COSCA Guidance on Clinical/Professional Wills

Death or Incapacitation of a Counsellor or Supervisor

1. Unplanned Endings with Clients/Supervisees

Some endings that counsellors, psychotherapists and supervisors have with their clients and supervisees are not planned e.g. due to an accident, protracted illness, death or other professional interruption.

Organisational and individual members of COSCA should consider making ethical decisions about how they contract with clients and supervisees about unplanned endings. They should also consider making suitable arrangements for their clients and supervisees in the case of unexpected illness, death or any other professional incapacitation. These arrangements should be suited to the context in which the organisation and individual members work.

The above arrangements may include organisations and individual having a policy or procedure to cover the above situations. This is often referred to as a clinical or professional will.

2. A Professional Will:

- covers what would happen to clients/supervisees if a counsellor or supervisor was suddenly unable to continue to work with them through incapacitation without warning or death

- attends to the counsellor's or supervisor's ethical responsibility for empathy, care and planning in respect of clients/supervisees

- helps those designated in the will to deal with the needs of clients and supervisees and to any outstanding aspects of the counsellor's or supervisor's work

A Clinical/Professional or Therapeutic Will is not a legally binding document in itself. It is, instead, an ethical document that is designed to ensure that the individual member's duty of care for clients and supervisees is continued even when they themselves are unable to deliver a counselling or supervision service. It is a demonstration of their ethical responsibilities to always act in the best interests of clients/supervisees and have a duty of care towards them. This should be made clear when drafting a clinical/professional will.

Organisational members of COSCA should make similar suitable arrangements for any counsellors or supervisors employed by, or volunteering with them who are suddenly unable to work for them.

Individual Members of COSCA should ask two colleagues, one of whom could be their supervisor, if they are prepared to act as their Agent(s) and to implement their clinical/professional will, and not assume that their supervisor will take on this role without being asked.

Both of these individuals should be informed of the contact details of the other colleague/agent. A copy of the professional will should be passed to both of the above colleagues/Agents.

The names and contact details of these colleagues should be lodged with named people who are most likely to quickly learn of the incapacitation or death of the individual member.

The list of your clients and supervisees, including their records and contact details, should be maintained and kept in a secure location. The list should be updated on a regular basis.

What is expected of the Agents should be clearly stated in the will and cover whether they will only contact clients and supervisees to notify them of the unplanned ending of the service, what information should be given to clients and supervisees about the reason(s) for the unplanned ending of the service, or whether they will work with them to find another counsellor or supervisor.

You should inform the executor or lawyer for your personal last will and testament, and your Power of Attorney, about your Clinical/Professional Will, and make sure it allows for any instructions you give your Agents e.g. permitting access to any relevant documents, personal devices, social media platforms, and other relevant video call platforms like zoom or teams containing client or business details.

You might also want to include in the above information details of how your Agents will be paid if you have offered to do so, and give details of how any payments of outstanding or overpaid client/supervisee session fees should be managed.

You should also inform your Agents about who your executor, lawyer or Power of Attorney are and their contact details, so that they can gain access to client/supervisee data if necessary.

In the event that you do not have a last will and testament or a Power of Attorney, you should consider how your Agents will access your client/supervisee data to contact your clients/supervisees, arrange payment to clients/supervisees and to your Agents if required.

You should check that your clinical/professional will does not breach the law in Scotland in relation to last will and testaments and Power of Attorney.

Member organisations should ensure that each of their counsellors has their own clinical/professional will and that they inform their executor or lawyer for their last will and testament and their Power of Attorney about their Clinical/Professional Will, and make sure it allows for any instructions they give the Director/Manager/Chief Executive e.g. permitting access to any relevant documents, personal devices, social media platforms, and other relevant accounts like zoom or teams containing client, supervisee or business details.

A professional will should include the following information:

- how to access the records and contact details of clients and supervisees
- how to access the list of appointments of clients and supervisees
- a statement that clients and supervisees have given their informed consent for their records to be accessed
- how and when clients, supervisees and colleagues will be notified
- how unpaid session fees and payment for additional sessions by another counsellor or supervisor will be dealt with
- how the Agents' compensation/payment/expenses will be covered
- clear instructions with set timescales about the confidential maintenance, storage and/or destruction of electronic and hard copy records of clients and supervisees in accord with COSCA's guidelines on record keeping or until at least after your estate has been fully finalised.

A professional will should clearly describe who has responsibility for doing the following three tasks:

- **Clinical Tasks**:
- informing and supporting clients and supervisees if their counsellor or supervisor is suddenly unable to work with them
- informing the supervisor of the counsellor and detailing what is expected of them e.g. to inform and/or see the clients and supervisees
- **Financial Tasks:**
- contacting clients and supervisees, and ensuring cancellation of financial agreements that the counsellor or supervisor has e.g. direct debits with website hosts, professional bodies, insurance companies etc.
- **Administrative Tasks**:
- deleting mailing lists and terminating social media accounts
- contacting relevant parties about outstanding pieces of work/commitments
- Dealing with client records and clinical notes.

3. Drafting a Professional Will

Organisations

A template for drafting a professional will for use by organisational members of COSCA is provided in Appendix I.

Individual Members

No standardised professional will can work for every individual member or situation. The values, counselling orientation, and resources available to implement a professional will vary across individual members. However, the information provided above can used by individual members to construct their own personal professional will.

4. Implications for Contracting

As stated above, the clinical/professional will should include a statement that clients and supervisees have given their informed consent for their records to be accessed in the event of a professional interruption as described above. Contracts with clients and supervisees should include information about this and state clearly how this consent will be obtained and recorded.

Brian Magee
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APPENDIX I.

Death or Incapacitation of a Counsellor or Supervisor

COSCA's Template for Member Organisations on Drafting a Professional/Clinical

Introduction

The template below is offered to COSCA member organisations to use and adapt to their situation when writing their clinical/professional will for their own organisation.

Template

1. Death or Incapacitation of a Counsellor or Supervisor

In the event of the death or incapacitation of any Counsellor or Supervisor employed by, or volunteering with a counselling service, the Director/Manager/Chief Executive of the counselling service will be responsible for contacting all clients and/or supervisees to advise of the circumstances and ascertaining how they wish to proceed.

In doing so, the above person must seek to understand the level of loss of the therapeutic/supervisory relationship experienced by the client/supervisees and also their needs in respect of counselling and/or supervision.

In the case of clients, the above person should establish if a client wishes to engage in a new therapeutic counselling relationship and make an introduction to another counsellor if required.

In the case of supervisees, the Director will establish if the supervisee wishes help with finding an alternative supervisor and provide support accordingly.

Mindful of the contractual confidentiality agreement, the above person should obtain the client's/supervisee's written authority to pass on information /file records or identify the level of background information that may be passed on to the new counsellor or supervisor.

2. Death of Incapacitation of the Director/Manager/Chief Executive

In the event of the incapacitation or death of the Director/Manager/Chief Executive of the counselling service who is working with a counselling and/or supervision caseload, a member of the Board who is a trained counsellor and not part of the organisation in any other capacity, should contact the Director's' clients and/or supervisees to establish the way forward as above. (At time of writing the member of the Board is …….).

For the purpose of providing distance and in the interest of professional practice, it is the responsibility of the Board to ensure that there is always an experienced counsellor out with the counselling service, serving on the Board.

In the event of the death or incapacitation of the Director it is the responsibility of the outside board representative to ensure that all paper records of current clients and supervisees are stored with closed files and held for 7 years in the event of a complaint or action being be raised against the service in that time.

The board representative should also ensure that all closed files belonging to the service and which are over 7 years old, are shredded.

(There are no computer records of client work. All client records are held on paper files and kept under data protection guidelines in a locked, fireproof cabinet.)
(Client initials only are held on file. Full names, addresses and phone numbers are kept in a separate locked index box file.)

Counsellors names and the initials of their current clients, and the names of those on the waiting list and date of their assessment meetings, are held as ‘Task” files on the Directors computer and may be accessed by the Board representative and if necessary assisted by the administrator of the counselling service.

3. Contact Details of Organisation and Lead Person

The contact details of the organisation and the lead person are given below:

Name of Organisation:

Address of Organisation:

Lead Person: