

# Record Keeping

BALENS *Specialist Insurance Brokers*



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Your records are your first line of defence if a client makes a complaint or claim against you and are therefore of utmost importance. Please report everything relevant that happened in the therapy session and relevant comments from the client, both positive and negative.

Before you carry out the treatment you must also ensure that you check what medication your client may be on, any prescriptions they are taking and any medical conditions they may have, as there may be conditions which preclude the therapy. This information falls under special category data under the General Data Protection Regulation (GDPR), and may be retained under the lawful basis of **processing in the substantial public interest for Counselling etc. and insurance.**

We are often asked 'how long should I keep my notes? What happens if I work in a clinic who owns the notes?' or 'What happens if I leave a clinic or stop practicing?' and 'What about Data Protection legislation?'

The reality is that there may be overlaps or contradictions according to the different types of law. Data Protection legislation, Contract Law, the Criminal law and Human Rights legislation are there to protect the public and prevent abuse but they can cause confusion, especially with regard to what you should do as part of your contract with your insurance company in complying with policy terms and conditions.

The Data Protection Act 2018 and GDPR says you should keep records for no longer than necessary (although they don't define how long that is!). The core purpose of the Act was to stop people abusing data held and using it for unethical purposes. There is a proviso though that records may be kept for the establishment, exercise or defense of legal claims, allowing them to be retrained should a client request to exercise their Right of Erasure.

You have a human right (protected by law), to maintain your livelihood. In order to defend you, it is usually a condition of your Insurance policy (Contract Law) that records be kept for at least 7 years, or for 7 years after they reach the age of majority when treating minors. It is important to check your insurance policy conditions, to ensure you retain your records in accordance with these.

Although in most cases the Statute of Limitation (Under Civil Law or Tort) that applies for late discovered situations leading to an allegation of negligence is 3 or 6 years from the date that the patient discovers a problem, there are certain situations where the limitation period could be much longer. In the case of minors, this is 3 or 6 years (according to the type of claim) from the date that they turn 18. In the case of people with learning difficulties and in certain other situations, there is no Statute of Limitation and the Courts can overturn limitation periods, so there is rationale for record retention beyond those imposed by your insurance policy if you are treating clients that fall under the category of 'vulnerable adults'.

Your patient's case notes and records are your property, and you must retain them even if you have referred the client on or move to another practice. If, as a clinical supervisor, you oversee a student's work under your professional practitioner insurance, the patient's records are yours. Although a patient can, by written application, seek access to notes they have no legal rights of ownership. However, if a patient requests a copy of their notes, under their 'Right of Access' you must follow the procedure laid out in the Data Protection Act and keep a record of this on the file.

As your Insurance policy may need to defend an allegation against you in the future it is important that you know where your records are at any time. Think ahead, you may want to appoint someone in your Will or any Power of Attorney arrangement you may have set up to be able to have access to the records

if you are too ill, disabled or incapable of accessing them. Your Will should include such information so that if your Estate was challenged after your death, the policy would be called upon to defend it and would be able to do so.

On selling or otherwise transferring your practice, you may pass on the original records if (a) the new owner will be subject to the same or similar rules to those referring to Case Notes above and (b) the patient is informed in writing in advance of the transfer and given the opportunity to object, in which event you must retain the original records.