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Faculty of Forensic Psychiatry Newsletter
Spring 2022

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Forensic Faculty Newsletter

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Welcome

News from the Faculty Chair

by Dr Josanne Holloway

Chair of the Forensic Psychiatry Faculty

What a fabulous conference we had this year. It was with great sorrow that we had to say goodbye to a great colleague and friend of the Faculty Professor Nigel Eastman and though it was a sad start to the conference it was fitting that we were able to acknowledge him and his contribution to Forensic Psychiatry.

With the war in Ukraine, it was also fitting that we expressed our condemnation of the invasion of Ukraine and the devastating effects this was having and the long lasting impact war and mass migration would have. We were able to express our solidarity with the people of Ukraine and all those including in Russia who were expressing their abhorrence to the war sometimes at great danger to themselves.

The Faculty became aware of the initiatives by the College to help people affected by the war in Ukraine. The College itself is a charity and it was felt that as the College was planning some very useful work related to mental health issues in people affected by the war, the Faculty had the option of supporting these College initiatives both monetarily and by other means including volunteering and advice.

The Faculty has set up a small subcommittee of executive committee members to see how we can have an impact to support those in need as a result of the war in Ukraine. A meeting of the Faculty finance officer, vice president and myself was recently held with the College treasurer and the College committee for international affairs to look at how any financial contribution the Faculty makes is in line with our expertise and charity commitments, is not replicating initiatives that are already in place and that we work with collaborators in the field on projects that are sustainable. We also agreed that any financial contribution made by the Faculty will be to support a non-funded initiative not a project that the College has budgeted for. In order to progress this, the Faculty subcommittee will be meeting with the College's staff working on international affairs to discuss sustainable initiatives we can support in a major way.

A number of issues particularly pertinent to forensic psychiatry and which had been raised in College discussions with partner organisations were discussed.

These included issues around transferring detained people (whether in mental health or custodial settings) with mental health problems across borders and from different jurisdictions from danger zones. These issues will also be discussed with our Faculty subcommittee.

Can I take this opportunity to remind members that they can volunteer their time and provide ongoing support through volunteering through the College which has been developing links with partner organisations also working in the field.

Please find attached the link to the volunteering form. Please see the link as follows: https://www.rcpsych.ac.uk/docs/default-source/members/international-divisions/volunteer-registration-form-final---international---2021.docx?sfvrsn=a05041d6_2

Josanne Holloway

Legal Update

Dr Richard Latham, Consultant Forensic Psychiatrist, South London and Maudsley NHS Trust

The three cases chosen for this edition will, for the very well informed, do little to change their understanding of the law on their respective themes: insanity, reliability of confessions and sentencing in diminished responsibility cases, but they all offer an update on the Court of Appeal's approach to these issues, and all make for worthwhile reading.

R v Keal [2022] EWCA Crim 341
Read it for an analysis of why the bar for insanity remains so high

What was the issue?
Robert Keal attacked several family members with weapons and was convicted of attempted murder. His psychiatric history included drug use, ADHD and attempted suicide and he was found to be psychotic at the time of the offences. He was, after these attacks, admitted to secure care. The defence of insanity failed at trial. The crux of the appeal was on the issue of whether a person who is "aware that his act is wrong but believes himself to be compelled to perform it" has the defence of insanity available to him. This was also described as a defendant's delusion denying him agency; he had no choice but to commit the act. This case represented an attempt to resurrect the possibility of an 'irresistible impulse' providing a possible route to insanity as well as considering the moral/legal distinction with respect to 'wrongness'.

What was the upshot?
The judgement navigated through the law with a conclusion that wrong in the case of insanity continues to mean wrong in law and morally wrong. A defendant who knows that something is wrong in law but believes their actions to be morally right will not be entitled to a defence of insanity.

Unsurprisingly, the Court of Appeal rejected the appeal on the basis that the M'Naghten Rules do not allow a defendant who knows that what they are doing is wrong but believe they have no choice, to rely on insanity as a defence. The bar for insanity remains very high.

Tredget v Regina [2022] EWCA Crim 108
Read it for a detailed description of the relationship between confessions, fitness, and guilty pleas (and if you want to learn about fires)

What was the issue?
Peter Tredget pleaded guilty to 11 counts of arson and 26 counts of manslaughter (diminished responsibility) in January 1981. He was sentenced to hospital. The case against him was substantially based on confessions he made in interviews and statements under caution. His instructions to his lawyers at the time changed tack regularly and caused those representing him to be "gravely troubled" (an unusual admission for a defence team). Previous appeals had reduced the total conviction count to 10 arsons and 15 manslaughters. This appeal considered the remaining convictions on the basis of the veracity and reliability of his confessions (as well as the facts) with evidence from a linguistics expert, psychologists, and a psychiatrist. The clinical issues were acquired brain injury, intellectual impairment, the impact of trauma on development, substance abuse, epilepsy, and personality disorder.

What was the upshot?
The reliability of his confessions, and the suggestibility and compliance of Mr Tredget were largely accepted although the confession evidence was not excluded. The ultimate decision relied heavily on the conclusion that he was fit to plead and stand trial and the determination that his guilty pleas were "unequivocal and voluntary". Whatever the veracity or reliability of his confessions, he had freely entered guilty pleas. He succeeded on some counts (on the basis of the facts) but retained convictions for 8 counts of arson and 12 counts of manslaughter.

R v Nijhawan [2022] EWCA Crim 10
Read it if you are interested in controversial expert opinions

What was the issue?
Sanjay Nijhawan was convicted of the manslaughter of his wife by reason of diminished responsibility (depression). He was sentenced to life in prison. The appeal (on sentence) was based on fresh evidence about the effect of antidepressant medications and their potential to cause people to become violent and potentially homicidal. The focus was on sertraline and mirtazapine. The evidence from the psychiatrist concerned used terms such as convincing and unequivocal in describing the relationship between

antidepressants and suicidality and homicidally. During their evidence, the psychiatrist was dismissive of the training of forensic psychiatrists and critical of the pharmaceutical industry. He concluded that the medication was the cause, in the absence of any other explanation. Other psychiatrists (forensic) rebutted the opinion.

What was the upshot?

The appeal failed. Comments on the expert evidence included that the more impressive witness was "measured and careful, giving ground where appropriate to do so" and that they also acknowledged a spectrum of opinion on the issue. Attention was drawn to psychiatrists who had treated or examined the person being better placed than an expert who had only conducted a telephone interview.

The Penrose Effect across the English NHS

by Dr Iain McKinnon

Consultant Forensic Psychiatrist, Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust

Lionel Sharples Penrose was a polymath who described a number of theorems and methods: these included quirky images such as the "impossible triangle" and the never-ending staircase, the latter made famous by artist M. C. Escher.

Whilst forensic psychiatrists might recognise the infinite uphill journey in their working lives, Penrose is better known in our field for his 1939 law stating that the prison population and psychiatric hospital are inversely related. Although likely to represent an oversimplification of what is a complex set of interlacing socio-political systems and pathways, the "Penrose Hypothesis" has attracted a substantial amount of attention over the last century. Studies in South America and Europe have reproduced Penrose's cross sectional work from the interwar period.

In our recent study, we analysed data from the NHS and Prisons in England from 1960 to explore whether the Penrose Hypothesis held true. Using time-series analysis and linear regression the population data show that reductions in the numbers of psychiatric beds were associated with an increase in the prison population up to 10 years later. For every 100 psychiatric beds closed, there were 36 more prisoners 10 years later: 3 more female prisoners and 33 more male prisoners.

The Penrose hypothesis in the second half of the 20th century in England

It would of course be folly to assert causation, or to fall into the tabloid hole of assuming this is the only game in town. However, it reinforces the need for us to reconsider the characteristics of people within our mental health systems. A limit on available inpatient beds will undoubtedly lead to an increased threshold for admission. Are we therefore bound to be carrying more risk to the public with patients who have to become more unwell before our services can intervene with definitive treatment? Are criminal justice and mental health interfaces services sufficiently funded or have the requisite expertise to provide the necessary intervention in the community?

Furthermore, we cannot be certain whether the increasing prison population is associated with an increase in the prevalence of serious mental illness and intellectual disability in prisons. And what about the wider picture of neurodevelopmental conditions where people come into contact with the police, probation, courts, and potentially prison. We need a better understanding of the complexity of the spectrum of mental disorders, but we also need to ensure that there is sufficient investment in community support, meaningful employment opportunities which are tailored to the individual. These are all areas for ongoing debate and investigation within clinical, academic, and political arenas.

COVID-19 vaccination and our patients

By Dr Callum Ross, Consultant Forensic Psychiatrist, Broadmoor Hospital. West London Mental Health NHS Trust.

Could vaccination be medical treatment for mental disorder for the purposes of the Mental Heath Act 1983 (MHA)?

No primary UK legislation permits compulsory—in the sense of forcible—vaccination of any person. However, section 63 of the MHA provides that an approved clinician may lawfully provide medical treatment for a mental disorder to a patient detained under the Act irrespective of whether the latter is able to or has validly refused treatment. Thus the MHA permits treatment without consent of patients who, among other things, have decision-making capacity under the Mental Capacity Act 2005.

It might seem to be obvious that COVID-19 vaccination is not medical treatment for mental disorder—it cannot be 'treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations' (MHA, s 145(4)). However, the courts have interpreted medical treatment for mental disorder broadly. This has included treatment for "*a range of acts ancillary to the core treatment*", for example, enteral feeding of individuals with anorexia nervosa. Ancillary treatment has been held to be both a prerequisite for being able to engage with other forms of treatment, and treatment for the manifestations of the mental disorder.

Vaccination could (at a stretch) be argued to be ancillary treatment for the reason being that if patients are unable to participate in treatment

because of vaccine refusal then this may set back their progress towards discharge.

Finding that there was little written on the matter and with and nothing apparently commissioned, a few of us set about writing a short article - ideally to assist. We wrote it with our Scottish brethren. After all, why not unite in times like these?

We have called it *COVID-19 Vaccination in those with mental health difficulties: a guide to assist decision-making in England, Scotland, and Wales.* Broadmoor Hospital and West London NHS Trust made a contribution to ensure that the piece could be open access. It is available here:

COVID-19 Vaccination in those with mental health difficulties: A guide to assist decision-making in England, Scotland, and Wales - Callum Ross, Penelope Brown, Christian Brown, Arun Chopra, Gwen Adshead, Derek Tracy, Kevin Towers, Colin McKay, Isra Black, Lisa Forsberg, 2022 (sagepub.com)

To be clear though: under existing legislation, vaccination could never be forced upon a refusing patient capacious to have made that decision in order to protect others, even where that refusal might put others at risk. But with this clarity might we also make the continuing dualism in medicine and law between body and mind that little bit more entrenched? We continue to consider it legally and ethically justifiable to impose both detention and informal treatment on patients whose mental disorders make them a risk to others, we have public health law that might allow quarantine in communicable diseases, and we have Article 5 of the ECHR which provides for the "*the lawful detention of persons for the prevention of the spreading of infectious diseases…*". And yet we do not have legislation to impose vaccination. This imbalance may sit uneasily with more relational approaches to both mental health and ethics.

We hope the article might assist you in your work. This pandemic isn't over.

Crime in Mind

By Dr John Gunn CBE, FRCPsych, FMedSci

Chairman, Crime in Mind. https://crimeinmind.co.uk
Past chairman, Faculty of Forensic Psychiatry

I would like to draw your attention to the relatively new small charity which several of us have put together. You will probably be aware that academic forensic psychiatry is not flourishing as well as it should. Universities are no longer making senior academic appointments in our subject. We had many more just a few years ago. This situation is not unique to forensic psychiatry indeed there are problems for many academic subjects in the whole of medicine.

No subject can flourish without research and teaching being abundantly available. Recognising this we have established Crime in Mind which aims to raise funds for research and teaching in our specialty. We hope more of you will become members. To do this and discover more of what we do please visit our website. You may even be interested in helping with our activities whether that be fundraising, assisting with webinars and seminars, or undertaking small research projects. We particularly welcome new ideas from the Faculty for increasing the quantity and quality of the research which is so urgent. Why not apply to for a seed-corn grant (£500) to get you on to the research ladder. I notice that you are putting a special emphasis on prison work, which is to be applauded, but a great deal more needs to be understood about prisoners and their mental health problems before we can change the unsatisfactory system we have at the moment.

CRIME IN MIND

Overview of Fellowship for Chairs

Fellowship eligibility

Members who have 10 years of continuous membership as of 1 January in each year can apply for Fellowship in that year. (e.g., anyone who became a Member on or before 1 January 2010 and was a continuous member could apply for Fellowship in 2020).

Applicants need to demonstrate their contributions to the three core purposes of the College:

1. Setting standards and promoting excellence in psychiatry and mental healthcare (such as examples of achieving high standards locally in service delivery, service development and innovation, research, teaching and examining).
2. Leading, representing and supporting psychiatrists (this would include, but is not limited to, all College work and work with relevant national or international organisations).
3. Working with patients, carers and their organisations (to improve services and deliver patient centred care).

Applicants are only asked to provide details under these three headings, they are not asked to give a list of their publications or research etc. We ask them to not send separate CVs but instead only complete the College's CV form.

Research study on 'post-incarceration syndrome'

By Dr Adrian Grounds

Honorary Research Fellow
Institute of Criminology
Institute of Cambridge

Over a decade ago, in the International Journal of Law and Psychiatry, Marieke Liem and Maarten Kunst described a cluster of features experienced by released life sentence prisoners, characterised by a combination of PTSD symptoms, institutionalised personality traits, and particular forms of social alienation. The authors proposed a 'post-incarceration syndrome' that could be a subtype of PTSD resulting from long-term imprisonment. Whilst research in the fields of 'prisoner re-entry' and psychological trauma (including 'complex PTSD') have developed substantially since Liem and Kunst's paper, there has been limited follow-up research to examine the validity of their concept.

One of the MPhil students I am supervising this year at the Institute of Criminology, Keya Prabhu, a graduate psychologist, is focussing on this in her dissertation project and hopes to supplement her literature review with a fieldwork component of brief interviews (by phone or on-line) with a sample of clinicians engaged in supervision and support of released long term prisoners. The interviews would focus on the extent to which the reported features of a 'post-incarceration syndrome' are generally recognised in the clinical experience of practitioners. (No confidential or personally identifiable information would be sought).

If any Forensic Faculty colleagues would be willing to help with this, we would be very grateful. (Participating would entail an approximately 30 minute interview to be arranged at your convenience). Please email me on ag113@cam.ac.uk if potentially interested.

RCPsych Publishing

RCPsych Publishing has launched Faculty Collections including content from the *BJPsych, BJPsych Advances, BJPsych Bulletin, BJPsych International* and *BJPsych Open.* These collections are curated from articles published across the journals that relate to the esteemed faculties.

Find out more about the collections: Collections (cambridge.org)

Take a look at the Forensic Faculty Collection here: Forensic (cambridge.org)

Contributions Welcome

Thank you to the contributors of this edition.

We would welcome contributions for the next e-newsletter by Friday 29th July 2022.

The newsletter is a means to keep you informed and updated on relevant topics and the Faculty of Forensic psychiatry's work.

If you would like to share your experiences in your area or write in the newsletter, please contact the iForensic Newsletter team:

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