Chapter 1:

Legal and ethical issues in therapeutic work in the criminal justice system

Peter Jenkins and Jill Swindells

Introduction

Counselling and other forms of therapeutic work face major challenges, difficulties and opportunities when carried out in the context of the criminal justice system. This system is necessarily bound by concepts of reparation, restraint and punishment, whereas counselling is essentially a *voluntary* relationship between client and therapist. From an ethical point of view, therefore, principles, such as autonomy, may need to be compromised or at least carefully calibrated with others, such as welfare, justice and the avoidance of harm. Providing therapy in the context of the criminal justice system can present real tensions for the therapist, client and organisations involved, with regard to constructing confidentiality, promoting client and practitioner autonomy, and even determining the overall *purpose* of therapy. These tensions need to be managed and worked with, even if they cannot not always be finally resolved and overcome.

The criminal justice system is defined here as including *both* community *and* custodial aspects. Community aspects include a wide range of provision of counselling and therapeutic services, such as support for victims and witnesses; restorative justice, involving both offenders and victims; and pre-trial therapy for child, and vulnerable and intimidated adult witnesses in criminal trials. Custodial aspects include provision within prison and youth custody, such as suicide prevention, offence- or drugs-related therapeutic work, as well as generic counselling. Therapeutic work is also broadly defined and includes counselling, psychotherapy and counselling psychology, specifically contracted, and carried out in individual or group formats. This activity is considered to be distinct from the use of counselling *skills* by personnel within the criminal justice system, such as prison officers, prisoners, probation officers, chaplains and volunteers, however valuable this contribution may be.

This chapter will look at:

- legal and ethical frameworks for counselling in the criminal justice system;
- counselling for offenders in the custodial system, and for victims and witnesses in community aspects of the criminal justice system;
- ethical and professional issues arising within therapeutic work in the criminal justice system.

Legal and ethical frameworks for counselling in the criminal justice system

Key points

- Therapists working in the criminal justice system are closely subject to and boundaried by the law.
- Models of ethics include a range of alternative frameworks for ethical decision-making.
- Therapeutic work in criminal justice systems is open to ethical critique, but also to ethical justification.
- Professional codes of ethics may vary in terms of their reliance on specific ethical models.

Law and ethics

Reference to the law clearly carries a greater resonance within the context of counselling within the criminal justice system than might apply elsewhere. The criminal justice system is firmly set within the law, and in relation to institutions, such as the police, courts, custodial and community services. The term 'law' refers here to all systems of law. This comprises a set of normative rules and legitimate sanctions, including both civil and criminal law, common law and statute, and operational regulations, such as prison rules and practice guidance (Jenkins, 2007). In practice, the law is also influenced by a strong element of government and agency *policy* with regard to sentencing guidelines, Crown Prosecution Service (CPS) guidelines and priorities, and the wider shifts, both towards and away from community sentencing and reparative justice.

At an individual level, therapists working in the custodial system are required to sign the Official Secrets Act (1989) and to comply with its strict requirements, under criminal law, for maintaining confidentiality (Mitchels & Bond, 2011). This undertaking requires therapists *not* to disclose information about prison procedures or prisoners outside their workplace, such as the movement, release, or transfer of prisoners to other establishments. Both prison personnel and volunteers who breach confidentiality or other prison rules may be subject to criminal prosecution for misconduct. The importance of these legal requirements is normally reinforced by regular in-house training, for example on data protection and prison security.

Models of ethics and ethical practice

The criminal justice system is also necessarily embedded in core, and often controversial, ethical discourses, which are related to the purposes and justifications for punishment within society, such as retribution, reform and deterrence (Foucault, 1991; Honderich, 1989). The broad concept of *ethics* refers to philosophical systems of understanding and decision-making in relation to what is judged to be 'good' or 'bad', 'right' or 'wrong', or 'fair and appropriate'. Broadly speaking, there are a number of different approaches to defining ethics, such as:

- rule-following (or *deontological*) approaches;
- outcomes-based (or *teleological*) approaches;
- virtue-based approaches;
- rights-based approaches;
- relational approaches.

Each of these ethical models might prescribe a different, but still ethically sound, approach towards working with a professional dilemma. One example might be in the case of a prison client disclosing low-level suicidal ideation within a counselling session, but also expressing a wish for this disclosure *not* to be recorded or passed onto prison staff to avoid delaying an imminent transfer to an open prison. A *rule-following* approach might follow the prescribed protocol for referring all clients at risk of suicide, however low-level the risk, to the appropriate prison authorities. An *outcome-based* approach might balance the ethical principles of respecting the client's wish for autonomy against that of avoiding harm. A *virtue-based* approach might refer to the therapist's wish to act and be perceived as being ethically sound in their decision-making. A *rights-based* approach might seek to prioritise the client's rights to autonomy

and rehabilitation. Finally, *relational* ethics might prioritise the quality of the therapeutic alliance and try to avoid jeopardising this by reporting the suicidal ideation without client consent.

Each decision could well be different in terms of the therapist's ultimate actions, but could be appropriately justified via alternative systems of ethical reasoning. This process of ethical decision-making and subsequent action (or possible *inaction*) is quite distinct from any legal consequences for the therapist in deciding to follow, or *not* to follow, prison regulations and the expressed terms of their contract of engagement, regarding procedures for reporting an identifiable suicide risk.

Ethical critiques of therapy within the prison system

The main ethical critique of therapeutic work within custodial settings appears to adopt a *rule-following* approach, arguing that the rule-bound context of prison itself ensures conflict with the basic rules of therapy. These basic rules are claimed to be essential for setting up and maintaining a 'secure frame' for carrying out effective therapy. Schlesinger (1979) has made a powerful argument that practising psychotherapy in prisons may even be 'an unethical endeavour' given that 'the therapeutic environment is one in which trust, confidentiality and voluntariness cannot characterise inmates' involvement in psychotherapy'.

The response by Huffman starts from the premise that '[p]rison is a different world' (2006). Adopting a more pragmatic, *outcomes-based* ethical stance, Huffman claims that 'the real ethical question is how do we adapt the frame to the need?' (2006). The reality appears to be that many therapists working within the wider criminal justice system, particularly within the custodial system as such, struggle with the day-to-day constraints of finding a suitable room, minimising interruptions, keeping to time and balancing client wishes with organisational priorities. These factors are described as part of the 'struggle to maintain appropriate boundaries in the prison setting' (Broderick, 2007). For any therapist, the *environmental context* therefore becomes a key factor which can be minimised, but never ignored, given that '[c]onstraint comes before counselling, security comes before self-actualisation and punishment comes before personal growth' (Claringbull, 2010).

Presumably, therapists who are unable to adapt, even partially, to a *rule-following* context for therapy will choose to leave. A crucial question remains, however, as to whether, or how, *others* might seek to adapt and retain their professional

autonomy in more or less creative ways, while continuing to work within the criminal justice system.

Professional codes of ethics

Ethical requirements are usually spelled out via binding codes of ethics, which govern the behaviour of specific groups of professionals. Psychologists are governed by the codes of ethics produced by the British Psychological Society and also by the code of their statutory regulatory body, the Health and Care Professions Council (HCPC, 2012). This code is *rule-based* in nature, and clearly follows deontological principles. Failure to follow the code, for example regarding accurate record-keeping, can result in disciplinary action against members by the HCPC, leading to removal of a practitioner's legal license to practise.

In contrast, the *Ethical Framework for Good Practice in Counselling and Psychotherapy*, produced by the British Association for Counselling and Psychotherapy (BACP, 2013), combines elements from all five models of ethical practice, ie. based respectively on *rules, outcomes, virtues, rights and relationships*. The code specifies key ethical principles, drawn from a widely accepted palette of core bio-medical ethical principles, such as autonomy, welfare, avoidance of harm, trust, justice and self-respect. It also sets out the personal qualities expected of practitioners, such as courage and humility, and the values required, which are broadly defined as attitudes translatable into observable behaviours, such as respecting the integrity of personal and professional relationships. Finally, the *Ethical Framework* (BACP, 2013), currently under review, is now also moving towards incorporating fundamental *rules*, such as keeping accurate and appropriate records, which closely parallel the requirements of the HCPC Code (2012).

It might be expected that ethical codes for therapists that are not solely *rule*-based but provide for a degree of practitioner discretion and autonomy are more than likely to come into conflict with codes of behaviour within the criminal justice system, which necessarily prioritise following set regulations, such as prison policy.

Some of the main potential areas of tension and conflict, such as in relation to confidentiality, risk management and information-sharing, will now be explored in more detail.

Counselling for offenders in custodial settings and for victims and witnesses in the community

Key points

- There is a wide range of counselling provision for offenders in custodial settings, from cognitive-behavioural interventions to listener schemes.
- Counselling for victims and witnesses in the community often employs a 'rights-based' model of entitlement and provision. Counselling for victims and witnesses of crime may also include offenders, provision of witness support and access to pre-trial therapy.

In a climate of cuts to prison staff and budgets, overcrowding, poor conditions, reoffending figures, rates of assault, sexual violence, self-harm and suicide in custody, there is much to debate about offender management (HMIPEW, 2014). This includes the arguments over custodial versus community sentences, particularly for young people, women and those with learning or mental health difficulties. According to organisations such as the Prison Reform Trust, the Howard League for Penal Reform and the Michael Sieff Foundation, current strategies are failing and the system is struggling to cope. Vulnerable offenders would arguably benefit from appropriate care in the community, rather than being in custody. They also advocate better support for victims of assault and sexual abuse in custody.

Change would require a more holistic approach and new systems. These are needed to identify offenders with particular and special needs at an earlier stage and to divert them as soon as possible to suitable healthcare, interventions and support, in the most appropriate setting, including those outlined next.

Offender behaviour and substance misuse programmes and other interventions

The majority of accredited programmes and other interventions in custodial settings are cognitive-behavioural in approach, this being perceived as the most effective in reducing offending and re-offending behaviour. Others utilise coaching, mentoring, the 12 step programme, therapeutic community living, psycho-social or psycho-education and motivational approaches or techniques. Based on exploring

past offending in order to reduce future risk, they are selected to tackle specific attitudes, beliefs and behaviours. These can include focusing on substance misuse, domestic abuse, sex offending and violence, as well as on promoting new skills, such as anger, emotion and risk management, victim empathy, relapse prevention and successful resettlement. These are a compulsory requirement, when identified as part of a custodial or community sentence plan. Other interventions may be optional as, indeed, counselling should always be.

Tailored multi-agency care plans, overseen by probation, are a compulsory requirement when imposed by the court on those serving community sentences. These can include a range of interventions, such as Drug or Alcohol Treatment Requirements (D/ATRs) if misuse is a significant factor in past offending, offender-focused counselling and other services provided by domestic or sexual abuse agencies, or specialist agencies, such as the Portman Clinic in London.

Restorative justice embraces generic 'victim awareness and empathy' courses, as well as *indirect* contact (eg. via letter writing) and facilitated face-to-face *direct* contact between offenders and their victims. Both sides must be willing participants in the case of face-to-face contact. Support is available for victims via Victim Support. From an ethical and therapeutic point of view, anecdotal evidence suggests that prisoners taking part in restorative justice are likely to need post-conference support, as their isolation may intensify what is often an emotionally powerful experience. While informal chats to prison staff or fellow prisoners may suffice, a referral to counselling, if available, may be advisable for those in need of greater support.

Counselling in custody

There is much variation in generic counselling provision in prisons across the UK. What is available varies enormously in terms of what is offered, by whom and why. The range and variety of counselling provision can include one-to-one or group work; short or long-term work; general or issue-focused counselling, such as bereavement; and avoidance of, or involvement in, appeals, report writing and advocacy. Provision may vary in accordance with counsellors' gender, age, culture, professional training and modality. It may also vary in terms of whether counsellors are volunteers or employed by the prison service or external organisations, or whether oriented towards a reducing reoffending agenda or empowering clients to overcome difficulties and achieve positive change, potentially leading to a more fulfilling life. Despite these variations, all counsellors face the same challenges of managing the complex interplay between the realms of custody and counselling, including differing agendas and ethical stances.

Offending behaviour might be conceptualised as a creative response to personal, social or environmental circumstances, albeit maladaptive. Counselling practice requires creative and dynamic adaptations and sensitivity to the differing needs of what can be a vulnerable, hard-to-reach or demanding client group. In addition, counselling may require fundamental changes in order to comply with the prison regime, rules and regulations, such as:

- devising counselling policies and procedures which are pro-active and compliant with prison or multidisciplinary or multi-agency approaches, which put safety and security foremost;
- ensuring explicit contracting and re-contracting, regarding confidentiality, harm to self or others, unreported offences, terrorism, money laundering and all aspects of prison security;
- undertaking initial and on-going risk assessment, through formal prison procedures and via informal client feedback, in relation to self-harm or suicidal ideation and other threats to safety or security;
- obtaining informed consent to disclosures, referrals and advocacy, in order to make best use of other sources of support.

While counselling aims to promote client autonomy, it is limited by the very nature of prison life. So it is important for counselling to maximise client autonomy by whatever means possible, such as by ensuring purely voluntary participation, encouraging self-referral, offering support sessions or alternative support while on the waiting list and a choice of counsellor's gender or age. Counsellors might seek to offer choices over the timing of sessions, for example to avoid clashes with other activities, or location choice, in order to accommodate safety concerns. Counselling might include mutual assessment, self-directed goals and session content, sharing boundary responsibilities, agreeing self-harm and suicide observation report entries. It may also include optional completion of outcome measures and service evaluation, or opting to request a 'hold' on prison moves during counselling and facilitating access to additional sources of support, as outlined below.

Other sources of support in custody

- **The Listener Scheme** is provided by Samaritan-trained and supported, security-cleared volunteer prisoners to peer-support fellow adult prisoners in distress, to relieve their despair and reduce self-harm and suicide risk in custody. However, anecdotal evidence suggests some prisoners do not use the service due to confidentiality concerns. In addition, all prisons should have 24-hour phone access to the Samaritans.

- **Other internal support** includes ad hoc or on-going support through employed prison staff, volunteers or via resident In-Reach, such as mental health and substance misuse teams, healthcare and education professionals, chaplaincy, NACRO (offering resettlement advice) and prison staff, including those responsible for safer custody issues.
- **External support** from family and friends via phone calls, letters and visits provides valuable support for many prisoners, while others access befriending and letter-writing schemes. They are all well placed to notice any changes indicating increased distress and risk of self-harm or suicide. Any concerns should be reported to the prison directly, or via services such as the Offenders' Families Helpline. The national newspaper for prisoners, *Insidetime*, also available online, provides a comprehensive list of support services available to prisoners and their families.

Counselling within community aspects of the criminal justice system

Counselling within community aspects of the wider criminal justice system has grown substantially in the last decade. Outside of the formal custodial system, counselling and other forms of therapeutic intervention have been recognised, funded and given policy approval, research backing and political clout. 'Counselling for victims' is now a well-used phrase in policy papers and within the wider political discourse on justice and victims' rights. From a wider ethical point of view, counselling within community aspects of the criminal justice system seems to be heavily influenced by this progressive discourse of, if not of 'rights' as such, then at least of 'entitlements', and even of 'enhanced entitlements' (MOJ, 2013). However, these rights seem to be embedded in an implicitly hierarchical value system, with the rights of victims and their families receiving highest priority, while the rights of prisoners are often portrayed in the media as being both undeserved and subject to manipulation and abuse. Yet even in the context of 'rights for victims', counselling, both pre- or during criminal trials, continues to suffer from a widespread lack of awareness, understanding and appreciation of key issues, such as the need for compliance with the *Practice Guidance on Pre-Trial Therapy* (HO/CPS/DH, 2001) and other appropriate sources of support.

Counselling already plays a valuable role in supporting criminal justice employees, through workplace schemes. It also has the potential to have a more significant role elsewhere for victims, ex-prisoners and offenders serving community sentences, including criminal diversion schemes, probation and restorative justice.

The criminal justice system is often criticised for marginalising, or re-victimising, victims and witnesses. This is in spite of the crucial role of witnesses in the trial process and evidence-giving often being demeaning or intimidating. Successful prosecutions are highly dependent on the co-operation of victims and witnesses. Long investigations, poor communication and court delays can threaten their welfare, worsen their prognosis and limit their ability to give 'best evidence' (DOJ, 2010; MOJ, 2012). The report *Speaking Up for Justice* (HO, 1998) stated that victims and witnesses should not be denied emotional support and counselling before or after trial. However, pre-trial therapy is often discouraged for fear of tainting evidence, appearing to coach witnesses and thus undermining their credibility (MOJ *et al*, 2011).

Various attempts have been made over the years for the criminal justice system to become more victim-focused. Most recently, the *Code of Practice for Victims of Crime* (MOJ, 2013) set out to ensure their needs are better met and provide greater clarity on the availability of local support services. In 2015, these rights will be set out in legislation, along with a new 'one-stop-shop' Victims' Information Service, with a helpline and website, including those outlined below.

Support for victims and witnesses in the community

- **Victim Support** offers emotional support, practical help, information and signposting to additional sources of help locally, such as counselling, to everyone affected by crime across the UK. The police may refer automatically or people may self-refer without reporting a crime. It can assist with Criminal Injuries Compensation applications, which could fund private counselling if not available free-of-charge. However, those with a criminal record may not be eligible for compensation.
- **Witness Service** is the part of Victim Support dedicated to supporting victims and all witnesses in court, as well as providing pre-court familiarisation visits and preparation.
- **Witness Care Units** in England and Wales, along with **Victim Information and Advice Services** in Scotland, manage the care of victims and prosecution witnesses and co-ordinate additional services where appropriate, including the use of 'special measures' and intermediaries.
- **'Special measures'** (CPS, 1999) are available for children under 18 years and for vulnerable and intimidated adults to provide greater support and reduce stress, for example using screens in court or evidence-giving via live-link, subject to the agreement of the court.

- **Family liaison officers and other specially trained officers** (FLOs/STOs) may be assigned to serious cases. Their primary role is investigative, but they also provide information and support to victims and their families.
- **Independent domestic/sexual abuse advisers** (IDVAs/ISVAs) provide specialist support and court preparation for victims of domestic or sexual abuse and signpost to pre-trial therapy, or post-trial counselling, as required.

Counselling for victims and witnesses of crime

Whether or not a crime is reported, it is important that counsellors have an up-to-date understanding of what constitutes a crime, the criminal justice system, other sources of support and pre-trial therapy practice guidance (HO/CPS/DH, 2001; 2002). This is necessary to work appropriately, according to their clients' involvement in criminal justice and to ensure clients' fully informed consent, in their quest for recovery and justice. Achieving justice can itself have real therapeutic value when appropriate support is in place (Williams, 2002). Due to the dynamic and changing nature of both clients and the justice system, therapists need to be mindful of the possibility that clients' involvement in criminal justice may change; for example, via clients reporting crimes during, or after, counselling, or new evidence emerging resulting in a case unexpectedly proceeding to trial. Hence, ongoing assessment and prudence are recommended when counselling all victims and potential witnesses of crime (Swindells, 2012).

Generic counselling is suitable for non-reported crime and for cases not proceeding to court. In the community, assistance from Victim Support is recommended for those proceeding to court but deemed *neither* eligible for, *nor* in need of, pre-trial therapy (discussed below); while in custody, supportive sessions may be helpful. If required, counselling is suitable for *all* clients post-court proceedings.

Pre-trial therapy should be available to all under 18s and to those over 18 who suffer with physical or mental health difficulties, have learning disabilities, or capacity issues. It also includes those who are affected by weapon-related crime, sexual or domestic abuse, the elderly and frail, if court is a possibility and therapy is considered necessary, both in custody and in the community. The police are primarily responsible for identifying clients as potentially being eligible for pre-trial therapy, as child witnesses or as vulnerable or intimidated adult witnesses. Therapists or carers are ultimately responsible for the decision to commence therapy and for so informing the police or Crown Prosecution Service. For many reasons, including reluctance to disclose, many potential clients are missed and, consequently, not referred (McLeod *et al*, 2010). With clients' consent, therapists

are ideally placed to flag up clients' eligibility for pre-trial therapy if this has not already been identified.

The CPS guidance (HO/CPS/DH, 2001) is supportive of therapists meeting clients' needs, working in their best interests, ethically and legally, by balancing support and healing with achieving justice. It highlights key issues, essentially informing therapists' policies, procedures and practice, when working prior to a criminal trial. See Box 1.1 for a summary of good practice, however therapists are advised to consult the full guidance.

Box 1. 1: Summary of pre-trial therapy good practice

Based on *Provision of Therapy for Vulnerable and Intimidated Witnesses Prior to a Criminal Trial: Practice guidance* (HO/CPS/DH, 2001).

- Adopting common terminology to avoid misunderstanding, by referring consistently to the 'CPS Practice Guidance' and 'pre-trial therapy'.
- Developing appropriate policies and procedures to ensure a pro-active, multi-agency approach; commencing therapy after police interviews following the original, or any fresh, allegations.
- Managing *internal* boundaries, as confidentiality cannot be guaranteed, by explicit contracting and re-contracting; by avoiding recounting evidence, hearsay and coaching; sharing boundary responsibilities with clients; adopting appropriate therapeutic aims, approaches and techniques; keeping brief factual notes, ideally reviewed, signed and dated by both client and therapist in each subsequent session.
- Managing *external* boundaries via negotiating clients' informed consent to any disclosures; using public interest immunity to limit disclosure where appropriate; separating court preparation and support; offering appropriate signposting and referrals.
- Resuming usual counselling practice after the trial, as 'the same concern about external evidence, necessary in the courtroom, is not required in recovery and healing' (Whitfield, 1995).

Offenders as victims and witnesses of crime

It perhaps needs to be emphasised that many offenders are also themselves *victims* or *witnesses* of crime. Often, this may take the form of unacknowledged or unreported crime, such as having experienced sexual or domestic abuse as children or as younger adults, or assaults in custody (Jones, 2011). The cycle of violence leads some victims to become aggressive or abusive themselves, while

others may use weapons for revenge or for protection (Walker, 2006). Substance misuse to mask distress may lead to dependency and to criminal activities to fund habits. Many suffer mental health difficulties and present as being vulnerable, or intimidated. When reporting crime in custody or the community, offenders are at greatest risk of being treated with suspicion by the justice system due to perceptions of providing misleading information, incitement or involvement (Williams, 2002). However, if services are ethically committed to fair access and impartial treatment, offenders should not be denied the counselling and pre-trial therapy which is available to non-offending victims (see Box 1.2).

Box 1.2: An offender's experience of pre-trial therapy

'It was overwhelming, all enveloping… I felt humiliated, ashamed. I'd get angry and upset… how could I possibly go to court like this? At first I thought what's the point… if I'm feeling this because of what happened (sexual abuse) when I was 13 and it's impacted my whole life, how can not talking about what happened help? It's strange how it works. It's about you and not those who hurt you. How I feel about it, learn to accept it and live with it. I don't feel a victim or ashamed now. I feel confident, in control, I've learned a lot about how it affected me, I have more insight, I treat other people differently now. I've become a better person. I can talk about it now. If I get justice – fantastic! But if I don't, I've still gained from it.'

Ethical and professional issues in therapeutic work in the criminal justice system

Key points

- Defining the purpose of therapy is a key area of potential conflict between differing models of ethics. Setting and maintaining the limits to client confidentiality may raise acute ethical dilemmas for therapists. Perspectives on managing the risk to client, therapist and third parties may vary according to the therapist's own ethical standpoint.
- High levels of practitioner self-care and professional development are integral to ethical practice within the criminal justice system.

Defining the purpose of therapy

This is a key area of potential conflict, at least in terms of ethics. Individual therapists may tend to see therapeutic work within the criminal justice system in classic terms of promoting *individual* change and personal growth. However, in this situation, where the prison can be considered to be a major stake-holder, or even as the primary client, then the agenda may be set in primarily *institutional* terms. Thus 'counselling in prisons should be part of an overall offender care and management package, and not an isolated exercise' (Claringbull, 2010). Counselling may be justified as part of a utilitarian enterprise in achieving the 'greatest good of the greatest number'. According to one prison governor interviewed, 'there is clear, albeit informal, evidence that a holistic approach is essential in the "reducing reoffending agenda", and that this approach meets the emotional needs of offenders...'. One person-centred counsellor has described this process in similar terms: 'at least give them an "outside chance of a chance outside"' (Hopwood, 2007). Individual client change and institutional priorities may not necessarily be counterposed, or be in conflict, but may require at least a degree of conscious 'dovetailing' (see Box 1.3).

Box 1.3: Jill's personal reflections on counselling in prison

'I believe that whatever the offender may have done does not define them, and nor should it affect their entitlement to help and support of any kind, such as counselling … To me, the person-centred counselling approach feels ideally suited to this setting and, in part, helps redress prisoners' general lack of autonomy and control. And, while I hold the keys, symbolic of power, the rules are not mine but imposed on me also.'

Hall & Swindells (2013)

Setting limits to confidentiality

According to one writer, '[c]onfidentiality obviously has a particular resonance in prison...' (Thorn, 2012). Confidentiality carries an added emotional charge, given the institutional loading of risk, harm and punishment. Schlesinger (1979) suggests that confidentiality operates at multiple levels, ie. 'that between the therapist and the institution, that between the therapist and the inmate, and that among inmates'. The case study in Box 1.4 illustrates some of the tensions between holding client confidentiality, working to reduce risk of harm to client, therapist and others, such as prison staff and other prisoners, and working

within a tight, prescriptive system for information-sharing. Standards for judging outcomes may also be heavily influenced by the context. Thus, in any other setting, for the client to be 'slashed', even if this was seen to be 'thankfully, relatively minor' (see Box 1.4), might not be judged to be so positive an outcome of such an acute ethical and professional dilemma.

Box 1.4: A prison counsellor on working with client confidentiality

'My client was wanting to turn his life around … in recovery from heroin addiction, methadone decreasing, progressing well, due for release soon. He flagged up an issue he wanted to discuss, but was unsure what he could disclose and remain confidential. We reviewed the confidentiality agreement and both parties' responsibilities, but he decided to disclose anyway. It was known that his cell-share prisoner had received drugs from outside. A prison gang threatened my client with violence if he didn't leave the cell door unlocked, so they could steal the drugs and, if need be, assault the other prisoner. He didn't know what to do. We explored the options, discussed my legal and ethical obligations to report and I made it clear that it was up to him to decide what to do … nurturing his autonomy. I secretly hoped he would decide to 'grass up' (disclose to security himself) and not give in to the gang … being in the process of change, he had feet on both sides of the fence. At the end of session we agreed to leave it till next week's session and attempt to resolve it then, if not done himself in the meantime. I reassured him that he knew what he needed to do. Several days later, a prison officer reported that the client had disclosed the situation to them while en route to hospital to have a long-waited operation. On return from hospital, my client was moved to the CSU (care and support unit/segregation) for protection before being transferred to another prison, but was still slashed a week later for 'grassing up' … thankfully, it was relatively minor. I explained to security how I'd worked and why – all was well documented, so my reasons were very clear. They understood and accepted the situation, as they trust me.'

Managing risk to client, therapist and others

Prisons have been defined as 'total institutions' (Goffman, 1961), where systematic rule-following is important for its efficient organisation. It is also intrinsic to prison's stated aims of punishment, reform and rehabilitation. Institutions can be notably risk-averse, particularly in the very sensitive area of preventing prisoner suicide. Therapists are contractually obliged to report any instances of prisoner suicide risk so that appropriate monitoring systems

can be put into place. However, from an ethical point of view, over-attentive rule-following may, perversely, *increase* the risk of suicide on occasion. The case study in Box 1.5 illustrates a counsellor following a divergent, *outcomes-based* ethical stance, when working with an explicit threat of prisoner suicide. For Huffman (2006), this would be a prime example of a therapist 'using clinical discretion in defiance of policy'. Here, the *therapist* rather than the *institution* successfully carried the risk to prisoner, institution and to his own employment and professional career, using an outcomes-based approach to ethics. The risks, in ethical terms, would have included achieving *negative* rather than positive outcomes, eg. via the prisoner attempting suicide, or the discovery that the therapist was breaching prison regulations by not reporting the risk of suicide.

Box 1. 5: Case study: A prison counsellor on working with the risk of prisoner suicide

'He was in prison for importing drugs. He was so afraid of the people outside, he owed money, that's why he'd imported the drugs under duress. He was terrified because they were threatening to kill his family. So he had said to the counsellor, *"All I can do is top myself; there's no other way out"*. So, normally in a prison, you'd have to fill out a 2052, which is now an ACCT [assessment, care in custody and teamwork] form, but as soon as the counsellor went through that again, because he'd already been through it in the contract, he said *"Oh, don't do that, don't put it on a form, I'll definitely commit suicide, if you do that."* So the counsellor decided, right, I won't, so they didn't write an ACCT form and said to him *"Let's contract, I won't fill out a form, if you contract not to self-harm"*. The client didn't self-harm, and it was great, he did a good piece of work.'

Practitioner self-care and professional development

In addition to the usual demands, therapeutic work within the criminal justice system can present therapists with a wide range of additional challenges, which may be:

- *client related*, due to their complex needs, co-morbid difficulties, substance misuse, poor mental or physical health, shame or anger issues, risk to self, or others;
- *environmentally related*, in terms of institutional volatility or bullying, limited autonomy, marginalisation, disturbed or missed sessions, or unplanned endings;

- *practice related*, due to changing external policies, procedures or rules impacting on the therapeutic frame and its boundaries, or to multidisciplinary/ agency approaches;
- *relationship related*, in terms of power, attachment and trust issues, transference and counter-transference difficulties, splitting, or idealisation, or confidentiality limits;
- *therapist related*, ie. concerning safety and security, collusion, conditioning, heavy or unbalanced caseloads.

While the work can be extremely satisfying and rewarding, it can also be frustrating, draining, intense, testing, potentially risky and may lead to compassion fatigue, burnout, vicarious traumatisation, secondary traumatic stress or personal injury. All these factors have the potential to take a significant emotional toll if not monitored and managed through good self-care and on-going professional development.

Personal aptitude, self-awareness and monitoring

It might be argued that therapists working within the criminal justice system require some additional or enhanced personal qualities or abilities to cope with the challenges and risks. These qualities might include vigilance, sincerity, integrity, resilience, respect and courage. Certainly, a strong commitment and belief in the value of their work, an ability to be flexible and innovative to manage the difficulties and an awareness of their personal needs and motivations to do such work, are essential. Wider knowledge and experience of the justice system beyond therapeutic work is also beneficial. Good awareness and understanding of any personal past traumatic experiences, unresolved issues and vulnerabilities, through self-reflection and personal counselling, will help avoid eroding therapists' objectivity and effectiveness through, for example, over-identification, minimisation, conditioning, or by making inappropriate assumptions. It is important to self-monitor continuously, to minimise the risks to the therapist, client and third parties, to retain a good work-life balance, to be alert to the impact of the work and take any necessary and timely steps to mitigate against stress, in order to maintain good practice and well-being.

Peer support, clinical and management supervision

Peer support in the form of regular team or multidisciplinary meetings and professional development groups provide opportunities to share experiences,

learn from and support each other. Regular clinical and management supervision is an ethical responsibility for therapeutic work. It is advisable if not essential that supervisors have direct, relevant and up-to-date knowledge of the criminal justice system. They also need relevant experience to equip them with the necessary awareness and understanding of the potential dangers, and the legal, ethical and practice issues faced by their supervisees in the prison setting or in the community.

Accountability and professional indemnity insurance

Accountable practice requires an ethical commitment to exercise reasonable skill and care regarding both client work and self-care. Both have the potential to impact on our competence and well-being respectively. This includes working within our limitations, working though ethical dilemmas and providing evidence if required (through written policies, procedures, client agreements and notes), making good use of supervision, plus further support and training when necessary. Professional indemnity insurance provides protection, peace of mind and the financial resources necessary in the event something goes wrong. It is recommended that expert advice is sought on what level of cover is appropriate from the relevant organisational setting and professional body.

Training and continuous professional development (CPD)

Basic counselling training is unable to cover adequately all the various different client groups and practice settings, so more specialist training and experience is essential, due to the risks, and to the legal and ethical complexities. In custodial settings, core prison and on-going internal training provide a good understanding of the regime and security issues, which help inform how to work appropriately from a therapeutic perspective. In the community, specialist agencies often provide their own training for employees and volunteers, while some extend training opportunities to partner agencies and organisations. Multi-agency training opportunities are invaluable as they provide a better understanding of how the system works and how to work together more effectively. A commitment to ongoing professional development demands keeping up-to-date with current issues, policies, procedures and guidance by various means, including internal training, CPD events, conferences, personal research, topical publications and making the necessary adjustments to therapeutic practice.

Box 1.6: Jill's personal reflections on counselling in prison

'…I noticed myself thinking about my prison clients more than those in other settings; reflecting on how I might feel in their shoes and wondering what is going on for them, particularly those struggling to cope with prison life or worrying about home. As I get on with my life outside, theirs inside feels 'on hold' to me; yet for some it seems to be their whole life, with no place outside to call home … I value my supervisor's directly relevant experience, I have developed more creative approaches to self-care and I place much greater value on my personal autonomy.'

Hall & Swindells (2013)

Summary

The criminal justice system is set within the law, including both civil and criminal law, based on complex institutional relationships between the police, courts, custodial and community services. Therapists working in the criminal justice system can be faced with complex ethical challenges, where their professional codes may conflict at times with the requirement to follow a strongly enforced rule-based culture, regarding defining the purpose of therapy, setting limits to confidentiality and managing risk to the client, therapist and to third parties. A high level of practitioner self-care and professional development is required in order to maintain ethical and effective practice to offenders, victims and witnesses, as clients in therapy.

Acknowledgements

Thanks to colleagues at the Counselling in Prisons Conference 2014, as well as to others, for sharing their experiences. Background data for this chapter was obtained in both custodial and community settings within the criminal justice system, via a focus group with experienced practitioners, carried out at the Counselling in Prisons Network National Conference in July 2014, together with other additional individual interviews.

References

British Association for Counselling and Psychotherapy (BACP) (2013) *Ethical Framework for Good Practice in Counselling and Psychotherapy*. Lutterworth: BACP.

Broderick, B (2007) Prison work: the dynamics of containment. *Therapy Today* **18** (5) 37–40.

Claringbull N (2010) Counselling and psychotherapy in prisons. In: J Moore and R Roberts (Eds) *Counselling and Psychotherapy in Organisational Settings*. Exeter: Learning Matters.

Crown Prosecution Service (CPS) (1999) *Special Measures* [online]. Available at: http://www.cps.gov.uk/legal/s_to_u/special_measures/ (accessed February 2015).

Department of Justice (July 2010) *Achieving Best Evidence in Criminal Proceedings. Guidance on interviewing vulnerable and intimidated adult witnesses, the use of special measures and the provision of pre-trial therapy*. Available at: http://www.dojni.gov.uk/index/public-consultations/archive-consultations/draft_achieving_best_evidence_guidance.pdf.pdf (accessed February 2015).

Foucault M (1991) *Discipline and Punish: The birth of the prison*. Harmondsworth: Penguin.

Goffman I (1961) *Asylums*. Harmondsworth: Penguin.

Hall O & Swindells J (2013) Inside out: two views of a prison placement. *Therapy Today* **24** (9) 25–27.

Health and Care Professions Council (HCPC) (2012) *Standards of Conduct, Performance and Ethics*. London: HCPC.

Her Majesty's Inspector of Prisons for England and Wales (HMIPEW) (2014) *Annual Report 2013–14*. HC 680. London: HMIP.

Home Office (1998) *Speaking Up for Justice: Report of the interdepartmental working group on the treatment of vulnerable or intimidated witnesses in the criminal justice system*. London: Home Office.

Home Office/Crown Prosecution Service/Department of Health (HO/CPS/DoH) (2001) *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice guidance*. London: Home Office Communications Directorate. Available at: http://www.cps.gov.uk/publications/prosecution/therapychild.html (accessed February 2015).

Home Office/Crown Prosecution Service/Department of Health (HO/CPS/DoH) (2002) *Provision of Therapy for Vulnerable and Intimidated Witnesses Prior to a Criminal Trial: Practice guidance*. London: Home Office Communications Directorate. Available at: http://www.cps.gov.uk/publications/prosecution/pretrialadult.html (accessed February 2015).

Honderich T (1989) *Punishment: The supposed justifications*. Oxford: Polity.

Hopwood B (2007) Locked in. *Therapy Today* **18** (5) 41–43.

Huffman E (2006) Psychotherapy in prisons: the frame imprisoned. *Clinical Social Work Journal* **34** (3) 319–333.

Jenkins P (2007) *Counselling, Psychotherapy and the Law* (2nd edition) London: Sage.

Jones P (2011) *Male Sexual Abuse and Trauma Training*. Brighton: Pavilion Publishing.

Ministry of Justice (2013) *The Code of Practice for Victims of Crime*. London: The Stationery Office. Available at: https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime (accessed February 2015).

Ministry of Justice (2012) *Getting it Right for Victims and Witnesses. Consultation paper CP3/2012*. Available at: https://consult.justice.gov.uk/digital-communications/victims-witnesses/consult_view (accessed February 2015).

Ministry of Justice, Crown Prosecution Service, Department for Education, Department of Health, Welsh Assembly Government (MOJ/CPS/DfE/DoH/WAG) (2011) *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on special measures*. Available at: http://www.cps.gov.uk/legal/assets/uploads/files/Achieving%20Best%20Evidence%20in%20Criminal%20Proceedings.pdf (accessed February 2015).

McLeod R, Philpin C, Sweeting A, Joyce L & Evans R (2010) *Court Experience of Adults with Mental Health Conditions, Learning Disabilities and Limited Mental Capacity*. London: Ministry of Justice.

Mitchels B & Bond T (2011) *Legal Issues Across Counselling and Psychotherapy Settings: A guide for practice*. London: BACP/Sage.

Schlesinger S (1979) Therapy on a treadmill: the role of the prison psychotherapist. *Professional Psychology* **10** (3) 307–317.

Swindells J (2012) *Counselling Victims and Witnesses of Crime – Are They A Specialist Group Requiring Specific Knowledge And Expertise?* Unpublished degree dissertation. University of Warwick: Coventry.

Thorn L (2012) Beautiful sentence: poetry as a therapeutic intervention. In: P Jones (Ed) *Interventions in Criminal Justice: A handbook for counsellors and therapists working in the criminal justice system*. Hove: Pavilion Publishing and Media Ltd.

Walker M (2006) The cycle of violence. *Journal of Human Rights* **5** (1) 81–105.

Whitfield CL (1995) *Memory and Abuse: Remembering and healing the effects of trauma*. Health Communications: Florida, US.

Williams B (2002) Counselling in legal settings: provision for jury members, vulnerable witnesses and victims of crime. In: P Jenkins (Ed) *Legal Issues in Counselling and Psychotherapy*. Sage: London.

Further reading

Harvey J & Smedley K (2010) *Psychological Therapy in Prisons and Other Settings*. Willan: London.

Sims C (2010) Counselling psychology in forensic settings. In: R Woolfe, S Strawbridge, B Douglas and W Dryden (Eds) *Handbook of Counselling Psychology* (3rd edition). Sage: London.

Williams Saunders J (2001) *Life Within Hidden Worlds: Psychotherapy in prisons*. Karnac: London.

Other resources

Counselling in Prisons Network: www.pn.counselling.co.uk

CPS – victims and witnesses: www.cps.gov.uk/victims_witnesses

Gov.uk – victims and witnesses: www.gov.uk/government/collections/victims-and-witnesses

Inside Time: The national newspaper for prisoners and detainees: www.insidetime.co.uk

It's Good to Talk: Counselling and psychotherapy – offenders and their families: www.itsgoodtotalk.org.uk/useful-links/categories/offenders-and-their-families

Ministry of Justice – victims and witnesses: www.justice.gov.uk/victims-and-witnesses

The Michael Sieff Foundation: www.michaelsieff-foundation.org.uk

Prison Reform Trust: www.prisonreformtrust.org.uk

Samaritans – our work in prisons: www.samaritans.org/your-community/our-work-prisons

The Advocate's Gateway: www.theadvocatesgateway.org

The Howard League for Penal Reform: www.howardleague.org

The Survivor's Trust: www.thesurvivorstrust.org

Victim Support: www.victimsupport.org.uk