



## Dental Records and the Law: UK

Dental Protection is very grateful for the advice of Christine Milne, one of our in-house lawyers in the preparation of this guidance to support the information on page 32 and 33 of the Annual Review 2007.



Because individual situations will vary, this information is provided for general guidance only. Regardless of any specific legal requirement it is best practice to keep all your dental records for as long as possible. Whilst the law may sometimes define a minimum requirement, it is no crime to exceed it and you may well be very glad that you did.

If you require more specific information on a particular issue relating to dental record keeping please contact Dental Protection using the email address below.  
[querydent@dentalprotectionorg.uk](mailto:querydent@dentalprotectionorg.uk)

Is there any legal requirement which determines the length of time that a dentist needs to keep their patient's clinical records in the UK?

*The Data Protection Act (1998)* prohibits sensitive personal data (dental records) from being kept any longer than is necessary for the purpose for which the data is kept. At present there is no authority to guide us on this. The limitation period for starting a claim in negligence is 3 years, contract (private treatment) 6 years, or for a child until the age of 21 and this may influence storage periods.

I would advise that practitioners keep records as long as possible but in any event a minimum of 11 years for adults. The reason for this is that claims can arise many years after the treatment is provided. The presence of records is of great assistance in investigating a claim. The absence of records can create considerable difficulties for the health care professional. Further advice on clinical records is available in the DPL risk management modules numbers 20 and 28 on records and computer records respectively

Are there any legal obligations about the storage of dental records?

The records must be kept securely. There is no need to use Privacy Enhancing Technology.

Are there any legal requirements about disposal of either paper or computer-held records?

The NHS Dental Contract requires records to be kept for up to 2 years after a course of treatment has finished. Disposal should be confidential preferably by shredding.

Under what circumstances does a dentist have an obligation to disclose their records and if so, who might be authorised to request that disclosure?

Section 7 of *The Data Protection Act (1998)*, gives rights of access to individuals in respect of personal data held about them. A dentist is obliged to disclose an individual's dental records provided he has received: the individual's written request, the current maximum chargeable fee of £10 (£50 for manual records.) and, if necessary, information required to satisfy himself of the authority of the person making the request if not the individual. Disclosure must take place as quickly as possible or in any event within 40 days of receipt of the request.

A dentist may also be asked to disclose dental records for other purposes. Common examples being disclosure:

- 1) To the police to prevent and detect crime.
- 2) Required by an enactment of law or court order.
- 3) To legal professionals for use in legal proceedings.

However, a dentist should be cautious as there are requirements of necessity as well as having consent of any other individual identified; the records may need to be redacted before disclosure. The dentist/ patient relationship gives rise to a duty of confidence and disclosure without consent is likely to be considered unreasonable. Dental Protection will give advice in relation to any request.

Are there any observations about clinical records that you feel might help our members in the future?

1. The DPA Information Commissioner has indicated that the definition of a 'health record' will apply to material held on x-ray.
2. Rather than destroying records when a storage problem arises consider scanning records and storing them on CD - Rom or DVD.