

Dilemma: *My dying client has disclosed child pornography use*

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Readers' responses to this month's dilemma

Julia is a counsellor in a hospice, working with end-of-life clients and their families. Terry, a widower in his mid-70s, is receiving palliative care for terminal cancer and has come to the hospice following a fall at home and an emergency hospital admission. Terry is in an immobilised state and has been told he has only a couple of weeks to live, at most. He has asked to see a counsellor.

In Julia's first meeting with Terry, he says he has a shameful secret that he wants to disclose before he dies. Although he insists he has never acted on it, he tells her he has a sexual interest in children and that he has a large amount of pornographic material relating to minors on his computer at home and saved onto CDs and in hard copy print-outs.

Terry is extremely anxious about how his adult daughter will feel on finding the images when she clears his house after his death. He has no one he can ask to go to his house to dispose of them and asks Julia if she can help him, so his daughter doesn't have to discover his shameful secret after his death.

What should Julia do?

Please note that opinions expressed in these responses are those of the writers alone and not necessarily those of the column editor or of BACP.

Disposal would be a criminal act

Jill Swindells MBACP

Person-centred counsellor in the criminal justice system (victims and offenders) and pre-trial therapy trainer

Terry has divulged a very serious crime. Hopefully, Julia will have already discussed with him that she will have to break confidentiality if she thinks he or others are at risk of harm or if required to by law. She needs immediately to clarify whether Terry wants her help to dispose of his child pornography collection or simply wants to explore ways to avoid his daughter discovering his secret after his death. Disposal would incriminate Julia: by actively helping to conceal the alleged criminal offence, she would be perverting the course of justice as an 'accessory after the fact'. Exploring other ways to prevent his daughter finding out is her only viable option.

However, possession of child pornography isn't a victimless crime and is deemed to cause further harm. In addition, Terry's cache could help police investigate and prevent related crime. There remains the dilemma of whether to report this to the police. Julia has an ethical duty of care to Terry and to others at risk of harm and is not required by law to report disclosures of child abuse. She does have the legal right to report this disclosure 'in the public interest' in order to protect others, but doing nothing wouldn't qualify as an offence if his crimes came to light by other means. It would seem impossible to avoid this, if it is also in hard copy. I would advise Julia to document his disclosure verbatim and make brief factual notes about the session, to avoid inaccuracies. She should explore with Terry the possibility of reporting his child porn stash to the police - either in person, or in a written confession after his death, or she could offer to do it herself. Of course, there can be no guarantee that his daughter won't discover his secret, once it's reported. If Terry chooses not to report, Julia should urgently consult with the hospice manager, her supervisor and safeguarding lead.

Help him take responsibility for his actions

Christina Kelekun MBACP
School counsellor

I empathise with Terry's wish to protect his daughter from finding the images at his house but I'm not clear what he expects Julia to do. Is he expecting her to go to his house to dispose of the images? Terry insists that he has never acted on his sexual interest; however, he has acted on it, in as much as he has been downloading images of others abusing children. He has therefore been complicit in child sexual abuse and has committed a criminal offence. Julia should immediately discuss Terry's request with her supervisor, to get support and advice. I expect that Terry's revelation has also evoked some very difficult feelings in Julia, which may impact on their further work together.

In their next session, Julia could suggest that she helps Terry report the websites to Child Exploitation and Online Protection (CEOP) and the police, so the abuse can be investigated and the children safeguarded. In this way, Terry would at least have done something positive towards protecting the children. Or the computer could be handed over to the police at the hospice. It is not enough to just destroy the images, and if Julia got involved in this, it could make her complicit. Terry does not have long to live and it is unlikely the police will want to pursue any action against him at this late stage in his life. As difficult as this would be for Terry, taking responsibility for his actions may help him with his feelings of shame and guilt and may mean he can die with a clearer conscience.

Discuss limits to confidentiality

Paul Clark MBACP
Integrative counsellor providing voluntary IAPT services

Whatever else she does, Julia absolutely shouldn't collude in the disposal of Terry's porn. Not all historical crimes committed by clients need to be reported by therapists, but the BACP *Ethical Framework* (s10: 55d) says safeguarding concerns can represent an exception to confidentiality. Whether or not Terry's collection of images represents a current risk of 'serious' harm to the children

depicted is a moot point and not one for Julia to decide. Terry seems unaware he has already committed a crime under UK law. Section 1 of the Protection of Children Act 1978 and section 160 of the Criminal Justice Act 1988 cover the offence of possession of indecent images of children. The defendant does not have to have had any intention to or involvement in making or distributing the image - all that is required is that they had the image in their possession.

Julia will already have discussed confidentiality and exceptions when contracting with Terry, so when he began his disclosure, she should have immediately warned him that she might have an ethical and/or contractual duty to report what he shares, under the hospice's safeguarding policy. Having heard again about the limits of confidentiality, if Terry still asks Julia to help him dispose of his collection of pictures, she needs to spell out to him her ethical and legal obligations. If, on the other hand, Terry decides to keep quiet, then it's up to him whether or not he's going to tell his daughter about what she's going to find and to discuss with her what she might do about it. Julia has no legal liability for something she is not party to. That aside, Julia has her professional integrity to consider. Regardless of how events unfold, she needs to take this to supervision where she can explore the experience and any legal or ethical duty arising from it.

More questions than answers

William Johnston

Person-centred counsellor in private practice

This has, I think, very little to do with counselling. A dying man, in considerable distress, is reaching out for very specific practical help. Can Julia help him? According to the rules, she can't. This is not the role of a counsellor. Unfortunately, rules and humanity do not generally make good bedfellows. That notwithstanding, this is not a dilemma to which there is a definitive right or wrong answer. All I can see are questions, which can only be answered by Julia, as the one person who is in contact with Terry, and clearly Julia herself will struggle.

How does she feel towards Terry? Does she feel revolted by his secret - even by the man himself? If so, can she lay her feelings to one side and work with Terry, the man, rather than whatever label she might attach to him? What does her gut tell her to do? And can she reasonably follow her instincts? In the brief period they have together, Julia's thoughts and feelings are going to be just as important as Terry's. Julia might need Terry to know what it is that he is asking. She is the one who will have to live with her decision.

Terry believes that he can die in peace if his secret dies first. Can death be that unmessy? If Julia destroys the pornography, what else, though less tangible, might remain? Might his daughter understand her father better if she knows the truth? He withheld the truth from her in life; is it better or worse if the lie is sustained in death? Might there be an alternative? Might Terry trust Julia to communicate his thoughts and feelings with his daughter?

In the public good

Peter Jenkins

Counsellor and author of *Professional Practice in Counselling and Psychotherapy: Ethics and the Law* (Sage, 2017).

From a legal point of view, destroying the evidence could put Julia at significant risk of prosecution, besides representing a major breach of professional and therapeutic boundaries, which would be in conflict with the BACP *Ethical Framework*. Terry is not the sole potential offender here, as the possession of child pornography relies on the active assistance of complex networks of producers and suppliers of this material.

It could be argued that reporting the issue to the police won't make any difference, because it is just too late - the videos have already been made and downloaded and the alleged perpetrator, Terry, is now close to death. However, from an ethical point of view, it could be argued that reporting is still important in order to promote welfare or to do good, both from a social and from an individual point of view. From a separate legal point of view, the police having access to this material may assist them a great deal in identifying and prosecuting other members of the network supplying this child pornography, or, in some cases, in identifying and rescuing the children depicted in the material.

The police must be informed

Olga Malyutina

Counselling student at Farnborough College of Technology

Julia will need to be clear and honest with Terry, and stand by him to the very last moment, if Terry wishes. The police must be contacted on ethical and professional grounds, if Julia is to comply with the BACP *Ethical Framework* and with her hospice's own safeguarding policy, even if reporting his disclosure is not strictly required by the law. The disclosure is necessary for the safeguarding of the children involved and the investigation of criminal activity. Julia may be able to offer invaluable support for Terry in his last days, as his confession is a cry for help.