

Practice policy 6: The appointment and duties of a professional executor

The CSRP Guidance for Ethical Practice draws attention to the Psychotherapist's duty to ensure continuing care for Clients in the event of a sudden cessation of practice due to illness, accident, change of circumstances or death. Psychotherapists also have a duty to ensure that the confidentiality of their Clients' records will be maintained. Clause iv, section E of Guidance to Ethical Practice requires that all practising Psychotherapists appoint a professional executor. These guidelines cover the appointment of a professional executor, the situations where the professional executor would be required to act, and the procedures to be carried out by the professional executor. Clients may be informed of these arrangements if that is desired, and it may be of therapeutic relevance in dealing with the issues of separation, mortality and death.

What is a professional executor?

This is the person appointed to ensure that a Psychotherapist's professional obligations to the Client and others are appropriately managed in the event of a Psychotherapist's sudden cessation of practice due to disability, death or other unforeseen circumstance. The responsibilities of a professional executor cover all aspects of the Psychotherapist's professional life: psychotherapy, supervision, consultation and any other teaching or publishing commitments. This appointment separates management of these professional aspects from the tasks of the other executors of a will in the event of death. This separation is vital for the preservation of the Client's confidentiality. The contract (see Appendix) between the Psychotherapist and the professional executor needs to be clear and fully agreed. Together with a clause of, or codicil to, the Psychotherapist's will, the contract gives legal power to the professional executor.

Why is a professional executor needed?

Two main areas are important here: the primary one is the welfare of Clients and supervisees, but includes related practice matters, such as finance; the second covers other possible activities such as teaching, training, writing, editing, etc. A Psychotherapist may choose to appoint more than one professional executor and allocate tasks appropriately. The professional executor fulfils several functions in relation to work with Clients and supervisees: Firstly they protect the Clients by ensuring that in the event of sudden cessation of practice, the Client will be informed by someone who will be able to consider their immediate and long-term needs in these circumstances and to protect their confidentiality. Secondly, they protect the Psychotherapist's family from having to get involved with the Clients at a time when they are pre-occupied dealing with grief, or with other issues that arise from death or a sudden disability due to accident or illness. Thirdly, they relieve the Psychotherapist from anxiety about what will happen to the Clients and practice in such circumstances, thus ensuring fulfilment of the duty of continuity of care.

Fourthly, they will also deal with certain financial aspects of the practice, such as the collection of outstanding fees. All of these functions will be defined in a contract, and the Psychotherapist has the re-assurance that all aspects of their professional work, as mentioned above, will be handled by a fellow professional rather than by the family and other executors.

Who would be a suitable choice for a professional executor?

The tasks might be performed by a qualified psychotherapist or counsellor bound by professional codes which cover confidentiality, or a sensitive and competent practice manager who already may be familiar with, and to, the Clients and entrusted with the confidential information. There must be confidence that the professional executor is capable of conveying unwelcome information in a clear, but sensitive manner and is capable of carrying out all the duties effectively. This includes liaising with the other executors, whilst fully maintaining the Clients' confidentiality. The professional executor may have to act swiftly and either be available personally for the Clients or be able to mobilise appropriate resources. Hence it may be advantageous if they are local and also knows of other local practitioners who can be called upon to help.

Situations requiring the services of a professional executor

- a. Where the Psychotherapist has died suddenly: The principle here is that the professional executor is carrying out the wishes of the Psychotherapist, as instructed by the Psychotherapist through their agreed contract.
- b. Where the Psychotherapist is alive, but unable to communicate: If the Psychotherapist suffers brain damage through illness, a stroke or an injury, or becomes mentally incapacitated, they may be totally unable to manage their affairs but still be legally responsible. It can be a long and expensive process for legal powers (e.g. to manage finances) to be transferred to another person when the Psychotherapist is unable to give consent. A safeguard against such a delay would be to grant the professional executor an Enduring Power of Attorney (with limited areas of responsibility) so that they can immediately act legally on behalf of the Psychotherapist in financial matters. The professional executor would implement the agreed contract, and make decisions regarding the practice.
- c. Where uncertainties might exist about the likely duration of the disability, what to tell the Client, and when, would be the responsibility of the professional executor, as would advise or help for Clients to find a replacement psychotherapist.
- d. Where the Psychotherapist is alive, unable to work, but able to communicate: Here the role of the professional executor would be simply that of communicating with Clients and carrying out the Psychotherapist's wishes in discussion with the

Psychotherapist. The professional executor in this instance would not be responsible for making decisions.

Establishing the professional executor's authority to act

This authority to act when circumstances require it is established through three main documentary processes: The will of the Psychotherapist, which appoints the professional executor through an appropriate clause or codicil, and includes contact details. It is to be expected that the next-of-kin are aware of this appointment and have the contact details

The contract defines the duties and responsibilities of the professional executor as agreed with the Psychotherapist, and the procedures to be followed. A copy of this contract is attached to the will and is also held by the next-of-kin.

The contract:

Authorises the professional executor to ensure that all Clients and supervisees are informed of the cessation of practice and offered consultation on their future psychotherapy or supervisory needs. This may be carried out by the professional executor, or by others under their instructions. Authorises access to all necessary documents by liaising with next-of-kin, executors and colleagues as required. Authorises collection of outstanding fees for payment into the Psychotherapist's estate. Instructs that the confidentiality of Clients and supervisees is strictly maintained at all times, and is responsible for the appropriate disposal of all confidential material. Instructs that all professional organisations and relevant contacts are informed of the situation. This includes the indemnity insurers. Authorises the payment of the agreed fees and expenses for the work involved in cessation of practice, and states the annual retainer payable on the appointment of the professional executor. States that the contract, fees and retainer are subject to annual review.

An example of a contract is shown in the Appendix below.

The information supplied to the professional executor:

Unless the professional executor is the practice manager, the following information is supplied to the professional executor in sealed envelopes which are only opened when there is a sudden cessation of practice, as previously defined.

Contact details of all current and recent Clients and supervisees. This list is regularly revised to ensure that the professional executor always holds fully up-to-date information.

Contact details for next of kin, professional organisations, and for professional colleagues who are closely involved e.g. as a supervisor or as a consultant for the Psychotherapist.

Contact details for colleagues and organisations involved with the Psychotherapist in non-clinical areas of work such as research, writing, teaching or administration.

Notification of professional organisations

Each of the Psychotherapist's professional organisation(s), which also require the appointment of a professional executor, will either hold a sealed envelope confirming the appointment and the contact details of the professional executor, or will have the information on a list. This information will only be used if the organisation is the first to be informed of the sudden cessation of practice, so that the professional executor can be informed.

Where a professional executor may not be needed

Practitioners working solely within a State health system, or within similar systems, may not need a professional executor, if arrangements within the organisation ensure adequate care for the Client. This could also apply to some Employee Assistance Programmes, funded by the Client's employers. It is essential to check from time to time (e.g. at the annual review) that there is a procedure in place for alerting the appropriate person if the situation arises. Where there is a co-psychotherapy team, it might be helpful for a co-psychotherapist to undertake some of the tasks of the professional executor. Conclusion This practice guideline provides all CSRP practitioners with a reminder of their obligation to ensure continuity of care for their Clients in the event of a sudden cessation of practice, and outlines the practical steps required to fulfil that requirement.

Appendix to practice guideline 6: The appointment and duties of a professional executor

An example of a contract between a psychotherapist (Th) and a Professional Executor (PE)

Contract and Procedures in the event of sudden death or disablement

Re: Th... CSRP Accredited Sexual and Relationship Psychotherapist No: 1234

This document outlines an agreement made with PE concerning his/her duties and procedures as Professional Executor with effect from dd/mm/yy. Th will ensure that his/her Next of Kin* are informed of the appointment of PE and of the relevant Clause in his/her will or Codicil where the PE is named. A copy of this Contract and Procedure in the event of death or sudden disablement may be attached to the will. CSRP* and other professional organisations* may be informed of the appointment of the PE and given contact details. In the event of the death or sudden disablement of Th, PE can expect to be informed by Next of Kin or by CSRP.

PE will be kept supplied with lists of current Clients and supervisees, and their contact details and will be required to maintain strict confidentiality with regard to this information. PE will liaise with the Next of Kin, or the Executors to gain access to such documents as are necessary for fulfilling his/her duties. PE will contact all current Clients and supervisees as soon as possible after receiving the information about Th's cessation of functioning. PE may make this contact personally or may delegate this task to other psychotherapists. Wherever possible, the use of such other psychotherapists will have been agreed with Th to avoid inappropriate contacts that might breach professional boundaries or confidentiality. PE will collect any outstanding fees due from Clients and supervisees. PE will be responsible for maintaining the confidentiality of Clients and supervisees at all times, and for the appropriate disposal of all confidential material. PE will also contact current supervisors* and colleagues* currently utilised for consultation or involved in other work. PE will ensure that CSRP are informed of either death or sudden disablement, and in the event of death, that other relevant organisations* and the Indemnity Insurers* are also informed. PE will be paid an annual retainer (£000 as of 01/01/07). H/she will charge Th (or his/her Executors) an hourly fee (£00 as of 01/01/07) for time involved in fulfilling his/her agreed duties, plus any expenses incurred.

This contract will be renewable annually, subject to mutual review.

Contact details attached

Signed:.....Th Date..... Signed:.....PE Date.....