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Forensic Psychology, the Dual Role Issue and Informed Consent

Philippa Laskey

University of Cumbria

Abstract

Forensic psychology is concerned with criminal behaviour, the treatment of offenders, and psychology applied in courts of law (Howitt, 2009). It is an important area in the field of psychology, as criminal activity and the recidivism of offenders is frequently brought to the public's attention (Ireland, 2009). Both the British Psychological Society (BPS; 2009) and the Health and Care Professions Council (HCPC; 2016) provide a code of ethics that practicing psychologists should abide by. The aim of this paper was to highlight a case example concerning a violation of ethical procedures. The case highlighted the issues found with gaining informed consent in a coerced environment. Furthermore, this paper evaluated the situation and critically discussed what could be improved. Finally, a checklist was designed and outlined which could be used to prevent informed consent issues arising for forensic psychologists in the future. It was also proposed that lawyers and other legal professionals should be involved in the informed consent process by informing clients and service users of the legal implications of not participating in a psychological evaluation (Foote & Shuman, 2006). It was highlighted that while the devised checklist and the involvement of lawyers could help with the issue of gaining informed consent, it is unlikely to solve the larger issue of dual roles for forensic psychologists.

Key words: Dual role, Forensic Psychology, Ethics, HCPC, British Psychological Society

Forensic psychology is concerned with criminal behaviour, the treatment of offenders, and, in its most literal definition, psychology applied in courts of law (Howitt, 2009). Daily tasks for a forensic psychologist can include: implementing offender treatment programs, changing offender behaviour, and reducing stress for prison staff and prisoners (British Psychological Society; BPS, 2014). They can also be involved in the training of prison officers, in decisions made about the release of prisoners, and in working with victims of crime (Howitt, 2009). It is an important area in the field of psychology, as criminal activity and the recidivism of offenders is frequently brought to the general public's attention (Ireland, 2009). The most common setting that a forensic psychologist will be found is that of a prison or correctional facility (Prospects, 2012), and the biggest employer of forensic psychologists in the UK is HM Prison Service (BPS, 2014). However, they can also work for the NHS, probation services, the police, and in academic institutions (NHS Careers, n.d.). Ultimately the role of a forensic psychologist is diverse and varied, and cannot be easily defined.

It is evident that the role of a forensic psychologist is more complex than is represented in the media (Ireland, 2009), and the training required is appropriately challenging (DeMatteo, Krauss, Marczyk & Burl, 2009). The BPS stipulates a very specific route for aspiring forensic psychologists to follow (BPS, 2014). The first step is to complete an undergraduate degree in psychology, applied psychology or forensic psychology. On successful completion of an undergraduate degree students should complete a society accredited master's degree. The final step is to complete two years' worth of supervision led by a certified forensic psychologist. There are other routes to certification, but this is the most conventional option in the UK (BPS, 2014). Despite the UK having a standardised route to qualification and certification, an appropriate training method for forensic psychology cannot be agreed upon globally (DeMatteo et al., 2009).

It is generally felt that training provided to forensic psychology students should encompass generalised and speciality competencies (Varela & Conroy, 2012). Varela and Conroy (2012) state that general competencies are those that can be applied across various areas within the larger field of psychology, and speciality competencies refer to those specific and unique skills associated with forensic psychology practice and research. Building upon this idea, DeMatteo et al. (2009) state that forensic psychologists should obtain experience and training in the following areas: core knowledge of basic areas of psychology, research methods and statistics, conducting original research, legal knowledge, knowledge of forensic subjects, assessments and tools, ethics and professional values, and clinical forensic training for those in clinical programs. It would seem that these proposed areas give a well-rounded start to a

forensic psychologist's professional education. However, they may not suffice when the individual starts working in the field of forensic psychology. In fact, both the BPS (2009) and the Health and Care Professions Council (HCPC, 2016) require all practicing psychologists to engage in continuing professional development (CPD) throughout their careers, with it being an integral part of their ongoing registration with both organisations.

Both the BPS (2009) and the HCPC (2016) provide a code of ethics that practicing psychologists of all disciplines should abide by. The BPS (2009), responsible for psychologists becoming chartered and certified, bases its code of ethics on four ethical principles: respect, competence, responsibility and integrity. The HCPC (2016), the regulator of applied psychologists, has a fairly general code of ethics because it must cater for all health and care professions in the UK. However, it still abides by the four ethical principles used by the BPS (2009), and both organisations have the welfare of service users as their primary concern. It should be noted that both codes of ethics state that they are guidelines and that professional decision making is key to avoiding major ethical violations (BPS, 2009; HCPC, 2016). Furthermore, Day and Tytler (2012) suggest that the ability to both act and think well in uncertain situations is evidence of professional expertise. This implies that the key to demonstrating professional expertise is to practice good decision making to avoid unethical situations. This is particularly relevant to forensic psychologists, as it is a field of psychology that is likely to experience challenging and ethical problems (Allan, 2013). The aim of this paper is to highlight a case example concerning a violation or breach of ethical procedures. The case example presented here will be concerning a forensic psychologist and the issue of dual roles. More specifically the case will highlight the issues found with gaining informed consent in a coerced environment. Furthermore, this paper will critically evaluate the situation presented; discuss what could be improved, and how this issue could be handled better. Finally, a checklist will be presented which could be used to prevent informed consent issues arising for forensic psychologists in coerced settings in the future.

The dual role issue arises when a forensic psychologist, particularly those working in a correctional environment, experience a disagreement between the ethical guidelines of their mental health profession and the aims and goals of the Criminal Justice System (Ward, 2013). In simpler terms, a dual role is when an individual concurrently participates in two professional role categories (Gottlieb, 1993; Cervantes & Hanson, 2013). As a result there tends to be a conflict between the Criminal Justice System concentrating on the protection of the community, and the forensic psychologist being primarily concerned with the welfare of the offender (Glaser, 2009). Simply put, a forensic psychologist works with offenders, but for the

prison service (Birgden & Perlin, 2009). As mentioned earlier, the ethical codes and guidelines that psychologists should adhere to encourage individuals to act in the best interests of the service user (BPS, 2009; HCPC, 2016). However, it has been said that these guidelines and principles are not adequate to guide practical decision making (Gottlieb, 1993). In contrast, the prison service and the Criminal Justice System are concerned with obtaining justice for victims of crime and community protection (Ward, 2012). While it cannot be said that one concern is more important than the other, the conflict in motivations between the forensic psychologist and the Criminal Justice System can only be expected to produce problems.

One important concept in the BPS (2009) and the HCPC (2016) codes of ethics is that of informed consent. Informed consent must be obtained from any client or service user before taking part in research, an evaluation, an intervention, or treatment programs. It involves the disclosure of information concerning the research, evaluation, intervention, or program which allows for voluntary choice, made by the client or service user who is competent to decide (Dwyer, 2012). It is generally accepted that for research, an evaluation, an intervention, or a treatment program to go forward informed consent must be obtained if the participants are competent enough to consent (Foote & Shuman, 2006). In regard to a correctional setting, it has been questioned whether true informed consent can be gained from individuals who are incarcerated or court ordered (Weinstein, 2002). They can be informed fully of all the details of what they are participating in and for the most part are competent to consent, but it is dubious whether their choice to participate is voluntary. Glaser (2003) states that most offender treatment programs are mandatory or court ordered, while Prescott and Levenson (2010) state that offenders are given incentives to participate in treatment programs, or are punished if they refuse to take part. This implies that perhaps informed consent, in its traditional sense, cannot be a part of procedures in a correctional setting such as a prison or secure hospital.

According to the literature, there seems to be two different ways in which the issue of informed consent can be problematic for forensic psychologists. The first is the fact that most offender treatment programs are conducted in a coercive nature (Glaser, 2003). This may seem an obvious point to make, but it has been found that treatment programs that are entirely coercive tend not to produce meaningful results (Prescott & Levenson, 2010). This would suggest that as long as treatment in prison is coercive, the Criminal Justice System will not achieve the lower recidivism rates it desires. This negatively affects forensic psychologists working in prisons because their professional code of ethics states that they should obtain informed consent from service users before commencing any treatment or research (BPS, 2009). This is a good example of the dual role problem; the Criminal Justice System would

require the psychologist to administer the treatment program to a coerced offender, but the psychologist's professional ethics code prevents them from going against the ethical principle of informed consent.

While this is a good example of dual role issues, the dual role issue that will be highlighted in this paper concerns the acquisition of informed consent when a forensic psychologist is asked to perform a psychological evaluation on request from the courts. This situation differs slightly from the issues found in offender treatment programs, as it is still in a coerced environment, but the evaluation is not part of punishment or treatment, but a consequence of trying to obtain justice for a victim (Weinstein, 2002).

The case example to be used in this paper is presented by Reynolds, Hays and Ryan-Arredondo (2001). The situation involves a child and his adoptive parents. The adoptive parents went to court against an adoption agency claiming wrongful adoption because they believed they were not told about the child's psychopathology. The diagnosis of psychopathology was crucial to establishing damages and liability and the parents objected to allowing an evaluation of the child by a forensic psychologist retained by the defence. The court ordered the parents to consent to the psychological evaluation, but that the evaluation would be subject to three restrictions. First of all the adoptive mother was to be allowed to observe the evaluation of the child through one way glass. Secondly, a video tape recording was to be made of the evaluation through the one-way glass. Finally, and possibly most importantly, the child (aged 14 years) was not to be told that the mother was observing the evaluation, that a video tape was being made of the procedure, the purpose of the psychological evaluation, the uses of the final results of the evaluation, or the existence of the court case.

Reynolds et al. (2001) highlight that this leaves the forensic psychologist in a very difficult position. They suggest the main issue is that the psychologist cannot obtain informed consent from the child because the court has ordered that the child not be told anything about the evaluation or the court case. They also state that because the child is a minor, in the eyes of the law, the parents would be responsible for providing informed consent to the forensic psychologist. However, they reason that this only covers the consent part of informed consent and that in this case the child is not informed with regard to the purpose of the evaluation or the use of the results. To abide by the principles of informed consent the participant or service user must be fully informed of the procedures involved and possible outcomes, the choice to participate must be entirely voluntary, and the participant must be competent to consent (Dwyer, 2012). In this case, the forensic psychologist would find it very difficult to abide by even one of these principles.

Any intervention to improve this kind of situation should concentrate on helping the psychologist to perform the task they have been asked to perform while still conforming to the ethical codes of their profession. In addition, the welfare of the service user should be paramount, as stated in both the BPS (2009) and the HCPC (2016) code of ethics. Reynolds et al. (2001) noted that if a forensic psychologist was to proceed in the conditions stated above, the trust of the child in the psychological profession could be damaged irreparably, and could prevent them from seeking help for any future mental health problems they may experience. The whole concept of informed consent is centred around client or service user autonomy, and their ability to make meaningful decisions after receiving the appropriate details on the procedure they are about to consent to (Dwyer, 2012). Indeed, Day and Casey (2009) state that when dealing with these kind of situations, psychologists and Criminal Justice System workers should always protect the human rights of any individual they work with, be they offender or victim. In addition, they note that, although some of the individuals' rights may be restricted (e.g. by court order), the greatest effort must be made to respect the human rights they still have full control over. Ward and Birgden (2009) further support this idea by saying that the aim is not to deceive and coerce an individual to consent to a procedure, but to persuade them that taking part is not harmful by explaining fully the procedure, the outcomes, and the risks. While 'coerce' and 'persuade' may seem like they mean the same thing, the case example presented earlier is an example of coercion, where the child would believe they have no choice in whether they take part in the evaluation and did not receive any information regarding what would happen. In contrast, if they had been presented with all the information they needed in order to make an informed decision, and it was made clear that according to basic human rights they were allowed to decline participation, they could have made the decision that was right for them, and their autonomy would have been respected.

If the child had declined to participate in the psychological evaluation, there would still be the issue of what the consequences of that decision might be. Foote and Shuman (2006) explain that not participating could result in severe legal consequences, and that the responsibility to inform the individual of this fact falls to their lawyer. They say that for the client or service user to get a full picture of what the evaluation involves, and what would happen if they did not participate, it requires the expertise of two professionals. Neither professional alone can provide all the information required to allow an individual to make an informed decision (Foote & Shuman, 2006). This would suggest that to inform individuals about court ordered psychological evaluations, forensic psychologists and Criminal Justice workers need to combine their knowledge and make gaining informed consent a team effort.

The solution to the ethical problems in the case example presented above is not straightforward. First of all forensic psychologists should always be aware of the principles of informed consent outlined in the BPS (2009) and HCPC (2016) ethical guidelines. If nothing else, their registration basis with both of these organisations is dependent on them having knowledge of these codes of ethics (BPS, 2014; HCPC, 2016). Secondly, if the individual involved is a minor, then the consent will have already been provided by the parents, however this does not mean the child should not be informed fully (Reynolds et al., 2001). It would seem that because the child has not consented personally, it gives greater importance to informing them about the procedure and consequences, which may reduce suffering for the child (Weinstein, 2002). In addition, Foote and Shuman's (2006) suggestion that a lawyer or law professional should be involved in the informed consent process of an evaluation is a useful one. They would be able to inform the individual of the legal consequences of participating or not participating in the evaluation. In addition, the involvement of the individuals' lawyer is likely to put the forensic psychologist at ease, as they would not know the details of the legal ramifications if the client asked about them (Foote & Shuman, 2006). Giving the individual information on both the psychological evaluation and any legal issues at the same time would probably be of benefit, as then they will have all the details at hand when making the decision whether to consent to participation.

In order to give forensic psychologists some specific guidelines, when dealing with issues of informed consent in psychological evaluations, a checklist has been devised (see Appendix One for full checklist). The checklist was devised using both the BPS (2009) and the HCPC (2016) ethical guidelines, to ensure the forensic psychologist works within their professional principles. In addition, the checklist will reference the coercive environment of the courts by referring to the involvement of a qualified Criminal Justice System professional, as suggested by Foote and Shuman (2006). The first four points on the checklist ask whether the individual has been informed of the procedure of the psychological evaluation, the purpose of the evaluation, how the results will be used, and possible risks that may arise from participating in the psychological evaluation. If forensic psychologists follow these points then they ensure the welfare of the service user is made a priority, but they also safeguard their professional reputation and protect themselves from any negative legal ramifications (Reynolds et al., 2001). The fifth, and final point included in the checklist asks whether a legal professional has explained the legal consequences of the individual not participating in the psychological evaluation. This follows the advice of Foote and Shuman (2006) about including the individuals' lawyer in the process of obtaining informed consent. Hopefully, the use of a

checklist like this will ensure that a forensic psychologist can abide by their professional ethical guidelines in a coerced environment, while still fulfilling the role the Criminal Justice System has employed them for. It should be noted that to help facilitate this process, psychologists should completely document their procedures, including gaining informed consent, to ensure they do not harm their own reputation or the reputation of their professional body (Dwyer, 2012).

In spite of any checklists, forms or interventions that can be developed, perhaps the root of the problem is the way the Criminal Justice System views forensic psychologists. It would appear that the dual role issue in general is quite common in correctional and coerced environments (e.g. Bonner & Vandecreek, 2006; Glaser, 2009; Birgden & Perlin, 2009; Ward 2013), so perhaps procedures regarding forensic psychologists working with the Criminal Justice System need to be altered. However, it may be the case that the guidelines that forensic psychologists should adhere to are too vague for practitioners in correctional and coerced environments. The BPS (2009) and HCPC (2016) ethical guidelines state themselves that they are general, so that they can be applied to psychologists and health care professionals in all disciplines. It could be said that forensic psychologists should have their own code of ethics that is tailored to their unique working situations and ethical dilemmas. In either case, changes need to be made in order for forensic psychologists to avoid the unique issue of dual roles in their profession.

Forensic psychology is a varied and complex field in professional psychology (Ireland, 2009), and because of this fact issues in a forensic psychologists' working life can be hard to resolve (Reynolds et al., 2001). Dual role issues seem to be fairly common in correctional and coerced settings (Ward, 2013). The aim of this paper was to develop a strategy to avoid issues that arise regarding informed consent in correctional and coerced environments. The issue presented, which concerned gaining informed consent to perform a psychological evaluation (Reynolds et al., 2001), was addressed by developing a checklist that would enable forensic psychologists to abide by the principles of informed consent. It was also proposed that lawyers and other legal professionals should be involved in the informed consent process by informing clients and service users of the legal implications of not participating in a psychological evaluation (Foote & Shuman, 2006). All of these improvements should help psychologists and Criminal Justice System professionals to respect the autonomy and, ultimately, the human rights of individuals who are court ordered to participate in psychological evaluations.

However, it should be noted that perhaps there are some faults in how the Criminal Justice System perceives the role of a forensic psychologist. Dual role issues happen very often

for forensic psychologists (Glaser, 2009), and this could possibly be because the Criminal Justice System does not entirely understand the ethical guidelines psychologists work by. Ultimately, psychologists working in a correctional or coercive environment should still put the welfare of the individual they are working with before anything else (BPS, 2009; HCPC, 2016). This may not work well with the Criminal Justice Systems ideals of punishment, and protection of the community (Birgden & Perlin, 2009). Therefore, while the devised checklist and the involvement of lawyers could help with the issue of gaining informed consent, it is unlikely to solve the larger issue of dual roles for forensic psychologists.

Future research into this area should focus on whether interventions, such as the checklist presented here, can help the issue of obtaining informed consent in court ordered psychological evaluations. In addition, an effort should be made to investigate whether there will ever be a way to solve the dual role issue without removing forensic psychologists from the Criminal Justice System altogether. Finally, research should be conducted to examine the BPS (2009) and the HCPC (2016) ethical guidelines to ascertain whether they are appropriate for forensic psychologists or whether the unique issues this profession faces need to be acknowledged more explicitly.

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Appendix One

Informed Consent Checklist for Forensic Psychologists Performing Court Ordered
Psychological Examinations*

1. Has the individual received information regarding what will happen during the psychological examination?
2. Does the individual know the intended purpose of the psychological examination?
3. Does the individual understand what the results of the psychological examination will be used for?
4. Is the individual aware of any potential risks associated with the psychological examination?
5. Has a qualified professional (e.g. lawyer) explained the legal consequences of not participating in the psychological examination?

*For use when the individual participating has been court ordered to complete a psychological examination.