

NWRPA Friday Evening Seminars**Being in Time: An existential approach to the therapeutic conversation****Robin Hobbes****Friday 13 March 2015.** 6.30pm-8.30pm. Cost £7.50 or free to members. This includes light refreshments.

Robin will consider the presence of time in our work as therapists and counsellors: time as a being-already (past), as a being-always (present), and as a being-ahead (future). How do they co-exist and what difference does a knowing of them make to the therapeutic project?

Robin Hobbes is a Transactional Analyst who takes an existential phenomenological approach to TA. He is the co-director of elan training, a humanistic and integrative training centre based in South Manchester <http://www.elantraining.org>

Working with Clients with Long-term Depression: Adapting psychodynamic counselling**Frank Kelley an NHS psychodynamic counsellor.****Friday 10 April 2015.** 6.30pm-8.30pm. Cost £7.50 or free to members. This includes light refreshments.**On 'Strictly Bipolar'****Andrew Shepherd, a doctoral research fellow at the University of Manchester and higher trainee in Forensic Psychiatry****Friday 8 May 2015,** 6.30pm-8.30pm. Cost £7.50 or free to members. This includes light refreshments.

Venue: The Manchester Institute for Psychotherapy
454 Barlow Moor Road, Chorlton, Manchester M21 0BQ.

Information about the Association is also available on our website at: www.nwrpa.org.uk

Counsellors, Therapists and Professional Negligence: A Duty of Care?**Peter Jenkins***Friday 13 February 2015*

Peter Jenkins is an experienced counsellor and trainer, and author of several books on the law including *Counselling, Psychotherapy and the Law* (Sage, 2007). He has extensive experience of running training workshops on legal aspects of therapy. He is a Senior Lecturer in Counselling at Manchester University and an honorary counsellor at Manchester University Counselling Service. Peter has been of a member of both the BACP Professional Conduct Committee and the UKCP Ethics Committee.

In this seminar we explored professional negligence in relation to the therapeutic work of counsellors, psychotherapists and psychologists. Peter pointed out that the view that litigation against therapists is widespread and costly is not supported by the evidence. Clients sue infrequently, cases are hard to prove and damages are small. The difficulty in proof arises because of the often private nature of therapy which means it can be the client's word against that of the therapist. Hence aggrieved clients often use the disciplinary procedures of professional bodies.

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Counsellors, Therapists and Professional Negligence: A Duty of Care?

Even here they will have a problem. Some therapists have statutory registration through the Health and Care Professions Council. In this case losing their registration means being unable to practice. Clinical Psychologists are an example. When barred they cannot practice as Clinical Psychologists but they can rename themselves counsellors or psychotherapists and carry on.

Most counsellors and psychotherapists are on voluntary registers, including those held by the British Association for Counselling and Psychotherapy (BACP) and the United Kingdom Council for Psychotherapy. As these voluntary registered professional titles, such as counsellor or psychotherapist are not statutorily protected then there is no statutory licence to practice that the registering body can remove. Hence some people removed from these registers have carried on working as counsellors or psychotherapists.

Unlike the USA there is very little reported case law to act as precedents in British law. However Peter gave us a summary of *Werner v Landau 1961* a precedent which establishes the basic legal principles. (NB summaries of this case are easy to find with an Internet search.) Peter observed from the way we discussed this legal case that as therapists we consistently thought in a therapeutic and relational way rather than the more precise perspective a legal expert would. This is a common difficulty when therapists encounter the law.

We readily recognised that this was an analytic therapy where the client developed a strong emotional attachment to the Doctor and there was a period of social contact between the two after the first part of treatment. The client, Miss Alice Landau, brought a successful action against Dr. Theodor Werner for wilful misconduct and/or negligence which was upheld at Appeal.

Peter said that this civil case would be decided on a consideration of the balance of probabilities in the evidence rather than the stricter criteria of the criminal law of beyond reasonable doubt. For the claim of negligence to be upheld it has to be established that the Doctor had a duty of care, that there had been a breach or failure of care and there was foreseeable harm. This would not be harm in the ordinary sense of the word but has to harm in the sense of a psychiatric diagnosis. As many clients are already diagnostically depressed or anxious before therapy this is often hard to prove. In Miss Landau's case the harm caused was established because she became suicidal after the first part of the treatment and the social contact. The legal concept of duty of care is significant because if you have a duty of care you have liability, either personally as in private practice or the vicarious liability of organisations like the NHS that employ therapists.

There is a difficulty for the court of knowing what is a good enough therapy and Judges are not trained therapists. In this case his Lordship said that in the course of the process a great deal of past emotion had become reactivated. A great deal of the emotion could be attached or attracted to the doctor who had undertaken the treatment, and had the the unintended effect of encouraging Miss Landau's affection for him. The need to keep to the boundary of excluding social contact would have been as well established then as it is now and good enough therapists would not have violated this boundary.

The court would have also looked at Dr. Werner's code of ethics. In this case it would have been the blue book of the General Medical Council and the code of ethics of the British Psychoanalytic Association. The good enough therapist would also be judged by the standards of the time. For example not having supervision might be viewed as unethical now but was common practice for therapists in the 1950s.

People attending the seminar really appreciated Peter's presentation. In a warm and unobtrusive way he combined expertise in the law, counselling and teaching.

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