

Ethics Case Study

Principle 5: Confidentiality

1. Identify the problem

As an experienced independent career professional, you have provided career coaching services to a global organisation for years. You are a trusted supplier and work on a retainer basis, coming into the organisation regularly to support employees with their career development. Your sponsor, the national HR director, values your expertise and professionalism. Over the years you have developed a trusted working relationship.

Today you are seeing 6 members of staff, for hourly appointments each. As usual, you are given a meeting room and a schedule with people's names and job title. In the past, you have asked the organisation to create intake forms for their staff to be shared with you in confidence, in advance, but so far this has not been implemented. Whenever you remind the HR director of your request, she makes promises but also jokes that you don't need the information upfront as you are so good at your job and can deal with anything on the spot.

On this particular day, the HR director asks you to come into her office to have a word with you, in confidence. She is concerned about a member of staff called Tom, who is on a three years' contract that is coming to an end soon. His contract has been renewed in the past, but this time it won't: Tom has had performance issues and been put on special measures, only to be off sick for weeks in between. The HR director tells you that Tom has had serious personal issues, leading to anxiety attacks and being signed off work for several times. Senior management want to provide intensive career support for him, to help him transition into a new job elsewhere, but they are not prepared to extend his current contract.

The HR director also tells you that Tom has taken the news of his contract termination very badly. The HR director wants you to start working with Tom so he can think about his career options, before moving onto a more intensive one-to-one job search programme led by you.

You have only 5 minutes before your session with Tom and make your way to the consultation room, slightly anxious about the state Tom will be in and how you will be building trust with him in such a charged situation.

You sit down with Tom and explain the nature, boundaries and confidentiality around your conversation, trying to create an open, safe and trusted environment. Tom is not responding much, he is withdrawn, avoiding eye contact and looking anxious. As you gently ask him about his personal circumstances and what ideas he has about moving forward, he gets agitated and hostile, eventually bursting into tears and sobbing inconsolably. Whilst you hold the safe space for him and let him release his pressure, it dawns on you what an impossible situation Tom (and you) have been put in. In your view, Tom is un-coachable in his current state of mind. What he needs is psychological support, not a careers intervention.

You are now so alarmed by despondency and dark thoughts he has shared with you, you ask Tom to arrange an immediate meeting with his line manager or HR, to get additional support. You make it

clear to Tom that his employer has a duty of care, and that he must seek help. He refuses to even consider your suggestion and you fail to persuade him otherwise. You tell him that you are now so concerned that you have no choice but to alert HR to his situation. He leaves the room in floods of tears, running down the corridor and disappearing into the men's toilet.

What are you going to do?

What kind of problem is it?

- a) It is organisational for two reasons:
 - 1) You find yourself in the middle of an organisational conflict between what the organisation regards as legitimate intervention (despite the client's current mental state of health) and what you regard as responsible employer behaviour (duty of care).
 - 2) You have asked the organisation to put processes in place to ensure you are informed about client's situations in advance, so you can be well prepared for any eventuality; yet the organisation has not provided the support you asked for.
- b) It is professional for two reasons:
 - 1) You are torn between adhering to your confidentiality agreement with your client versus your responsibility to protect your client, under your duty of care, thereby breaching your client's trust.
 - 2) You have not re-enforced or re-negotiated your contractual agreement with the HR director, to have sound systems in place for your career support sessions. As a result, you have got caught up in a situation which could have been avoided, had the right measures been put in place.

2. Apply the code of ethics

Ethical dilemmas can be complex and often touch more than one single ethical principle. At first glance, this case appears to be mainly about "client confidentiality" (or the breach of it – as you promised confidentiality first but then broke it to safe guard your client). Following further analysis, ethical principles such as "duty of care" come to the fore (for Tom provided by the organisation and by you, the career practitioner; but also for you, provided by the organisation). In addition, "trustworthiness" is also at stake:

Principle 5 of the CDI Code of Ethics (Confidentiality) states that:

Members must respect the privacy of individuals, disclosing confidential information only with informed consent, except where there is clear evidence of serious risk to the client or welfare of others.

Members must inform clients of the limits of confidentiality and data sharing at the outset.

Principle 7 (Duty of Care – to clients, colleagues, organisations and self) states that:

Members have a duty of care and are expected always to act in the best interests of their clients.

Members must develop and maintain professional and supportive working relationships with colleagues both inside and external to their own organisation and respect the contributions of other career development professionals to the activities and services on offer.

Members must fulfil their obligations and duties to their employer (where applicable), except where to do so would compromise the best interests of clients.

Members have a duty of care to themselves, both in terms of their personal integrity, personal safety and their capacity to practice in order to provide an effective service to clients.

Principle 12 (Trustworthiness) states that:

Members must act in accordance with the trust placed in them, ensure that the clients' expectations are ones that have reasonable expectations of being met and honour agreements and promises.

This case brings up a number of questions:

- What does your contract with your sponsor say about “confidentiality” and “duty of care”? Do you have a framework you can refer to, to clarify everyone’s roles, responsibilities and boundaries in providing career coaching services?
- How do you and the organisation define “confidentiality” and “duty of care”? Did the HR director breach confidentiality by briefing you about Tom before your meeting, assuming she did not seek consent from him? Or would she regard her intervention as “duty of care”?
- Confidentiality issues do sometimes arise in these settings, as you have two clients: your sponsor (who pays for the sessions) and your client (who is the member of staff you support). Not all sponsors understand the need for privacy, as they have a vested interest in the outcome of the coaching support they pay for. An example is a well-meaning line manager who wants to hear how the coachee is progressing, without appreciating that he is overstepping boundaries.
- As a long-term supplier, it is easy to get into the habit of providing a service without revisiting and updating arrangements made at the very start of the contract. What contractual arrangements are in place to safeguard the client, you and the organisation? What steps can you take to ensure you are satisfied with the arrangements? What steps do you need the organisation to take to protect everyone concerned – the client, you as a supplier, and the organisation itself?
- Who is responsibility for supporting Tom? One could argue that the organisation has failed to put the right measures in place and been ill-advised to ask you to step in at this point. One could also argue that you did not set sufficient boundaries, so you could do the best work for your client and yourself. What is your stand on this?
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- What made you so sure that Tom needed to seek immediate help? Did you react appropriately? Could it be that the HR director’s introduction influenced your actions? Or would you have taken the same course of action if you had not been warned by her?
- What arguments support your breach of confidentiality with Tom and your decision to report back to HR? What arguments speak against taking this step?
- Finally - which action is in the best interest of the client?

3. Review the relevant professional literature

Mulvey, Rachel (2002) 'Ethical Practice in Guidance' in Career Guidance - Constructing the Future - 2002, Social Inclusion Policy and Practice, Institute of Career Guidance, pp 79 - 89

Bryman, Alan (2008) Social Research Methods 3rd Edition, Oxford University Press, Chapter 5 Ethics and Politics in Social Research

4. Consult with experienced professional colleagues and/or supervisors and/or relevant professional bodies

As the independent practitioner and main service provider to this organisation, you are solely responsible for ensuring that you adhere to the CDI's ethical standards and fulfil your contractual obligations towards the sponsoring organisation and your coaching clients.

Stressful situations like the one described above do happen. Thankfully, they are rare. But when they occur, it is helpful to know what is best or right to do (especially when you are under pressure and need to react quickly, without much time to assess what is going on).

But however daunting this scenario sounds, you are not alone!

You have a professional network you can seek help from, whether this is in the form of experienced peers, colleagues or mentors, a professional body like the CDI, recommendations for coaching supervision or in an extreme case, access to legal support.

If you can't think of anyone to approach in person, identify someone through online groups (good places to start are professional groups on LinkedIn, such as CDI groups and subgroups like the Independent Career Practitioner group, the Career Coach Forum or the Career Thought Leaders' Consortium. However, please be aware that a sensitive case like this is best discussed in absolute confidence, and not in online fora. By all means, use online groups to find people who can help you further, but take the conversation offline. Do not reveal any case information in public.

Approach experienced career professionals, ideally those who have experience of contracting with organisations and working in the triangle of sponsor, client, coach.

You can see that coaching in organisations brings additional challenges, and you can learn a lot from

5. Potential courses of action

Immediate options:

- a) You could speak to the HR director and report back on what just happened, asking her to take immediate action and handle Tom's disappearance. You could decide to withdraw at this point.
- b) You could ask for Tom's line manager to get involved, with consent from the HR director, and get immediate help from someone who Tom trusts.
- c) You could go and see Tom yourself and find out what he wants to do next; then engage the HR director afterwards.
- d) You could do nothing and leave it to the organisation to resolve their own issue.
- e) You could carry on as you are.
- f) Practicing self-care: You and the HR director need to decide what to do with the rest of the clients who you are meant to see shortly after. Are you in a fit state to work with clients for the rest of the day? Are you okay and just need a break to collect your thoughts, before you proceed? Or is it in everyone's interest to simply cancel the rest of the sessions. Don't feel

under pressure to “perform” as it is likely that the experience has shaken you. You (and your sponsor) have a duty of care for yourself, too.

Longer-term options:

- g) Following this incident, you could ask for a debrief with the HR director and discuss the ethical implications of what has happened, against the CDI Code of Ethical Practice (covering confidentiality, duty of care and trust). You could also jointly review your contractual arrangements and decide whether they need updating. In addition to the contract, you would want to negotiate practical steps and processes (like intake forms; procedures etc.) to ensure a situation like this does not happen again. This is not about apportioning blame, but a great learning opportunity for everyone involved.

You could also ask about Tom and what decisions he took, in the end. Knowing what happened to him will be important for your sense of professionalism and sense of identity as a career professional: without showing self-care and getting closure, there is a real danger that you will always wonder what happened to Tom. Even worse, your inner critic might enjoy questioning what you could (or should) have done to handle the situation better.

- h) You could seek supervision coaching and work through the case with a trained professional, to help you make sense of what happened and learn from the occasion. In complex and emotional cases like this one, it is helpful to evaluate what happened with someone who takes an objective, detached view, and who can help you put your experience into a broader perspective. Do not let an experience like this haunt you or undermine your confidence!

6. Select the most appropriate course of action

Asking the HR director to take control of the situation immediately seems the best approach. Your client needs help, in the here and now, and you are not his employer. In the longer term, an open, honest and frank conversation with the HR director will help address issues that seem long overdue. You have built a good working relationship with the organisation and your sponsor, the HR director, and together you can find a constructive and productive way forward.

In addition, it is time for reflection and help for yourself, as a career professional. We all care about our clients and want them to succeed. Getting caught up in someone’s utter distress can be an unsettling, even traumatising experience. You owe it to yourself to talk through this experience, ideally through supervision, coaching or mentoring, so you can let go of a negative experience and move forward.

7. Evaluate the selected course of action

The test of justice: you feel that this is a course of action you would be happy with for someone you cared about. You believe that this will allow you to apply the principles of confidentiality, trustworthiness and duty of care to your clients.

The tests of accountability: you would be happy to publicise your actions as you feel you have maintained your professional integrity. Public trust and confidence in the profession is dependent on its practitioners being seen to exercise their accountability responsibly.

The test of universality: you feel that you would be happy if this course of actions were reported to your professional colleagues. You feel that there would be some colleagues who would not be prepared to compromise but you are satisfied the most would see that you are adhering to the principles so long as you are clear to clients about their expectations.

8. Implement the course of action

- The HR director took immediate action and approached the client. He was given additional support and signed off work, to give him time out.
- You completed your day in the organisation. After a short break, you saw the other 5 clients. With hindsight, this was not a wise choice: you needed to take time out, as you were quite shaken. You need to learn that saying no is okay, and that people will understand that sometimes, circumstances change.
- After a few weeks, you met with the HR director and client's line manager, and debriefed the situation. New measures were put into place, and better systems for the client sessions. And yes, you finally got you intake session forms, which helps the client and you prepare before the actual meeting.
- Tom's contract was not renewed. He left the organisation, and no one knows what he decided to do next.
- You did not seek supervision support, which is something you deeply regret. The incident was on your mind for a long time. With hindsight, you should have dealt with it soon after and taken the time and funds to have supervision coaching. Next time, you will!

9. Monitor and evaluate outcome

What lessons emerged

- You must always discuss these type of professional boundaries with your sponsor (or client) at the outset of the coaching contract. Agreeing boundaries early on makes it so much easier to address breaches of confidentiality, once you have started providing coaching services.
- You realise that as an independent practitioner, it is important to have sound contractual arrangements in place and that it is worth checking that previous agreements are still fit for purpose – especially if you have been working with an organisation over a long period of time and the initial contract is now outdated and needs reviewing.
- When it comes to doing your best work, you have learned that your instincts are right: you need to ask more forcefully for processes to be put in place by your sponsor, such as a confidential intake form for clients, so you are less exposed and can provide even better support for your clients. You feel that having been more aware of Tom's dire situation in advance could have changed the course of events. You would have had time to question the suitability of a careers intervention, explored alternatives to support Tom, or at least been more prepared for a challenging session, instead of waking into it, almost blindly.
- You have learnt to deal with the complexities of confidentiality issues and realise what stance you are comfortable (or not comfortable) with. You have grappled with the issue of breaching the confidence of your client, but you do feel that the circumstances justified your actions. At the end of the day, you have a care of duty to the client, and must protect his wellbeing, at any time.
- You appreciate that if Tom had been your private client, you would have had an open and trusted conversation much earlier on in the coaching relationship and would have referred him onto a psychologist or counsellor. You would have asked him to seek psychological help way before the organisation did. This experience has given you confidence in dealing with similar situations in the future, achieving better outcomes for all parties.

- You have learnt that as flattering as it can be to be held in high regard by an organisational sponsor, you cannot be expected to achieve miracles. Only because you are excellent at your job doesn't mean you can just walk into any situation and deal with it well. You need to safeguard yourself and your clients. Ensure that you and your sponsor co-create good working practices that work for your coachee, yourself and your client organisation.
- The case also illustrates the importance of liability insurance, in case someone decides you have been negligent; or in this case, sharing information that you were not "entitled" to share with senior management. Many organisations require their service providers to have professional indemnity insurance, often with cover for up to £1 to £2 Million. The importance of having insurance as an independent career professional to protect you and your client cannot be stressed enough. (If you provide career services on behalf of an employer, do check that insurance and the required level of cover are in place). Hopefully you will never need to use your insurance, but having everything in place provides peace of mind. Approach the CDI for special member discounts – professional indemnity insurance is not as expensive as you might think.

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