

Forensic mental health nursing

Ethics, debates and dilemmas

Note

Healthcare practice and knowledge are constantly changing and developing as new research and treatments, changes in procedures, drugs and equipment become available.

The author and publishers have, as far as is possible, taken care to confirm that the information complies with the latest standards of practice and legislation.

Forensic mental health nursing

Ethics, debates and dilemmas

edited by

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on behalf of the National Forensic Nurses' Research
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Contents

About the editors	vii
List of contributors	x
Foreword Malcolm Rae	xii
Dedication	xiv
1 Ethics, debates and dilemmas in forensic nursing <i>Alyson Kettles, Michael Coffey and Richard Byrt</i>	1
2 Ethical principles in forensic and prison nursing <i>Richard Byrt</i>	17
3 Ethical and legal aspects of the Mental Health Act 2007 and related legislation <i>Nicholas Taylor</i> <i>Poem: The Wall</i>	43 57
<i>Andrew Higgins, Mandy Laird, Monica Elaine Mantey, Phineas Mapfumo, Tapiwa Mugabe and Folorunso Olubukola with Giotto Bonomaully</i>	
4 The promotion of autonomy in clients with learning disabilities <i>Ian Smith, Mary Addo and Jerry Ninnoni</i>	59
5 My personal tsunami: Surviving assault <i>Frances Barrone</i>	71
6 From hero, to hospital, to hope: A carer's experience <i>Jane Wood</i>	81
7 Ethical and legal issues of culture, spirituality, diversity and equality in forensic nursing <i>Mary Addo</i>	85
8 Ethical issues in forensic community work <i>Michael Coffey and Jeanette Hewitt</i>	107
9 Women's enhanced medium secure care: A personal account <i>Wendy Ifill</i>	123
10 "Enhanced" women's secure services: Reflections and strategies for treatment design <i>Rebecca Lawday</i>	125
11 The emotional labour of prison nursing <i>Elizabeth Walsh</i>	139

Contents

12	An experience as a prison in-reach mental health nurse <i>Glynnis Vann and Richard Byrt</i>	155
13	Ethics of involving service users in forensic nursing education <i>Julia Terry</i>	163
14	Ethical issues in forensic nursing education <i>Alyson Kettles</i> <i>Poem: Dark light</i> <i>Stephen Pope</i>	179 189
15	Legal and ethical aspects of management of self-harm and suicidal behaviour <i>Jay Sarkar and Trevor Broughton</i>	191
16	Ethical aspects of seclusion <i>Richard Byrt and Satnam Kaur</i>	205
17	Patients' views of seclusion and the way forward <i>Richard Byrt</i>	225
18	User-led research project in a medium secure unit <i>Keith Halsall</i>	239
19	On a scale of 1–5 how satisfied are you with the healthcare service you receive? <i>Paul Godin and Jacqueline Davies</i>	247
20	Moral reasoning: A nurse-led approach in a medium secure unit <i>David Wilkinson and Sukhbinder Panacer with Stephen Pope, Ryan, Stuart and Pete</i>	251
21	Mind, brain and forensic psychiatry <i>Tim Hardie</i>	261
22	Dementia and offending behaviour <i>Chris Knifton</i>	277
23	The care programme approach and recovery <i>Tony Earp and Richard Byrt</i>	289
24	“Boots and saddles”: My experience as a special hospital patient <i>“Billy B”</i>	305
25	How to prevent abuse in secure hospitals <i>Richard Byrt and “Billy B”</i>	321
	Index	345

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David Wilkinson qualified several years ago after a career change from electronics engineering. He has been working on a personality disorder unit since qualification and is currently working as a Clinical Team Leader.

Jane Wood lives with her husband. Her family includes her Mum and Dad and her brother. She was a primary school teacher, but is now at university, retraining.

Foreword

I was enticed to plunge into the depths of this book by the surface attractions of the subject matter. I emerged with a greater understanding of the most important ethical issues of concern, a wider vision, and an awareness of the hazards and possibilities for the future. Many of my assumptions have been challenged.

The publication of this book is timely as the Health Service is faced with unprecedented change and a national financial crisis, with potentially harmful impacts on healthcare. This comes at a time when there are policy and practice imperatives for closer working between health, social care and the criminal justice system. There will be some hard decisions to make. These will cause ethical and moral dilemmas which could have a serious and negative impact on practice standards and may hinder future progress.

In addition, the forensic speciality is further vulnerable to a public restlessly demanding safety and severe punishment for all offenders, without an understanding of the complex causative factors. Public opinion is often whipped up into a storm of prejudicial hysteria by the excesses of the tabloid media, who frequently vilify the professionals seeking to provide enlightened, personalised and safe care, often without the necessary resources, conditions, and national and local leadership.

The good news is that this book goes a long way to strengthen our ability to inform debates in a credible manner; to argue cogently in defending what has been achieved to date; to tackle resentments and fears; and to influence decisions about resource priorities.

If there is no place for the weak, abused and unloved they will suffer repeatedly, and ethical practice will be undermined and might disappear from our services and communities.

The editors have assembled an impressive body of expertise which brings fresh insights and weaves together their experiences and different perspectives. The chapter authors not only point to the inadequacies of the present system, but also provide authentic solutions and practical advice whilst, at the same time dispensing with some of the common myths which surround forensic care.

It seems to me that much human suffering stems from destructive emotions, ignorance or flawed assumptions. One of the basic responsibilities of care professionals is to alleviate suffering and provide well-being. In that mission we have to search for new ideas, increase our understanding and

expand our knowledge and practice. I believe that the contributors to this book have paved the way for us. They have provided us with both the causes of and some of the cures for suffering and will encourage reflection on the many questions raised.

I envisage returning to the various chapters time and again as a source of information, advice and inspiration. I will use this book in the work I do in both investigating “service failures” and in service development initiatives. I also expect that I will use the insights I have gained in future presentations aimed at challenging existing thinking and encouraging different approaches.

I invite others to benefit from exploration of these pages, as I have.

Malcolm Rae OBE FRCN

In memory of Linda Hart

Ethics, debates and dilemmas in forensic nursing

Alyson Kettles, Michael Coffey and Richard Byrt

Introduction

Welcome to this book on ethical issues, debates and dilemmas in forensic mental health and learning disability nursing in secure hospitals and prisons. We hope that you will find it both enjoyable and relevant. This book, and earlier volumes in the Quay Books “Forensic mental health nursing” sub-series, originated from the determination of the National Forensic Nurses’ Research and Development Group to contribute to the development of knowledge and understanding in the field of forensic nursing. This text is aimed at helping forensic nurses to understand the nature of the ethical challenges and dilemmas that they are likely to meet, in order to enable the provision of appropriate care to patients, their carers, families and significant/relevant others, including the person harmed (the victim or survivor of an offence).

This text has at its core a desire to offer students in the field of forensic mental health a greater understanding of the complexity of everyday practice and we hope it will contribute to our knowledge of how workers can better engage in the task of providing quality services informed by sound empirical and ethical knowledge. Besides nurses, student nurses and healthcare assistants, the book has relevance to service users and their carers and to various professionals and students on placement in healthcare and prison settings.

Whilst the word “forensic” can have many meanings for different people, in this book:

Forensic means “of the law”, and is based on the Latin word “forum”, meaning “what is out of doors”...The Ancient Romans met outside in... [forums] for public meetings, political debates and public legal hearings to try offenders...In the United Kingdom, forensic mental health nurses work with the relatively small proportion of individuals whose mental health problems are associated with offending behaviour.

(Kettles et al 2007: 1, quoting Soanes 2002 and citing Parker 1985)

Forensic mental health nursing and forensic learning disability nursing occur in a wide range of settings and this variety continues to extend to new areas. Forensic nurses work in hospitals and units offering low, medium and high security: “court diversion schemes (e.g. in magistrates’ [and other] courts); prisons [including in-reach services]... young offender institutions and police stations” (Kettles et al 2007: 1) and community settings (Coffey and Jones 2008, Rowe and Lopes 2003, Wix and Humphreys 2005). Not only this, but forensic nurses have to work with a greater variety of professionals than, for example, those working in acute mental healthcare settings. For example, the range of other professionals involved in risk assessment and risk management has increased within an increasingly risk averse society (Davies et al 2008, Godin 2006), with, for example, multi-agency public protection arrangements in place, and now involving police, parole officers, other people from the Criminal Justice services, the Risk Management Authority (in Scotland), the Ministry of Justice, researchers, lawyers and solicitors, to name but a few. The ethical challenges and the potential dilemmas that we face have been addressed in a variety of settings, as well as from individual and clinical perspectives.

Forensic mental health nursing: Ethical practice

There is an increasing need for forensic knowledge.

(Kettles et al 2007: 2)

There is a need for forensic nurses and other professionals (and perhaps those using the services) to have knowledge and understanding of ethics, ethical practice, the nature of dilemmas, and how these dilemmas may be resolved in relation to a variety of forensic patients and services. Not only is there a growing complexity of patient problems and need (Dale et al 2001: 19), but also there is the need for nurses to respond effectively, in relation to sound ethical practice (Adshead 2010, Chaloner and Coffey 2000: 1, Kettles and Robinson 2000: 35).

As has been noted in an earlier book in the forensic mental health nursing sub-series: “The majority of mental health nurses work with individuals with histories of offending in (non-forensic) settings, including acute admission wards; services for children and young people and older people; therapeutic communities; and facilities for treatment and recovery, as well as with individuals with problematic substance use” (Kettles et al 2007: 1, citing Kettles et al 2002, Woods 2004). From this, it can be seen that the forensic mental health nursing role is not limited in relation to client groups or particular settings. Provision of safety and security for patients in high secure

**Box 1.1. The case for forensic mental health nursing
(Burrow 1993: 903)**

- The client category consists overwhelmingly of offenders with psychiatric pathology
- Nurses contribute towards the therapeutic targeting of any mental disorder or offending behaviour related to psychiatric morbidity
- These care strategies are largely incorporated within institutional control and custody of patients
- The configuration of patient pathology, criminal activity, therapeutic interventions and competencies, court/legal issues and custodial care creates the need for a formidable and accelerating knowledge base
- The advocacy role is different from that in other nursing specialities, embracing both the destigmatisation and decriminalisation of the patient group
- Clients' potentials for future dangerousness require the formulation of risk assessment strategies

care is no longer enough, and has not been enough for some time. In many respects, the current forensic mental health nursing role is “out of doors” because it is no longer solely within the purview of high security care.

Kirby (2000: 300) states that:

Most mental health professionals are familiar with the term “forensic psychiatry” but they are perhaps less likely to have a clear conception of the forensic mental health nurse. Unlike many specialities, there is little understanding of what forensic nursing represents.

Although this statement is 10 years old, the truth of it has probably not changed vastly since it was written. If there is little understanding of the role and function of the forensic nurse, then there is even less understanding generally of related ethical principles and the dilemmas faced by forensic mental health nurses. Surprisingly, there is not a large range of literature about it either, although Bucky et al (2009) write about ethical aspects of mental health professionals' role in court, and Adshead and Brown (2003) consider ethical issues in forensic mental health research. Relevant chapters and papers that consider ethical aspects of forensic nursing include Addo (2006), Byrt (1993, 2008), Chaloner (2000), and Swinton and Boyd (2000) but there are relatively few papers in this area. Worryingly, this lack of discussion has also extended to ethical aspects of service user research in forensic settings (Coffey 2006). Most texts keep to the safety of factual

material or description, rather than entering the uncomfortable area of ethics and morality.

A few of the contributors to this book consider relevant legal aspects. (See *Chapter 3*, in particular). Forensic nurses have to understand much more in terms of the various types and forms of legislation that affect each individual patient and the legal freedoms that each patient is allowed under the terms of that legislation. A few examples of the legislation that forensic mental health nurses must now be familiar with include the following (Byrt and Hardie 2007, Kettles et al 2007):

- The respective Mental Health Acts applicable in their place of work, such as the Mental Health (Care and Treatment) (Scotland) Act 2003 (HM Government Scotland 2003) and the Mental Health Acts of 1983 and 2007 in England and Wales (HM Government 1983, 2008).
- The Police and Criminal Evidence Act 1984 (HM Government 1984)
- The Children Acts 1989 and 2004 (HM Governments 1989, 2004c).
- Data Protection Act 1998 (HM Government 1998a)
- Human Rights Act 1998 (HM Government 1998b)
- Criminal Justice Act 2003 (HM Government 2003)
- Civil Partnership Act 2004 (HM Government 2004a)
- Gender Recognition Act 2004 (HM Government 2004b)
- Disability Discrimination Act 2005 (HM Government 2005a)
- Mental Capacity Act 2005 (HM Government 2005b)
- National Health Service Act 2006 (HM Government 2006)
- Health and Social Care Act 2008 (HM Government 2008)
- Equality Act 2010 (HM Government 2010)

All of the above have some requirements relevant to forensic and prison health services and the nurses who work in them.

Another consideration is the length of time that forensic mental health nurses spend with forensic patients. In many cases, even with new ideas and ways of working, forensic patients still spend much longer in hospitals and other services than many other clients. A person with recurring bouts of depression may be known to staff in an acute ward over a period of years as the person comes in and out of hospital, but a forensic patient is often in hospital for years and faces long-term input from a variety of multidisciplinary staff (Aiyegbusi and Clarke-Moore 2009) until they are finally rehabilitated to community care as part of a process of recovery (Coffey and Jones 2008). The course of care is different to that of other mental health service users; and so the level of care is also different, with the forensic patient facing a long-term care programme approach; and monitoring and interventions related to risk. In contrast, the depressed patient may see a

community nurse for a specified period of time and is more likely to attend an outpatient clinic or see the consultant psychiatrist, followed by general practitioner care in the primary care setting. Thus, the overall course of care also tends to be different because of the nature of the index offence and other identified problems (Coffey et al 2007). As a consequence of this legal, social and cultural complexity, the types of ethical problems and dilemmas, or the ways in which they can be addressed, may be different, as are the legal implications (Eastman et al 2010).

The forensic mental health nurse: A developing, evolving species

The current situation is that there are many ethical concerns and dilemmas that forensic mental health nurses have to deal with, and this text seeks to discuss some of these. After a general overview of ethical principles in *Chapter 2*, various contributors to this book give practical examples related to ethical principles and the consideration or resolution of moral dilemmas.

Topics covered in this book

In this text we have gathered together a variety of material that illustrates the complexity of forensic mental health practice. As you might expect there are no straightforward or simple answers provided and it was not our intention to accomplish this. Instead the separate authors in their various styles help to demonstrate that forensic mental healthcare continues to present multiple challenges for practitioners, service users and also carers and victims. These challenges span much of the ethical and moral elements of health and social care provision but also raise dilemmas for practitioners, carers, service users and victims. As such, the personal accounts which we have solicited are a crucial element of our approach to this text as the ethical/moral dilemmas of forensic nursing practice are perhaps more immediately evident in these accounts. We have assembled this text so that these personal accounts (and in some cases poems) provide the necessary first-person context to the later discussions by practitioners and academics.

The text leads off with a useful introduction by Richard Byrt for those first approaching ethical issues in forensic nursing practice. Richard outlines a principle-based approach to ethics but also importantly links this to values-based practice. It is in this area of values that forensic nurses must develop self-aware critical practice so that the care they offer is achieved with respect. They must also develop an awareness of the wider implications of both practice decisions and the harmful consequences of offending behaviours on a variety of individuals.

Having set the ethical context the text moves on with Nick Taylor's chapter addressing much of the legal framework for practice. Recent changes to the Mental Health Act in England and Wales, the advent of the Mental Capacity Act and deprivation of liberty standards have all increased the need for better working knowledge of relevant legislation for mental health nurses. While Nick, like others, draws the notion of advance directives as essentially a stated denial of treatment it is also worth noting that they may be seen more positively as assertive involvement and responsibility in one's own care. Mental health nurses have much to offer here in engaging with service users to actively manage (with appropriate support) their own treatment and risk behaviours (Coffey and Bishop 2000). This is an ever-evolving and important contextual backdrop for all workers. Indeed as we write it is becoming increasingly obvious that for nurses this is an area of developing practice as we see nurse candidates train as Approved Mental Health Professionals and gain Approved Clinician status. These new roles indicate the increasingly diverse nature of mental health and social care work and a sound understanding of the necessary legislative frameworks is more essential than ever. The need to be competent in terms of the legal aspects of care must not however be allowed to supplant the fundamental values of the mental health nursing profession in which the primacy of the relationships we have with clients must be maintained. One aspect of this relationship is addressed by Ian Smith and colleagues who examine the difficulties of promoting autonomy in forensic mental health service users. In many cases this client group may be deemed to lack capacity for autonomous decisions by virtue of their mental ill-health or, as is often the case, their rights to autonomy are subjugated by the need for security and public protection. This is a difficult balancing act to sustain and Ian Smith and colleagues, while eschewing easy or trite answers, provide a thoughtful and stimulating account.

One of the key features of this text is that the debates and dilemmas of everyday forensic practice are set in sharp contrast by the personal accounts of service users, carers and victims. *Chapters 5 and 6* provide useful examples of the latter two categories. Frances Barrone provides a thoughtful account of her experience as a victim of a stranger assault from a man with enduring mental health problems. Frances likens her experience to a personal tsunami and indeed her account is frightening but retold with great bravery and personal resolve. Jane Wood's moving account addresses the complexities of being both a victim and a sibling of her attacker, and the longer-term effects this has had on her, her family and her relationship with her brother. Jane's account throws into sharp relief the sometimes abstract arguments of autonomy and deprivation of liberty but also highlights the importance of involvement of the wider family in achieving treatment for the individual and resolution for the victim.

Forensic mental health services have and continue to be sites of contested identity for those using them. Identity is a multi-faceted aspect of all people but in some cases workers have been found to pay little attention to the full range of identity-relevant aspects of people (see, for instance, Norfolk, Suffolk and Cambridgeshire Strategic Health Authority 2003). In *Chapter 7* Mary Addo outlines a number of important issues in recognising and addressing the cultural, spiritual and diversity issues which are implicated in identities of users of forensic services. Mary concludes that these dilemmas may be resolved (or at least more successfully addressed) with recourse to fundamental values of mental health nursing based on respect and valuing of diversity rather than a focus on difference.

In *Chapter 8* Michael Coffey and Jeanette Hewitt address the safety versus autonomy debate in relation to community care of people with forensic mental health histories. They argue that balancing care with compulsion remains a difficult task and one which mental health nurses are increasingly being called upon to accomplish. One issue that continues to present problems is that of reciprocity or in other words the limitations placed on the liberty of clients for the purpose of providing treatments, which in some cases have poor evidence or are not actually available. Here again public protection and the prevention of risk behaviours may be deemed to outweigh any supposed benefits of treatment and compulsion but it should be remembered that these too are often cited as the rationale for treatment thus throwing into doubt the basis for professional claims. More thought and clarity is required here so that practice decisions are supported by fully thought-through arguments that are transparent and open to discussion.

One area of practice that has frequently presented workers and service users with dilemmas is the provision of care for women in the forensic system. Although proportionately making up a small section of the client group with mental ill-health and offending histories, women are nevertheless presented with a range of unique problems which services have often struggled to address. In her personal account Wendy Ifill (*Chapter 9*) indicates that a women's service provides a highly individual programme of care which is distinguished by providing choice on more communal mixing. This account and the personal difficulties that Wendy hints at are a useful prelude to Rebecca Lawday's chapter which follows. Rebecca provides a concise background to the development of women-only services and the needs of the client group. She makes the case for the importance of a consistent therapeutic relationship founded on trust, respect and honesty as the basis of a transtheoretical model of treatment.

Chapters 11 and 12 address the issue of prison healthcare. Firstly Liz Walsh presents some very interesting data from her study of prison healthcare nurses and identifies the importance of developing emotional resilience as

a means for enabling continued work in this field. Glynnis Cooper and Richard Byrt follow this with an account and a response, respectively, to the experience of working as an in-reach nurse in prisons. Clearly the tensions presented by a system where security is promoted as fundamental, and treatment and care may be seen as secondary, can cause significant dilemmas and sources of challenge for forensic nurses.

The education and training of mental health nurses takes on a range of new challenges when considering forensic mental health practice. In *Chapter 13* Julia Terry considers the moral and ethical dilemmas presented by the need to improve service user involvement in education and the issues this suggests for forensic nurse education. This is followed by Alyson Kettle's chapter in which she highlights some of the aspects of ethical teaching that should be considered in this field. These two chapters mark another staging post in forensic nurse education as there is precious little written on the subject of ethics in forensic nurse education and even less on involving service users (and the ethical implications of this) in this enterprise. This is truly startling given the complexity of forensic nursing practice and the literally captive nature of the people who receive these services.

Stephen Pope's poem *Dark Light* is evocative of a type of hopelessness that must envelope people distressed by years of mental ill-health and detained for long periods with no sight of discharge. It is a fitting introduction to the chapter by Jay Sarkar and Tim Broughton exploring the fraught area of self-harm. This is an area for which mental health nursing can best be employed to good effect to achieve positive outcomes (Cremin et al 1995). A further important aspect of mental health nursing in secure facilities is how and when to use seclusion as an intervention. Richard Byrt and Satnam Kaur (*Chapter 16*) present a critical look at the use and misuse of seclusion. They note that despite the presence of ethical principles, which can easily be applied to use of seclusion, there remain many examples of services ignoring these. Clearly moving beyond the learning of lists of principles and towards methods of exploring values is an ongoing concern. Practitioners of all types must challenge themselves to reflect in their practice a values base that promotes respect and dignity for all people, and this is particularly pertinent when using seclusion as an intervention. Richard Byrt goes on to explore patient perspectives of seclusion in the following chapter and suggests some useful lessons from his analysis.

One recurring dilemma for many in forensic mental healthcare is balancing the impetus to involve service users more and gain insight into their experience with a concern to protect therapeutic integrity and provide the best protection against worrying risk behaviours. There is however a seemingly unstoppable movement towards more involvement and greater collaboration and, as Keith Halsall demonstrates, and later Paul Godin and

Jacqueline Davies show, it is not only desirable but also possible to engage service users in research. This will not only enable them to feel benefit from this engagement but also to achieve mutually advantageous goals. The use of moral reasoning in treatment approaches might also be considered a form of advanced engagement. As David Wilkinson and associates show, however, it presents an intriguing and potentially very useful treatment approach that is not without its own dilemmas.

In *Chapter 21* Tim Hardie usefully returns to notions of capacity and responsibility for criminal behaviours. Tim ranges wide in his use of the literature as he considers notions of free will and dualism between brain and mind that remain influential in current thinking. Tim urges caution as he notes that many clinical decisions are made based upon assumptions rather than knowledge of what is known and what is not known about available scientific evidence. This debate is perhaps further complicated when considering the implications of offending behaviours associated with various types of dementia. Chris Knifton presents in *Chapter 22* a very interesting and scholarly overview of the literature and complex dilemmas faced when attempting to work in this area. Chris points out that in an aging society, where increasing numbers of people are being diagnosed with different forms of dementia, there is likely to be more attention focused on offending behaviours in this group. Chris also notes that dementia is no protection from other types of mental illnesses and many people in this group will suffer with forms of depressive and psychotic conditions which further complicate the presenting picture.

In *Chapter 23* Tony Earp and Richard Byrt present an overview of the care programme approach and its application to forensic nursing practice. They highlight the legal and ethical issues that this presents and their analysis suggests that forensic services are not immune from the problems identified elsewhere with this approach to care planning (see, for example, Simpson 2005).

The penultimate chapter in this book is a personal account from “Billy B”. Parts of it make chilling reading. The account, in its own way, makes an undeniable appeal as to the importance of awareness of legal and moral aspects of forensic nursing care and the very real necessity for debate and discussion in this area. As Billy B points out nursing staff have perhaps evolved ever-more subtle forms of punitive interventions and it is the lack of critical engagement and acknowledgement of this by the wider profession that makes a text such as this even more relevant.

In *Chapter 25*, Richard Byrt and “Billy B” note the very real concerns related to disempowerment and liberty deprivations associated with detention in high security hospitals and other closed facilities. They point to a concern too about how this contributes to reduced opportunities to listen to the

Box 1.2. The case for forensic mental health nursing (after Burrow 1993)

It can be argued that forensic mental health nursing is a distinct specialty for the following reasons:

1. The client group consists mainly of people with a mental illness who have offended or been diverted from custody.
2. Nurses care for the client population in the various settings in which they live, and contribute to the therapeutic care and treatment of the person and his or her illness and offending behaviour.
3. The care strategies follow the patient journey through detention/secure care to community-based services, in the variety of settings in which patients can find themselves.
4. Forensic mental health nurses have specific roles which differ from other mental health nurses. These differences relate to the following areas:
 - The complexity of patients' multiple pathologies
 - Individuals' criminal behaviours and recidivism in social/cultural systems,
 - Specific therapeutic/clinical competencies
 - Specific issues related to forging therapeutic relationships/interpersonal skills/boundary issues
 - Avoiding negative custodial care, but working safely in the reality of secure settings or measures to ensure safety in the community
 - Roles related to the criminal justice system and its workings
 - Legal issues such as the multitude of new laws, ethics and rights-based practice
 - Responsibility to and protection of the public
 - Probability/risk, offence-specific assessment and care
 - Meeting varying safety security needs applied through differing security levels.
5. Both advocacy and the delivery of culturally competent care differ from other areas of nursing, in view of the need to de-stigmatise and decriminalise the client group.
6. There are also specific needs to defend and maintain staff morale, as well as ensuring clinical supervision and other means to deal effectively with the emotional impact of caring for this client group.
7. The client group continues to have the potential for future dangerousness and requires the staff to have coherent and consistent risk assessment, management and probability measurement.

Box 1.2 cont/

8. Future challenges include:

- Care which is increasingly holistic, in relation to the individual's safety, psychological, physical, interpersonal, spiritual, cultural, psychosexual, social, legal, advocacy, economic and other needs.
- The provision of forensic services which increasingly both recognise individuals' shared humanity, and are sensitive to, and meet, the needs of individuals related to their diversity, including gender, age, culture, ethnicity, spirituality, varying intellectual, physical and sensory ability, sexual orientation and gender identity, in line with the Equality Act, 2010 (HM Government 2010) and related policy (Byrt and Hardie 2007).
- Provision of new services for specific groups, such as women and adolescents; and services that are gender and culturally sensitive; and which cater for specific groups of people such as survivors/victims of domestic violence and facilities for people who are sex offenders.
- New and/or extended roles: e.g. related to influencing relevant government policy and "public education and prevention" (Kettles et al 2006: 230).
- Other challenges include the search for new knowledge and evidence through appropriate research, audit and assimilation.

Burrow 1993, Kettles and Robinson 2000, Kettles and Woods 2006, National Forensic Nurses' Research and Development Group 2006, 2007, 2008, Robinson and Kettles 1998

patient's "voice" and establish the "other". Social isolation and separation is indeed a telling feature of detention in forensic settings. However it would be wrong to fall into the trap of thinking that, once people move on to other settings or are discharged to community living, such deprivations cease. We must be cognisant of the very real but perhaps more subtle and hidden surveillance and monitoring that continues post-discharge and which in many cases continues to place limitations on the liberty of people with forensic mental health histories. We might argue that such approaches are a proportional and necessary response to risk behaviours of potentially dangerous people and this may be the case. However to simply accept this without question or attention to the effects of our actions places us in danger of replicating the problems of closed institutional practices in the new environment of community settings.

We hope that this text will provoke further debate and discussion about the role of forensic mental health nursing. If nothing else you should read it with a weather eye on your own practice and be prepared to challenge and question yourself in the delivery of your care. Mental health nursing can be

a force for good, it can truly help people who are lost and distressed and do so in thoughtful and evidenced ways so that they leave care with a positive experience and a real sense of the potential for change. We believe that in this text you will find the beginnings of a range of ideas that will help inform this process.

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