

ORIGINAL ARTICLE

'In my agency it's very clear – but I can't tell you what it is': Work settings and ethical challenges

ALISON P. BROWN

Department of Applied Social Science, University of Stirling, Stirling, UK

Abstract

This study aims to increase our understanding of how counsellors experience ethical and legal challenges in their work. Counsellors ($n=20$) from a variety of backgrounds and working in a range of settings, took part in the study. Interviews focused on the experience of risks of harm, requests for information, record keeping; and the sources of knowledge and expertise on which practitioners drew. The study found that in responding to ethical and legal challenges, practitioners are engaged in a process of negotiation between the inner and outer worlds of the client, the agency, society and themselves. Regardless of theoretical orientation, those in private practice have greater freedom from the constraints of the outer worlds than those in agencies. Areas of particular concern included child protection, multi-agency working, and relationships with other practitioners.

Keywords: *Ethics, confidentiality, counsellors' experience, qualitative methods*

Introduction

The quotation in the title of this paper came from an experienced counsellor, trainer and supervisor, referring to the child protection policy of the agency in which she worked. It indicates the uncertainty that characterises counsellors' experience of working with such policies. The study described below aimed to find out more about how counsellors experienced ethical and legal dilemmas and constraints in their workplaces. This paper does not aim to set out what our obligations are, nor to demarcate 'the law' from 'ethics', but to explore perceptions and experiences of these overlapping realms. After a brief review of relevant literature and a description of the research methods used, the findings of the study are reported and discussed.

Legal and ethical dilemmas

Therapists are increasingly aware of the impact law may have on their work. Along with potential breaches of the therapist's duty of care to the client, the main legal challenges lie in the limits to confidentiality implied by the potential inclusion of therapists within the health professions' duty to disclose information in the public interest (Cordess, 2001). A therapist in private practice, however, is subject only to the general duties to disclose in relation to drug trafficking and terrorism (Jenkins,

2002; Bond, Higgins & Jamieson, 2001). These mandatory reporting requirements can be distinguished from contractual or discretionary requirements. Counselling agencies may be funded by statutory health and welfare agencies and therefore come to share in statutory duties in relation to risk of harm to the client or others.

Our obligations as practitioners extend beyond the realm of the law to that of wider ethical codes and standards. A growing number of texts address the range of potential dilemmas for counsellors and therapists (for example, Jones et al., 2000). These aim to avoid what Clarkson warns against, the 'simplistic introjection of ethical code items' (2000, p. xvi). For example, therapists who believe that confidentiality is not sacrosanct, note that it can benefit the client to share information with others, with the client's consent, particularly in a case where there is a history of abusive 'secrets' or where a network of support can be developed with other professionals (Wosket, 1999). Other therapists argue that since we are dealing also with transference processes, having the client's 'permission' to share information is insufficient.

As Jenkins (2005) notes, the crucial importance of preventing disruption to the therapeutic frame marks out psychodynamic psychotherapy; this implies complete confidentiality, with the possible exception of threats to life. In the UK, this may be increasingly

What does this study explore?

- How counsellors experience ethical and legal challenges in their work

threatened by the legal system, as psychotherapists face increasing demands for access to records or to share client material with other professionals, such as in multi-disciplinary team working.

As research from the United States has shown, mandated reporting has significant impacts on the therapeutic relationship. Moreover, it affects relationships between practitioners; for example, in relation to emotional abuse, different professional cultures among child protection workers and therapists lead to miscommunication and strain: 'the problem in recognizing what constitutes reportable suspicions may in part reflect differences in the theories and in the character of evidence acceptable in the culture of therapists and . . . investigators' (Levine & Doueck, 1995, pp. 68–69). The primary critics of the United States' regime of mandatory reporting of risk to others have been Bollas and Sundelson (1996), who argue that their effect is to undermine the fundamental process of free association, both during the session and in the therapist's own note-taking. Bollas and Sundelson trace the reasons for the loss of that privilege, to therapists increasingly seeking to intervene in clients' external worlds (to 'empower' clients involved in litigation), and to the expansion of external world standards (official guidelines and standards for treatment). The concept of internal and external worlds, adapted from object relations theory, informs Bollas and Sundelson's critique. Through the process of 'psychic internalisation of the environment', Guntrip observes, one 'lives in two worlds at the same time, inner and outer, psychic and material, and has relationships with two kinds of objects, internal and external' (1995, p. 194). Although the analysis below does not include a discussion of unconscious processes, it will utilise a more basic notion of how we deal with internal and external relationships.

There exists relatively little research on ethical problems faced by practitioners. Lindsay and Clarkson's (1999) survey of registered psychotherapists found that the most prevalent dilemmas were related to *confidentiality*—risk to third parties, risk to the client, and disclosure of information to others and *dual relationships*—social relationships or encounters with clients, or working with two separate clients who have a relationship—was the next most prevalent situation. Problems associated with *conduct of colleagues* included sexual relationships with clients, incompetence, and unprofessional comments about colleagues. *Training issues* related mainly to supervision of therapists (or supervision of therapy of therapists) regarded as not ready or unfit to practise. Thus both the relationships between therapist and client and between therapists are in question.

There is, however, very little research on how practitioners themselves internalise ethical and legal norms. One example is a study of clinical psychologists' note-taking practices (Newnes, 1995) that discovered a spectrum from no notes to mini-essays on each session. That study, in addition, challenged the overt reasons for note taking, such as to remind clients of previous sessions or to record practitioners' own feelings; and argued that note taking is done for three covert reasons. First, it is part of monitoring in Rose's sociological sense (Rose, 1990): 'observing others and writing it down become a prelude to observing ourselves or being observed, as if such observation is good for people' (Newnes, 1995, p. 33). Secondly, it is a means to contain the anxiety of inexperienced practitioners and give the illusion that no harm results when 'cases' are passed between practitioners. Thirdly, access to notes is seen as a 'consumer right'.

In summary, previous research has used survey methodology to count and classify therapists' ethical problems; and has focused on registered psychotherapists, many of whom are likely to be in private practice. This study used qualitative methods to explore in more depth therapists' understandings of their ethical dilemmas; and to focus on counsellors, many of whom work paid or unpaid in voluntary sector agencies, in order to explore the impact of work settings and relationships with other professionals. As an exploratory study, additional objectives were to test the methodology and highlight areas for more substantial research.

Research methods

The main method was face-to-face interviews undertaken in 2004–05 with 20 counsellors and therapists (nine one-to-one interviews and two group interviews, of four and seven participants). Participants were recruited through professional bodies, at conferences and through my own networks. Participants who expressed an interest were given a written explanation of the purpose of the research. An agreement on confidentiality was made at the start of each interview. Using a topic guide, the interviews explored practitioners' views of their ethical and legal obligations, the challenges they faced, and the influences that shaped their views. Interviews were either tape-recorded or recorded by note-taking; and the data was analysed manually, adding emerging themes to those in the topic guide. Respondents were given the opportunity to comment on a draft report of the findings.

In keeping with the 'theoretical sampling' approach central to qualitative methodology (Glaser & Strauss, 1967), I sought to include practitioners who might be expected to have diverse views, that is, from different orientations, work settings and levels of experience. The respondents' orientations included integrative, person-centred, psychodynamic and gestalt, although many had training in more than one orientation. In

terms of experience, they ranged from months to over 20 years. Respondents worked in a diverse range of agencies: independent or part of a larger organisation providing care services, specialist or generic, voluntary, public (e.g. health service or school) or private sector (private practice or employee assistance companies); and in the case of the voluntary sector, in varying degrees of proximity to statutory services according to funding arrangements. Many had worked or were working in more than one setting; and had multiple roles (for example, supervisor, manager, trainer, therapist; or paid and unpaid) and therefore confronted ethical challenges from multiple perspectives.

Although it proved successful overall, the chosen methodology had several limitations. Some of the interviewees were colleagues of mine, which may have restricted their responses. The process of theoretical sampling – continuing to select participants until no new insights are being generated – was curtailed due to the limited scale of the study. This meant that some important issues that emerged during the research were left relatively unexplored; and that many orientations or counselling specialisms were not included. The research was presented as being about ethical and legal challenges, and this generated more data about confidentiality, perhaps because of its association with law, than about other ethical concerns such as dual relationships. Individual interviews produced more data than group interviews, mainly because the latter were attended by less experienced practitioners who saw them as an opportunity to learn more about the topic.

Findings

Three aspects of confidentiality are explored in the findings: risk of harm, information sharing, and record keeping. These are followed by findings in relation to practitioners' knowledge and confidence, and relationships between practitioners.

Risk of harm

In terms of how confidentiality was articulated to clients, practice varied. At one end of the spectrum was the minimalist approach that prioritised the 'inner world' and therefore avoided making statements about confidentiality, or taking details of the client's GP, for example:

Statements cloud the therapeutic relationship, but if issues emerge in the work I will talk about them.
(trainer and supervisor, psychodynamic)

At the other extreme were counsellors who made a clear statement about confidentiality at the outset, and took details relevant to the client's safety.

Private practitioners were generally more free to work through dilemmas without breaking confidentiality. They cited, for example, clients who refused

urgent medical attention, who had harmed vulnerable adults, or who were suicidal. Having to take something 'outside' without consent was very rare and confined to agencies: child protection and attempted suicide being common examples. The counselling medium affected the ability to engage with the client's inner world; for example, the situation where a client appeared to have a clear suicide plan might require action if encountered over a helpline, but might be worked through more readily face-to-face.

Child protection was an area that presented significant challenges to practitioners who wished to balance encouraging clients to take responsibility for reporting against the risk of being seen as obstructive or collusive. In settings governed by social services rules in relation to child protection, the counsellor was more likely to act, on the basis of 'either you report or we will.'

More or less standard across counselling agencies was a confidentiality statement that made exceptions in cases of risk of serious harm to self or others. Agencies' policies tended to be clearest in relation to harm to children, less clear in relation to harm to self; and least clear in relation to harm to adult others. This last is where the practitioner's own ethical framework becomes more significant.

You can have great ideas about confidentiality, it is easy to say it, but do you actually know what you are saying? If someone discloses they are shoplifting, no-one gets hurt. But if someone is hurting others confidentiality goes out of the window. Are you being judgemental if you get into these moral issues with a client?

(manager and trainer, person centred)

The project is much more focused on suicidal ideation, risk to self, as the main challenge... I personally say 'risk to self or others', but this difference with the organisation hasn't been tested. I don't overestimate my power, I would risk losing the relationship with the client if risk to life and limb outweighed the risk to the therapeutic alliance.

(counsellor and social worker, psychodynamic)

Inevitably, there were differences between agencies' policies and the views of individual practitioners; for example, in relation to the client's risk to self:

It's about what I can live with, I have to protect the person until they are able to take a rational decision... We get money from social work and health so we have duty of care. I could respect some people's decision to kill themselves, but my personal belief is different from what my work requires.

(agency counsellor, integrative)

One supervisee thought suicide was anyone's choice, so when his client said he was going to kill himself there was a big debate because it's the

agency's responsibility.
(manager and supervisor, integrative)

In relation to risk of harm, coming into contact with 'the law' was rare; in contrast, the level of anxiety about the possibility of this was high. In general, the most experienced counsellors were the least concerned; this was due to professional experience and confidence; and also because they were more likely to be in private practice and therefore less mired in the uncertainties that counsellors in agencies (often as volunteers) faced.

Information sharing

In terms of requests to the therapist for information, the situations faced were typically of five types: attendance information requested by other agencies; statements for client or client's ex-partner in divorce or child custody proceedings; statements for insurance companies or solicitors in relation to claims made by the client; requests from the police in relation to crimes allegedly committed against or by the client; and requests from police or social services in child protection investigations. There was considerable confusion about the 'status' of such requests. Collusion is not in the client's interests; managers of agencies, therefore, would correct false information given by clients about, for example, attendance at counselling. In general, therapists wished to say as little as possible, and to agree any statement with the client, particularly when, for the sake of integrity, it would be necessary to say something that might not be in the client's favour. According to one therapist:

I wouldn't disclose to the lawyer anything about the client unless it was to do with potential loss of life, suicide, or untoward punishment – they punished themselves, became masochistic or addicted to alcohol or whatever else – anything that might disturb their balance of mind that could lead to irresponsible statements being made. I'd tell the lawyer and tell the client that it is being disclosed... It may initially not be looked on very favourably by the client, one would have to work on that.
(supervisor and trainer, psychodynamic)

Requests for information could be formal, or informal and subtle. Tensions around confidentiality could originate in differences between professional cultures, within an agency or between organisations:

In my job, they all talk about people in meetings, but I want a boundary. It's hard to challenge, I'm not even supposed to say I'm seeing them but I am asked directly about details by untrained counsellors and social workers.
(manager and supervisor, integrative)

We have multi-agency case conferences and we're the only ones not sharing information, although we reported the [child protection] allegations. Other agencies think we're being precious.
(counsellor, former social worker, integrative)

As an expanding area, school counselling presented particular challenges to confidentiality. Counsellors found themselves 'caught' between the head teacher, class or guidance teacher, and parents, each of whom believed they needed information from the counsellor in order better to help the child. Counsellors' views of how 'responsible' young people are influenced their response. Similarly, counsellors in GP practices were challenged by the formal and informal information sharing between colleagues and the expectation that they would contribute.

We don't discuss personal details with the doctors, but the doctors discuss them with me. I was shocked.
(counsellor, former social worker, integrative)

Training is another area where psychodynamic practitioners saw the impact of exchanges of information on the transference relationship. For example, while most trainers used well-disguised client material in training, one psychodynamic therapist refrained from this:

As soon as you start asking permission, as soon as you start putting this stuff into the public domain, you are doing something to the therapeutic relationship, indefinitely.
(trainer and supervisor, psychodynamic)

Notes and records

A spectrum – full records, to limited 'factual' records, to no records other than contact details – existed in both private practice and agencies. Agencies appeared to be under pressure to move away from both ends of this spectrum, towards the 'middle' position of keeping limited 'factual' notes. Practitioners with nursing or social services backgrounds were more familiar with the concept of 'factual' record keeping; while other therapists challenged the view that there may be such things as 'factual' notes. Many counsellors kept 'dual notes' (the agency's and 'their own') without having particularly examined their status. Some agencies found that their record-keeping policy was being influenced by funders or commissioners of services, or by a wider 'parent' organisation, in ways that might not be appropriate. Moreover, record-keeping was the topic that evoked the term 'litigation':

We now have to write notes with an eye to litigation.
(agency supervisor and trainer, gestalt)

There is great variation, fear of litigation and a lot of talk of how to protect ourselves.

(trainer, supervisor, integrative)

Private practitioners had diverse approaches, from one of 'agency-type notes for the purpose of litigation', to one based on personal preference and the therapist's ability or desire to 'remember'.

[Compared to an agency situation] it's very freeing, but I provide no less of a service in private practice. I might note a fact, such as a partner's name, but I keep minimal notes and I rarely need to refer back to notes. But I feel very uneasy sometimes stating that to colleagues.

(trainer and counsellor, person centred)

Both psychodynamic and person centred practitioners might decide not to keep notes, for different reasons, such as a barrier to direct encounter with the person, or an threat to the therapeutic frame.

I favour a person centred approach, which wouldn't see it as right to keep notes. I don't care if a colleague who comes after me has no notes.

(trainee counsellor, person centred)

The kind of notes I would need to keep would be so incriminating.

(trainer and supervisor, psychodynamic)

Although psychodynamic practitioners might be more used to taking notes, this was not universal. The influence on one's expectations of the work setting and previous training were most influential, as this practitioner suggested:

Person-centred and psychodynamic don't have different approaches, they stereotype each other; although there is more of a tradition of note-taking in psychodynamic, especially for supervision. It depends more on the setting, so in the NHS I would expect to share information more than in a community project.

(counsellor and social worker, psychodynamic)

Thus in relation to risk of harm, information sharing, and record keeping, the counsellor is negotiating between the inner worlds of both client and self, their beliefs and the transference or person-to-person relationship; and the outer worlds of the real relationship, the agency and its external environment, colleagues, other professions, and the law.

Knowledge and confidence

Having given some examples of counsellors' experiences of challenges to confidentiality, this section considers where they gain their knowledge of how to respond.

There was a spectrum of knowledge and confidence regarding the law and ethics, from practitioners who were very confident in their understanding, based on years of private practice, reading and seminars; to those who were unaware of their misconceptions; to those who were openly unsure. These last two categories included experienced agency managers and counsellors. Although agencies were paying increasing attention to ethical and legal questions, particularly child protection and data protection, nevertheless, these were still given insufficient priority. This was attributed to agencies' struggles to survive. The extent of training on ethical and legal issues was highly variable between training organisations also; for example:

I don't recall child protection specifically, I picked it up elsewhere. Issues of legality we were left to research ourselves, because it does keep changing.

(agency counsellor, person centred)

According to experienced practitioners, however, preferable to didactic training on 'the law' is an approach that integrates ethics into one's way of being as a practitioner.

Trainees want to know the right way, but we need to get back to 'what does it mean when we say x to a client', and how we work with how they receive it and what's received back: to inhabit it, to have a sense for yourself of what is ethical practice.

(supervisor and trainer, gestalt)

Particular areas of uncertainty were the authority of officials such as precognition agents and police officers to demand information; and reporting requirements in relation to child protection. There was hope that new guidance would bring the clarity that was lacking in oneself or one's agency. When asked about legal obligations and confidentiality, few counsellors spontaneously referred to any statement or code of ethics, suggesting that these are not well integrated into everyday practice. While practitioners might be unable to remember their organisation's policies, it appears that 'the law' is equally difficult fully to understand and integrate into one's thinking; for example, an experienced counsellor stated:

I went to a workshop on legal issues a couple of years ago. I can't remember what they said, but I thought that I would pass on more information than the lawyer suggested, such as if someone was planning to attack someone. The lawyer said we only have to report murder.

(counsellor and social worker, psychodynamic)

Social work-trained practitioners tended to see counselling training as vague, and were more confident than others about legal obligations and discussing these with clients, particularly in relation to child protection. The level of uncertainty, and the relevance

of differences in ethos between social work and counselling, is reflected in these comments:

I'm not very clear about what I can keep confidential. I have two trainings: counselling training is less clear about boundaries and is more client-led, which isn't too helpful, especially in relation to child protection.

(counsellor, former social worker, integrative)

[Our agency policy] says we keep everything confidential except child protection. I'm not sure what it says about mental health... We spend hours talking about things like this... For complex issues people go back to their own code and basis of first training. Counsellor trained workers narrow it down. They are influenced by a particular type of training, such as couple counselling. They don't know about legislation. They don't give advice and information that might be necessary to protect people.

(manager of counsellors and social worker)

Many services that traditionally work with adults haven't thought through and misunderstand child protection... there's a sense that thinking about child protection will necessarily damage the therapeutic alliance with adults, but most parents want to protect their children and to be prevented from harming them.

(counsellor and social worker, psychodynamic)

Some experienced practitioners recognised that how one handles ethics is influenced by one's personality or sense of self. One contrasted her approach with that of another:

My personality is chatty... [Analytically-based organisation] is closer in confidentiality: is that the orientation or the personality of the leader?

(trainer and supervisor, integrative)

Recounting an incident of being asked by the police for information about a client, another suggested that confidence is not only about knowledge, but about one's sense of oneself as a professional:

I was clear for myself what I thought my responsibilities were. In that kind of situation a lot depends on the demeanour of the counsellor and how they address the police. I have my professional integrity: someone who is in control of the particular therapeutic work he is undertaking. It isn't 'them up there and me down here'.

(supervisor and trainer, psychodynamic)

Relationships between practitioners

Although it was not an explicit aim of the research to explore relationships between practitioners, data

emerged from the interviews. Experienced practitioners saw the more problematic ethical dilemmas as those concerning practitioners' relations with each other, with trainees, ex-trainees and supervisees; and relationships between organisations. Differences between orientations emerged more in respect of relations between colleagues and supervisors rather than in relation to clients; for example:

Confidentiality between counsellor and client is fairly good by and large, but when it comes to assessment of counsellors or supervisors, or the right person to have on this committee, then integrity can be rather fragile.

(supervisor and trainer, psychodynamic)

In agencies and in private practice, the importance of external supervision in relation to legal and ethical issues was stressed. In the agency context there were, however, debates and tensions, particularly between agencies and external supervisors about supervisors' responsibilities in relation to risks of harm. Some managers felt that demands on the organisation could be incompatible with 'therapeutic priorities', and sought supervision from outside the counselling and therapy profession. Thus good external supervision did not in itself guarantee clarity for the agency counsellor who had to deal with the two outer-world relationships of supervision and management.

For supervisors themselves, there was dissatisfaction with the established ways of (not) dealing with the ethical dilemmas in relation to supervisees' conduct. In view of the limitations of the traditional supervision dyad, some experienced supervisors advocated a broader acceptance of confidentiality within professional peer supervision groups, and within the relationships between training and placement agencies, in order that confidentiality is not used defensively.

There is a tension between confidentiality and enough transparency for professional training purposes and monitoring people's practice. I think I am quite intolerant about confidentiality, I think people are far too precious about it. Where I think it should exist I am rigorous about upholding it.

(trainer and supervisor, psychodynamic)

Regulation of counsellors was generally welcomed, while recognising that formal processes are ineffective without a culture where both clients and practitioners are willing to take the risk of speaking out against unethical practice and are supported to do so. One experienced practitioner reflected on the role of gossip and its function when there is no other sanction against unethical practitioners:

You hear a lot informally; people gossip to us, but people won't invoke formal processes; there is a lack of clarity of what can be complained about.

(trainer and supervisor, integrative)

What does this study tell us?

- There is lack of clarity, especially among volunteer counsellors, over the status of requests for information about clients, child protection, prevention of harm to others, and record keeping
- Information sharing between counselling and other 'partner' agencies was problematic
- Relationships between training agency and trainee, external supervisor and agency, supervisor and supervisee, and between colleagues, were additional areas of concern

It appears that the ethical challenges of relationships between practitioners is a fruitful area for further research, although this is likely to be more ethically demanding of the practitioner-researcher.

Conclusion

From this small study, some conclusions can be drawn that suggest further avenues for research and also point to implications for practice.

Despite increasing attention by training and counselling agencies to ethics and the law, there remained a lack of clarity, especially among volunteer counsellors, particularly over the status of requests for information about clients, child protection, prevention of harm to others, and record keeping. Information sharing, in particular, was problematic when translated into relationships between counselling and other 'partner' agencies. Relationships between training agency and trainee, external supervisor and agency, supervisor and supervisee, and between colleagues, were additional areas of concern. These findings accord with those of Lindsay and Clarkson (1999) and Clarkson and Lindsay (2000) that many therapists are concerned about their duties in relation to child protection; and experience confusion and ignorance in relation to how to deal with problematic collegial relationships.

Where practitioners have different approaches to thinking about ethical and legal issues, these appear to derive less from therapeutic orientation than from personality and previous professional training. This study also suggests that there is a growing divergence between counsellors in agencies and those in private practice, and that this split may be present in an individual therapist. In turn, agencies are influenced by the external world of funders and other professions.

Clarkson calls for us 'to begin a relationship to ethics, morality, our profession and the law which is continuous and ongoing, problematised and questioning rather than adapted or formalistic and rote' (2000, p. xix). This small study suggests that professional bodies have a role in ensuring that

- agencies have training especially on information sharing, child protection protocols and record keeping
- training courses equip trainees to be able to think through ethical dilemmas that they are likely to face in agencies and multi-agency contexts
- agencies are supported in contracting with funders over information sharing and policies and procedures
- the ethical implications of training, supervision and collegial relationships are debated
- a culture of zero tolerance of unethical practice is supported with procedures that are widely understood and accessible.

In response to the intrusion of the external world, Bollas and Sundelson's proposed alternative is a demarcation of the roles of the psychotherapist, who guarantees confidentiality (while using their clinical judgement to prevent harm to clients or others); and the 'social therapist', working to institutional guidelines, who would 'not only discuss the client's feelings but would also explore, initiate, support and carry out practical actions that would help resolve the problem' (Bollas & Sundelson, 1996, p. 159). This study does not support the notion that agency counsellors are moving towards the role of 'social therapist', because tensions persist between the professional ethos of counsellor and social worker. As counsellors we are generally caught half way, constantly engaged in complex negotiations between the inner world of the client and oneself, one's own conscious moral code, and the outer worlds of the agency, other 'partner' agencies, the law and social norms. For counsellors in private practice, whatever their orientation, the number of negotiations may be less, giving them the freedom of the 'psychotherapist'.

This is an area where the profession might benefit from further debate on how the institutional and political context in which it operates has a significant, and potentially determining, impact on the relationships between therapists and between therapist and client. In addition, there is scope for interesting debate on the inner worlds of the profession, its relationship to rules, authority, anxiety and gossip in relation to ethical and legal dilemmas.

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