

## Introduction

‘A solicitor has written to me demanding all my notes about one of my clients. Do I have to send them?’

‘I have been approached to counsel a very anxious 10-year-old-girl who is waiting to appear as witness in a child abuse case. She has changed from happy outward-going girl to someone who is withdrawn at home and school. She is just the witness, not the victim. Can I counsel her?’

‘My client has asked me to provide a report to help him in a case where he is suing someone following an accident. I am not sure that this is something that I should be doing as therapist. Can he compel me to produce a report? If he can force me to do this, what should I be saying?’

‘I have been ordered by court to appear as witness. I think that this will completely disrupt the therapy with my client. We have discussed her personal relationships in confidence and it seems wrong to break this understanding and discuss them in a court with her relatives and the public present. Do I have to do this?’

‘I have been asked to provide a report about my work with my client for a case concerning who looks after the children following a bitter separation. I can say quite a lot in her favour but I also know things that could work against her. Do I have to reveal these?’

These types of enquires are increasingly commonplace in the world of therapy. Counsellors, psychotherapists and psychologists are increasingly being contacted by lawyers and the courts to provide information about their work. They are also likely to be working with clients who are involved with court cases as witnesses or victims. Few therapists feel adequately trained or sufficiently experienced to be confident about how to respond to these situations. Many are justifiably concerned about how to manage the different expectations of legal and therapeutic processes.

This series has been written to meet the growing demand from therapists for advice about situations in which their therapeutic work as counsellors, psychotherapists and psychologists brings them into contact with the law. Therapists often report difficulty in finding information that relates to their professional field. The obvious sources of information are either not detailed enough to be of practical use or so technically complex that they are only understood by trained lawyers. This is clearly unsatisfactory and exposes both clients and therapists to

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unnecessary and probably avoidable legal risks. All professional bodies require their practitioners to know the law that relates to their field of practice and we hope that this series will make this requirement easier to achieve.

All the books in this series are designed to identify those areas of law that impinge on therapeutic practice and to provide relevant information in as user friendly way as possible for therapists. As authors, we have worked as a team. Amanpreet Sandhu has used her experience as a legal resource manager in the British Association for Counselling and Psychotherapy to identify, clarify and set out relevant areas of law. Tim Bond has drawn on his experience in professional ethics and conduct, especially his experience of advising practitioners, to generate practical examples of the application of the law to therapeutic practice and to ask questions about the law from a therapist's perspective. The books cannot be a substitute for obtaining good up-to-date legal advice on specific matters of importance. However, they are intended to alert therapists to potential difficulties or opportunities in the legal aspects of their work. Prior knowledge of the relevant law places therapists in the best possible position to plan systems for delivering their services to take advantage of the protection offered by the law and to anticipate any potential problems. A working knowledge of the law also enables therapists to ask more relevant and better informed questions when seeking legal advice.

### **The structure of this book**

As the first book of the series, we decided that it would be appropriate to consider the source of some of the most urgent and anguished queries about what to do when either a client or a therapist becomes involved in litigation. This creates the immediate prospect of therapists being brought face-to-face with the law at its most intimidating and magisterial in the courts. It is only the exceptional therapist who has any previous experience of the involvement of their cases with the law. Unlike social workers and probation officers, few therapists have had any training in the trail of paperwork that precedes most cases, appearing as a witness or writing professional reports for use by lawyers. They are also seldom prepared to take into account the implications of a client seeking therapy who is involved in litigation whether as a witness in a criminal case or as a party to civil action. This book considers some of the more commonly occurring situations and is structured around these.

The first section, 'Therapists entering the legal process', considers how they can become directly involved in legal cases that may end up in court. It provides essential legal information to answer questions about:

- Responding to solicitors' letters.
- Court orders concerning the production of documents or appearance as a witness.
- Writing reports with examples of all the more common types of reports.
- Presenting your work as a witness in court.
- Fees and expenses for work connected with the law.

The second section considers the challenges of 'Working with clients involved in the law' and particularly issues concerning working with:

- Child witnesses, especially victims.
- Adult victims and witnesses.
- Criminal compensation claims for physical and psychological injuries.

The final chapter provides useful information about the different types of courts within the United Kingdom and their functions, including the different roles of people within the legal system. Sufficient information is given for therapists to find their way round the English and Scottish legal systems.

### **Using this book**

All therapists face the possibility of being drawn into the legal process at some time or another. For most, this involvement with the law will be an exceptional experience that arises, sometimes unexpectedly, due to the unusual circumstances of a particular client. Most therapists working in private practice or voluntary agencies with a general range of clients, report that they are only occasionally caught up in legal processes connected with their clients. However, it is increasingly commonplace for therapists working in the health service, education, or services supporting families to receive regular legal inquiries, with some requiring substantial further involvement. Responding to legal inquiries may even be routine for services involved in supporting victims or offenders.

Whether or not therapists are occasionally or regularly involved in legal processes, familiarising yourself with the contents of this book in general terms is advisable so that you have a sense of what involvement with the law might mean for your work with clients; it will put therapists in the best possible position to respond to requests from clients about legal matters. It may also assist therapists to identify cases where future legal involvement is more probable than others. Therapists working with any of the following should consider the possibility of unavoidable legal involvement at some future date:

- Anyone who has suffered physical or psychological trauma arising from an accident or crime.
- Clients who make the first report of sexual assault to their therapist as this is likely to be regarded as crucial evidence in any subsequent prosecution.
- Members of families in dispute about the care and custody of children.
- Vulnerable young people.
- Clients who commit suicide.

Therapists working with clients in any of these categories are well-advised to develop a detailed knowledge of the relevant law and associated legal processes. The books in this series are designed to be useful points of reference for detailed legal information relevant to the development and delivery of these kinds of

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services. These books are also intended to be a useful first point of reference, in the event of the therapist becoming legally involved in a specific case, so that he or she is better able to seek appropriate legal advice.

A valuable feature of this book is the inclusion of examples showing the types of documents therapists might be asked to produce. These documents are realistic; they are based on the types of documents and statements presented in actual cases. However, the details about the actual events and people concerned are fictional in order to avoid compromising the anonymity of any clients or the integrity of actual cases. The examples are written in a variety of styles to indicate how varied legal documents can be. They provide examples of how to address a concern that carries less weight in therapy than in law.

The primary focus of most therapy is subjective experience where inner experience is paid more attention than external events. The therapist's trained intuition is a valid source of information and the basis for action in therapy. Intuition is of much lower standing in law and is often treated with suspicion. Lawyers tend to approach human experience in a very different way. Their practice is shaped by working in a context where there are often conflicting accounts of events or interpretations of the events. As a consequence, lawyers tend to be more concerned with separating identifying facts and separating facts from opinion. The first step in any legal process is usually to determine the facts from the available evidence by a combination of scientific and logical reasoning. Only once the available facts have been determined will attention be turned to the possible interpretations of those facts and considering which interpretation is the most appropriate professional or legal opinion. Therapists are therefore not only faced with the need for technical knowledge about the way the law is applied to their work but they are also encountering a different mindset and way of thinking when they come into contact with legal processes. The examples of representative documents have been developed to provide insight into the challenges of presenting therapeutic work within a legal context. Many of them are also interesting reading in their own right and may persuade some therapists that overcoming the difficulties of presenting their work for lawyers is a worthwhile endeavour in the interests of their clients and also the well-being of society. It is certainly a professional and personal challenge.

At the end of the book there is also a glossary for readers. It is a useful reference tool for any legalistic terminology that you are unsure about.

The book opens with what is probably the most common starting point for therapists' involvement with the law, the arrival of a letter from a solicitor.