

Ethical Problem-solving

Whenever you are confronted with a problem or dilemma about ethical standards, it is useful to approach it in a systematic way. This maximizes the likelihood of reaching a solution which you are confident is the best possible outcome. This chapter contains a six-step process, which is a development of an ethical problem-solving model derived from American sources (Paradise and Siegelwaks, 1982; Austin et al., 1990). It follows the basic principles of many problem-solving models used by counsellors with their clients but adapted to fit ethical problem-solving. It has stood the test of time and I have heard of many counsellors and supervisors using this model either for private reflection or to structure a professional discussion about a current dilemma. It works best when it is taken as a basic framework and used to consider as wide a range of options as possible before making a decision.

Produce a Brief Description of the Problem or Dilemma

Making sure that you can produce a short spoken or written conceptual description of the main elements of your ethical dilemma is useful. Sometimes doing this reduces confusion to the extent that the problem disappears. On the other hand, if the problem still remains, you then have

a good starting point from which to seek assistance and to clarify the main issues to be considered. When I find it difficult to define a problem, I know it is something I need to discuss with my counselling-supervisor(s) or another experienced counsellor, because I have to identify the elements of something in order to summarize it. If it cannot be summarized, perhaps that is a clear indication that even the problem itself is not clear to me yet. It is very difficult to make much progress in discussion of the issues until the main issues of the problem can be identified. It may be that some of the later steps will cause me to revise my description of the main points, but a short and clear statement of what these appear to be is a good starting point.

Whose Dilemma Is It Anyway?

This is a basic question that often casts a sharp light on the darkest of ethical problems in counselling. Counselling is an activity that requires careful monitoring of boundaries of responsibility in order to ensure that these are not becoming blurred. In Chapter 6, I suggested that a useful way of approaching boundary issues is to start from the position that the counsellor is responsible for the methods used and the client holds responsibility for the outcome of the counselling. Often this general principle is very helpful, especially where the ethical issue concerns the relationship or work within the counselling. There may be rare exceptions to this principle where the counsellor considers that she holds some responsibility for protecting the client from self-harm or protecting others. Protecting the client from self-harm is most likely to arise when the client is a young person or child, or a vulnerable adult. Protecting others may arise where the client threatens serious harm to another named person, especially if that person is also your client. It may be that there are good reasons for believing that your client is so deluded or mentally disturbed that he is incapable of taking responsibility for the outcome of the counselling and he poses a threat to others. Fortunately, these situations are rare and some counsellors may never encounter them. Nonetheless, it is a useful starting point to ensure that you have established the boundaries of responsibilities between yourself and your client. The following scenarios are examples of issues relating to ethics and standards classified according to boundaries of responsibility.

- Client's own ethical dilemma:

Sheila decides she cannot face telling her partner that she has stronger feelings of attraction for someone else. She makes the decision to lie to her partner about the time she is spending with her new lover.

Trevor is feeling guilty about money he has embezzled from his employer. He had intended to pay it back but he has lost the money through gambling. He knows it puts the future of the business at risk. Should he tell his employer? (If the counselling is taking place in the work setting, it is likely that this would become a dilemma shared by counsellor and client.)
- Counsellor's own ethical dilemma:

Zoe is very wealthy and, having fallen out with all her close family, has decided that she wants to make a will bequeathing all her possessions to you as her counsellor. You suspect that this is a manipulation to win your support for Zoe's side in a family dispute. You also know that if you accept the bequest, it is likely that it will be suggested that you used your position of influence to persuade Zoe to make you a beneficiary. On the other hand, you would welcome being donated a large six-figure sum of money.

Frances has been talking in counselling sessions about her difficulties with someone who is already well known to you. Do you tell Frances that you know the person she is talking about and risk inhibiting her, or do you stay silent?

Rachel has sought counselling from the student counselling service about whether to leave a course before its completion. As the counsellor, you know that if one more student leaves this course it will be closed and the remaining students will be transferred to other courses. For one of your other very vulnerable clients, this could be disastrous as she sees this course as a lifeline. It could also have serious consequences for other students and staff.

The organization that employs you as a counsellor wishes to impose a restriction on the number of sessions you can offer to any one client. You know that the maximum number of permitted sessions is unrealistically low for a majority of clients you see for counselling. What should you say to new clients who might be affected by the proposed policy? What should you do about the proposed policy?
- Ethical dilemma shared by counsellor and client:

Bill is unbearably stressed by his work but he needs the income to support his partner and children. He decides that he must leave his employment but is feeling guilty about letting his family down. Therefore he decides to lie to his wife and says that you, as his counsellor, have said that he should give up work. To add credibility to his deception and without your knowledge, he

tells his wife that you are willing to see her and to explain your recommendation. Bill's wife has arranged an interview with you. When his wife contacts you, you become aware that Bill has woven you into his deception and you will need to decide how far you are willing to share in the deception or distance yourself from it while respecting Bill's rights as a client.

Susan seeks counselling about an eating disorder. She states that she is not receiving counselling or therapy from anyone else. You agree to be her counsellor. Several sessions later, Susan admits to having lied about not having another therapist. She had a prior agreement to work exclusively with someone else. She does not want to stop seeing you or the other therapist and values her work with you. She feels unable to discuss seeing you with the other therapist.

One of the reasons for deciding at this stage who holds responsibility for the dilemma is that it may make all the subsequent steps in this model unnecessary. If the client has the sole responsibility for the dilemma, it is most appropriate to explain the issue to the client and help him make his own decision. Where there is joint responsibility, some clarification and negotiation with the client are usually indicated. The stages that follow are particularly appropriate for the resolution of dilemmas that are primarily the counsellor's responsibility. On the other hand, the model is flexible enough to be shared, wholly or partially, with some clients in order to help them decide issues which are their own responsibility or joint responsibilities with the counsellor.

Consider All Available Ethical Principles and Guidelines

The aim of this stage is to become better informed about possible ways of resolving the ethical dilemma. The main codes of standards and ethics of use to counsellors in Britain are published by the British Association for Counselling and Psychotherapy, the British Psychological Society, the Confederation of Scottish Counselling Agencies, the Irish Association for Counselling and Psychotherapy, and the United Kingdom Council for Psychotherapy. The guidelines produced for specific professional groups by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, the British Association for Social Workers and the General Medical Council are highly relevant to counsellors working in related roles. They may also offer useful insights to counsellors in similar settings but some caution may be indicated in assuming that they are directly

transferable because of the different legal bases of specific professions and organizations. Some counselling services have developed their own codes and guidance, which can be very informative.

Some ethical issues cannot be decided without consideration of the law. Up-to-date publications may be useful but if the matter is complex or there is uncertainty about the law, I strongly recommend seeking legal advice. The general questions you may want answered are:

- 1 What actions are prohibited by law?
- 2 What actions are required to be performed by law?
- 3 What rights and responsibilities does the law protect?

In the absence of any relevant guidelines or definitive legal advice, you may find yourself considering the issue on the basis of the general ethical principles outlined in Chapter 3.

- 1 Respect for autonomy – what maximizes the opportunities for everyone involved to implement their choices?
- 2 Beneficence – what will achieve the greatest good?
- 3 Non-maleficence – what will cause least harm?
- 4 Justice – what will be fairest?
- 5 Fidelity – how can the relationship of trust be honoured?
- 6 Self-respect – how should the counsellor's own need for 1-5 be taken into account?

In counselling, the first principle is especially important and will often prove decisive, particularly if it is possible to act in ways consistent with client autonomy, which also satisfies one or more of the other principles.

At the end of this stage you would hope to be clearer about the goals which are ethically desirable. This will give you an orientation and some criteria for choosing between possible courses of action.

Identify All Possible Courses of Action

This stage is an opportunity to brainstorm all the possible courses of action open to you that will achieve the ethical goals you identified in the earlier stage. Some courses of action will seem highly probable ways of resolving the dilemma. Others may not seem feasible. However, it is better not to discard the less realistic ideas too readily because sometimes they contain the basis for an original approach or new insight.

Select the Best Course of Action

A former chairperson of the American Counselling Association Development (Holly A. Stadler, 1986a, 1986b) proposed three tests for a chosen course of action that have their origins in moral philosophy and have stood the test of time.

- Universality
 - could your chosen course of action be recommended to others?
 - would you condone your proposed course of action if it was done by someone else?
- Publicity
 - could I explain my chosen course of actions to other counsellors?
 - would I be willing to have my actions and rationale exposed to scrutiny in a public forum, e.g. at a workshop, in a professional journal, newspaper or on radio/TV?
- Justice
 - would I do the same for other clients in a similar situation?
 - would I do the same if the client was well known or influential?

If you find yourself answering 'no' to any of these questions, you may need to reconsider your chosen outcome. A final step in identifying the best course of action may be checking whether the resources are available to implement what is proposed.

The aim of this stage is to make an informed choice between all the possible courses of action you have identified. The consideration of guidelines and the law in the previous stage will be useful but may not be decisive. Therefore, asking yourself these questions is usually very informative.

Evaluate the Outcome

After you have implemented your course of action, it is useful to evaluate it in order to learn from the experience and to prepare yourself for any similar situations in the future.

- Was the outcome as you hoped?
- Had you considered all relevant factors with the result that no new factors emerged after you implemented your chosen course of action?
- Would you do the same again in similar circumstances?

Examples of Ethical Problem-Solving

I have chosen two issues as examples of how this model of ethical problem-solving might work in practice. The first raises the issues of dual relationships. The second poses what participants in training workshops often consider to be one of the most difficult ethical dilemmas which could confront a counsellor. I am offering both these as examples of how the model works rather than suggesting that my conclusions are necessarily right. You may use the same model but come to different conclusions.

Example 1

You are approached by Pam, the teenage daughter of a friend, who asks you to offer her counselling. You hardly know Pam but it is apparent that she is emotionally troubled and has dropped hints about not eating properly. Pam is insistent that from her point of view you are ideal as a counsellor. You are neither too much a stranger nor too close. She turns down any suggestion of seeing anyone else. It has taken her months to pluck up the courage to speak to you. You check with her mother, who is your friend. She is supportive of the idea and offers to pay whatever is your usual fee. You feel her friendship matters to you.

The first step is to produce a brief description of the dilemma. The main elements are:

- divided loyalties if you take on Pam as a client between putting her interests as a client first and your friendship with her mother. What if Pam's difficulties involve her relationship with her mother or perhaps abuse within the family?
- as a subsidiary issue, the management of confidentiality in relation to the mother, your friend. You suspect that neither Pam nor her mother understand some of the potential complications of what is proposed.

- a further subsidiary issue: the payment for counselling by someone other than the client when there is uncertainty about that person's role in the client's problems. This could be considered once the other issues are resolved.

The second step is to consider whose dilemma is it anyway? As it is presented, Pam and her mother are in agreement and the onus is on you to accept or reject the role of counselling Pam.

The third step is to consider all the available codes and guidelines. The BACP *Ethical Framework for Good Practice in Counselling and Psychotherapy* places responsibility on the counsellor for determining the potential beneficial or detrimental impact of dual relationships on the client and that they should be readily accountable to clients and colleagues for any dual relationships that occur (BACP, 2007). Some models of counselling are more open to this type of dual relationship than others. For example, it might be more problematic maintaining the professional distance in a psychodynamic approach than in a person-centred or cognitive-behavioural way of working. The situation raises the question of whether the overlapping and pre-existing relationships are avoidable. The possibility of referral has been considered but this is unacceptable to Pam. There is the additional requirement to explain the implications of maintaining boundaries to Pam, and perhaps secondarily her mother. In what ways might the boundaries become blurred? For the client, it is a potential dual relationship with Pam as 'counsellor' and 'mother's friend' simultaneously. A secondary issue is the potential dual relationship with Pam's mother as 'daughter's counsellor' and 'friend'.

Ethical attitudes to dual relationships have relaxed on both sides of the Atlantic from an instinctive prohibition to placing a great deal of responsibility on the counsellor for determining therapeutic impact of such a relationship and ensuring that the benefits outweigh any detriments (Corey et al., 2003; Syme, 2003; Gabriel, 2005; Sommers-Flanagan and Sommers-Flanagan 2007).

There are no apparent legal constraints. Therefore, the next step is to consider all possible courses of action. These include:

- Refuse to take Pam on as client, stating reasons.
- Offer a 'white lie' for not taking Pam on, e.g. too busy, don't work with teenagers, etc.
- Agree to see Pam but only once she understands the potential conflicts of interest and has explored how she wants you to deal with any issues relating to her mother.

- Agree to see Pam, but for as long as you are seeing Pam, minimize contact with her mother and have a clear agreement with both Pam and her mother about confidentiality and what may be communicated.
- Accept risk of losing a friend by seeing Pam.
- See Pam for a fixed period with review at which the possibility of referral or continuation will be considered.

The final stage is to choose a possible course of action. The choice will depend on the exact circumstances of the situation and your assessment of the possibility of maintaining clear boundaries and the likelihood of being able to help Pam. If I were faced with this dilemma, I would prefer to decline this dual relationship on ethical grounds. It is likely that Pamela will have issues relating to her mother, which she will need to explore and resolve for herself in the process of overcoming her eating disorder. My existing friendship with her mother is likely to complicate this process both for Pam and myself. If I took on any role, it would be to assist Pam in finding a source of help which she considers acceptable and perhaps offering to be present to introduce Pam to her counsellor or therapist before they start working together. I would be willing to be quite firm about the ethical undestratability of taking on the role of counsellor in these circumstances, and quite active in giving Pam information that could assist her search for an alternative source of help. I would not usually charge any fees for providing this information, so the subsidiary problem would not arise. However, this is often an issue when seeing young people so I will consider it.

The third-order issue of payment of fees by someone other than the client is often tricky, especially if a client's relationship with the person making the payment might be an issue in the counselling. It is possible that the client will experience a sense of guilt about using counselling to explore difficulties with the benefactor, and therefore may avoid this subject. The counsellor may also experience similar inhibitions. So this arrangement may be contrary to an ethical commitment to respecting the client's autonomy, which implies actively promoting the client's control over her life. Several alternatives exist:

- reducing the fees to a level where the client can afford direct payment;
- the client making a contribution towards the fees paid by someone else;
- suggesting that the money for fees be given as a gift to client, who takes responsibility for managing payment to the counsellor.

Any of these arrangements would be preferable to direct payment by the mother, which might further confuse an already difficult set of dual

relationships. My own preference is to reduce fees to a level the client can afford directly. This provides the best way of placing the client in control of the counselling relationship. However, if this is not feasible, I prefer the client to make a contribution to the fees and to take responsibility for managing the payment of fees.

Example 2

Joanne, a 15 year-old client is seeing you for help with friendship difficulties and low self-confidence. After a few sessions, she hints that she is being sexually abused by someone at home but asks for a promise that you will keep what she says confidential before she is willing to tell you more.

This is an increasingly common situation for counsellors. In many ways, it is a welcome development that young people are more likely to seek help when they are being physically or sexually abused and that there is greater public awareness. It is so much better to be able to talk than suffer in silence. A commitment to prevent and detect child abuse has steadily grown in importance in public policy. It is also the case that child protection services have greatly improved over the last ten years but they remain variable from area to area. No matter how local services have improved, a young person who has experience of being abused is likely to be wary because they have direct experience of the harm that humans can inflict on each other. In this example, a young person has taken the first cautious step in putting her trust in another person, a counsellor. In real life, the counsellor will have some sense of how far this is trust based on a developing sense of each other or whether Joanne is seeking help out of desperation to escape an intolerable situation. Where it is the former, the counsellor will want to honour the trust that is being offered. Where Joanne is beginning to talk out of desperation, the counsellor will be aware of her vulnerability and emotional pain. In my experience, communications about being abused are usually prompted by a mixture of hoping to be able to trust someone and the desire to get out of an intolerable and painful situation. Being ethical in such circumstances is not only a matter of professional integrity but also helping someone to begin to trust again.

The dilemma in this case arises from Joanne's request for confidentiality. Increasingly, counsellors feel a moral obligation to act to protect vulnerable young people from abuse in relationships where they are systematically disempowered or counsellors are under actual legal obligations arising from a contract of employment to report allegations of child abuse. How should a counsellor respond to Joanne's request for a promise of confidentiality? The tension is between working in ways which build the client's confidence and trust to counteract the abusive relationship or to intervene and attempt to build the relationship afterwards. So much will depend on:

- the counsellor's sense of the young person and what they will tolerate or, preferably, actively support and the significance of forming a therapeutic relationship;
- an assessment of the overall best interests of the young person concerned;
- the severity of the abuse and the imminence of any repetition;
- any known risks to other young people being abused by the same perpetrator;
- the legal framework in which the counsellor is working, particularly the contract of employment and whether or not the service falls within statutory children's services (see Bond and Mitchels, 2008).

These sorts of situations are difficult to predict and it is unwise to promise total confidentiality. It is generally much better to actively consider how to remain respectful and trustworthy for the young person concerned. In some cases this may require continuing to be actively involved in the referral process and possible case conferences following a disclosure to the authorities. As services and procedures for investigation are developing rapidly in this field, it is sound practice to seek the advice of specialists in child protection. Such discussions can often be opened in ways that protect the anonymity of the client until it is clear that either the client is ready to consent to disclosure or it is considered that the seriousness of the situation requires immediate disclosure.

Conclusion

Ethical dilemmas occur on a daily basis in counselling. Fortunately, most dilemmas are on a manageable scale after careful reflection. Many are more likely to be of the order of considering whether to refer a client, choosing what to discuss in counselling-supervision or deciding whether

your client has consented to your proposed course of action. Resolving ethical dilemmas requires thought, knowledge, feeling and you may also need courage to make and sustain decisions. Michael Carroll (1993) has likened resolving ethical dilemmas to general problem-solving and argues that it is a process in which counsellors can become more skilled with training. The model of ethical problem-solving I have offered is not definitive, but it is intended to be useful in everyday counselling. It is sufficiently flexible to incorporate insights from any of the six sources of professional ethics outlined in Chapter 3. Ethical dilemmas are usually a professional and personal challenge, but they can also be a source of new learning for the counsellor (Bond, 1997), when that learning is shared with the profession as a whole.

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Implications for practice

The ethical context of counselling continues to change in ways that require counsellors to reconsider established ethical practice. Changes tend to be progressive and incremental, moving at the pace of social change, but may in some instances require substantial jumps to keep up. One such jump is imminent.

Statutory Regulation of Counselling

The possibility of statutory regulation seems to have been hanging over the field of counselling for an interminable number of years. It is a possibility that produces very mixed feelings among practitioners, from enthusiastic support to total opposition. Most have mixed feelings. Many of the different positions relate to the person's views about providing counselling as a committed radical (more likely to be resistant) or a professional (more likely to cautiously accept or even enthusiastic) (see Table 3.1 on p. 46). When regulation happens, it will be a major step-change that will significantly alter the ethical landscape for practitioners. The best guide to the full impact of regulation will be the developments in counselling psychology as it advances towards statutory regulation in England and Wales under the Health Professions Council.

The implications will be more far-reaching than those in ethics alone, but in this closing section I will concentrate on ethics. The voice of ethics on some issues will change and will be determined by a more authoritative