

# Part I

## THEORETICAL FRAMEWORK

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## Introduction

This book has grown out of the convergence of two distinct, but overlapping themes – the enormous therapeutic potential of working with the child as the immediate client in counselling and psychotherapy, and the increasing impact of law and literature on the issue of children's rights. Following a career in education, Debbie Daniels has worked as a counsellor in a number of school settings, both in the UK and abroad. She brings direct experience of trying to negotiate a secure framework for providing children in school with space for a therapeutic relationship. Debbie has a Certificate in Education and an MA in Psychotherapy and Counselling. She is registered as a psychotherapist with the United Kingdom Council for Psychotherapy (UKCP) and adheres to the psychoanalytic approach. Peter Jenkins is a Senior Lecturer in Counselling at the University of Salford, works as an honorary student counsellor on a part-time basis, and has published widely on the topic of children's rights and on legal aspects of therapy. The combination of these two approaches sheds light on the many dilemmas facing those counselling children. This book presents case material, anonymised to protect the individual client's identity, and links it to discussion of the issues facing Debbie as the therapist directly involved in each situation. The concerns include key practice and professional issues, the scope and outcome of the therapy involved, and the legal framework and options available to the child, therapist and parents.

This focus on the value of work with the child as the immediate client derives from the pioneering practice of therapists working within the psychoanalytic tradition, therapists such as Melanie Klein, Anna Freud, Donald Winnicott and even, in a more qualified manner, Sigmund Freud himself. This is not to ignore or minimise the important work of later therapists or those working from other approaches, such as the person-centred approach or cognitive behavioural models, but simply to trace the development of the child-focused work back to its roots. The crucial importance most therapists place on confidentiality, boundaries and the maintenance of a secure framework for therapy, derives ultimately from the psychoanalytic tradition. The lasting impact of these principles is developed in the first chapters, as the basis for establishing a working alliance with the child as client for sound therapeutic reasons.

This emphasis on the child as client is not an implied criticism of the behaviour or role of parents, as supposedly unwelcome intruders in therapy with children. In some cases an approach involving parents directly in therapeutic work, such as family therapy, may be called for. Nor is it the case that parents are assumed to be the cause, directly or

indirectly, of whatever problems the child is exploring in therapy. This would be no more than an extension of the common process of blame, or *mal de mère*, which locates the ultimate causes of children's behaviour in poor child-rearing practices. The particular case argued here is that effective therapeutic work with the child requires a secure and confidential space for the work to take place. External pressures from parents or other adult authority figures will, it is argued, limit and ultimately undermine, the value of whatever work may be carried out.

Some brief explanation of terms is called for. The term 'therapist' is used in a generic sense, to include counsellors, psychotherapists and counselling psychologists. It does not include teachers or social workers, valuable as these roles are in other contexts, unless their primary activity involves contracted therapeutic work with a client. Therapy in this sense is seen as distinct from situations where teachers and social workers may be using counselling, or interpersonal skills, as an adjunct to, or support for, their primary professional role. Having said that, however, there is much within this book which may be of interest, or direct relevance, to members of professional groups such as teachers, social workers, nurses and doctors.

The term 'child' is used throughout the book to describe a young person under the age of 18. In reality, much of the therapy covered in the book will relate to young people in their teens, where using the term 'child' may seem rather clumsy, or even inappropriate. Despite this possible objection, the term child is used because it carries a specific legal meaning, based on the definition under the Children Act 1989, which refers to a person under the age of majority. It is used throughout in this sense to provide consistency, rather than constantly using the broader and all-inclusive phrase 'children and young people'.

'Children's rights' are at the core of the argument developed here for an approach to therapeutic work, which prioritises the needs of the child as client. This term is used to denote where a claim can be made for treatment, either by the child, or on their behalf, based on established legal or quasi-legal authority, such as an Act of Parliament, international convention, code of practice, case law, or official policy document. A vast and increasingly significant number of rights for children now exist in the UK, or more specifically England and Wales, which need to be brought together and understood by all those working with children as a matter of urgency.

The concept of 'confidentiality' is situated right on the contested borders of therapy and the law. Confidentiality is a strongly held professional responsibility for therapists, based on ethical principles and codes of practice. Therapists learn through their training that client material is to be contained securely within the therapeutic framework, in order to establish the fundamental trust necessary for the work to take place and to promote the client's ability to make autonomous choices. The conflict that arises concerns the requirement, or discretion, on the therapist's part

to break confidentiality, with or without the client's permission. These issues assume a heightened importance in a culture where public and professional awareness of child abuse has grown in the last three decades to become an ever-present background. On occasions, child abuse is a more immediate concern for therapists. The duty to maintain a client's confidence in therapy arises where this would be a legitimate expectation, given the special nature or degree of trust involved in the relationship. However (and this is a major qualification), therapists in England and Wales do not enjoy the sort of privilege which, for example, is held by a solicitor, who confers with a client for the purposes of giving legal advice. On the other hand, however, mandatory child abuse reporting laws do not apply to therapists in England and Wales as they do to many of their colleagues in the USA (Hoyano and Keenan, 2007: 444). There are many circumstances in which the therapist's ability to provide confidentiality in work with children is variously constrained and supported by the law. These situations are outlined in detail in earlier publications (Daniels, 2006; Jenkins, 2007) and are further explored here.

There is a growing trend towards recognising the rights of children and young people to high levels of confidentiality in the therapeutic situation, consonant with the law entitling them to exercise their parallel rights to autonomy, as far as possible. This approach probably finds its clearest expression in the Children Act 1990, not from the UK, but from Germany.

Children and young people can be counselled without the knowledge of the legal parent or guardian if the counselling is necessary due to need or conflict of interest and as long as the aim of the counselling is undermined if the parent or guardian is informed. (Kinder und Jugendhilfegesetz 1990, para. 8, sect. 3)

Briefly, this piece of law expresses, perhaps bluntly and somewhat inelegantly, some of the main themes and arguments of this book. Firstly there is the need to recognise that children and young people have needs and rights, which are distinct and separate in law from those of their parents. Secondly, there is clearly the potential for a conflict of interests between children and their parents, which may be expressed, at one level in ethical terms, as a conflict between the principles of autonomy and welfare. Finally, the integrity of therapeutic privacy is of considerable social value and worth, even (or perhaps especially) in the case of children and young people who have limited access to alternative sources of help. Breaching the therapeutic frame, via seeking parental permission or oversight, is highly likely to have adverse social and individual consequences for those children and young people who are seeking help outside of the family in privacy from a therapeutic source.

This particular piece of legislation from Germany may have no immediate counterpart in UK law, but it will be argued that there is now extensive case law which supports a parallel provision for the principle of

respect for therapeutic confidentiality for children and young people. This is not a utopian or impractical stance, but one rooted in good therapeutic practice, derived from the psychoanalytic tradition, and which is decisively in tune with developing human rights law and the rapidly developing law on privacy and confidentiality in the UK.

The format followed by this book is to set out the necessary theoretical frameworks of law and the psychoanalytic tradition of work with children in the first four chapters. The second half of the book then provides a detailed examination of legal, practice and therapeutic issues raised by specific case studies of therapy with children. The book concludes by considering the need to focus on the issue of empowerment for children.

The authors' shared concern to maintain confidentiality in the therapeutic relationship also has implications for the use of 'live' case material for the purposes of this book. The danger of the client's identity being realised by either the client or by a third party is one that is, unfortunately, seemingly inherent in the use of realistic case material. This requires particular vigilance on the part of the therapist in disguising identifying features of the client. Freud recognised this problem in his earliest work:

It would be a grave breach of confidence to publish material of this kind, with the risk of patients being recognized and their acquaintances becoming informed of facts which were confided only to the physician. (Breuer and Freud, 1985/1991: 47)

Every effort has been made, therefore, to avoid any inadvertent breaches of confidentiality through this same process of 'deductive disclosure' or 'jigsaw identification', by changing key identifying features of the child's characteristics and situation.

With regard to methodology, the case studies are simply intended to illustrate the authors' movement towards adopting a position of prioritising autonomy and confidentiality in therapeutic work with children. The use of case studies can only provide evidence towards an argument and clearly does not constitute an argument in itself, as some critics of the first edition rightly pointed out. While the use of case studies is rightly enjoying something of a revival at present in therapeutic research circles, the authors are fully aware of their limitations, from a strictly methodological point of view (Spence, 1989).

Securing a safe framework for confidential therapeutic work with the child as client needs to be based on full knowledge of the relevant law, as opposed to convenient or ill-founded assumption. In working therapeutically with children, as with adult clients, therapists will increasingly discover that ignorance of the law is no defence. This book is intended, therefore, to provide a background of information and discussion, which will hopefully promote safe and effective therapy with children.