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The Risk Management Authority in Scotland and the forensic psychiatrist as risk assessor

The Risk Management Authority (RMA), Scotland's new body which oversees the conduct of assessments of convicted offenders placed on risk assessment orders, recently held its first annual lecture. This was given by Scotland's new Solicitor General, who observed that risk assessment orders are likely to be reserved for 'extraordinary crimes committed by extraordinary people'. The first risk assessment orders have been made by Scottish courts and the risk assessors' reports are awaited with interest, not least in England, which has taken a different approach to dangerous offenders (Darjee & Crichton, 2002). It seems timely to review the more novel aspects of the Scottish system and the issues they raise for forensic psychiatry.

The RMA, whose motto is 'Working towards a safer Scotland', was created on the recommendations of the MacLean Committee on Serious Violent and Sexual Offenders. It will be the national centre of expertise in risk assessment and risk management in Scotland. One of its main purposes is to set standards and issue guidance for those involved in the assessment and minimisation of risk, particularly with high-risk offenders. It will accredit risk assessors and the methods and practices used in the assessment and management of risk; it has published a directory of approved risk assessment tools (Risk Management Authority, 2006a). The body will also approve and monitor risk management plans for those high-risk sexual and violent offenders who receive an order for lifelong restriction (OLR), which is similar to an indeterminate sentence in England and Wales. The MacLean Committee was clear on the importance of assessment to facilitate management, and the OLR was to ensure such risk management was lifelong. The RMA will also develop policy, carry out research and provide education and training.

Role of the risk assessor

Three risk assessors have so far been accredited by the RMA – one is a forensic psychiatrist, one a forensic clinical psychologist and the third a forensic psychologist. The RMA hopes to accredit at least another 15 risk assessors over the next year; accreditation will depend

on applicants possessing the necessary skills and experience in risk assessment and risk management, but they need not come from any specific professional group – for example, criminal justice social workers who regularly provide structured risk assessments for Scottish courts might be eligible. Forensic psychiatrists are well aware of the ethical dilemmas involved in providing reports to courts when they might be used to justify extended sentences or preventive detention (Royal College of Psychiatrists, 2005). The role of risk assessor is a step further on from the traditional role of the forensic psychiatrist who provides a medical report to the court; the risk assessment report on an offender is requested solely for judicial purposes, to determine 'what risk his being at liberty presents to the safety of the public at large' under the Criminal Justice (Scotland) Act 2003. There is no requirement that risk be linked to mental disorder for the court to make an OLR. The Scottish approach was discussed at length in the MacLean report that recommended the establishment of the RMA; there has been no adverse comment in the psychiatric journals to date, which contrasts sharply with widespread criticism of the English proposals for dangerous and severe personality disorder (Mullen, 1999; Buchanan & Leese, 2001; Cordess, 2002; Moran, 2002; White, 2002).

Ethics of risk assessment

Some forensic psychiatrists have argued that providing reports is permitted under medical ethics because there might be the prospect, however slim, of benefiting the person by discovering a mental disorder that might be treated. This might apply to conventional psychiatric reports, but in the case of risk assessment reports the prospect of possible benefit diminishes further. Risk assessment tends to result in the person's perceived level of risk increasing – Hare (2003) has shown 4-point rises in scores on the Psychopathy Checklist Rating Scale (PCL–R; one of the most widely used risk assessment tools which is approved by the RMA) for a file plus interview PCL–R rating compared with a file only based PCL–R rating. The PCL–R would not usually be used on its own, but would be used to inform the Historical Clinical



Risk – 20 items scale (HCR–20; Webster *et al*, 1997) or the Risk for Sexual Violence Protocol (RVSP; Hart *et al*, 2003), risk assessment tools that assess risk of violence and sexual violence respectively. Risk assessment reports, which need to be compiled according to the rigorous standards of the RMA using structured professional (or clinical) judgement, are therefore likely to judge a convicted offender as presenting greater risk than if there had been no assessment; this increases the probability of the court making an OLR. Some forensic psychiatrists might construe such an outcome as being indirectly beneficial for an offender – they will eventually be subject to a risk management plan which will aim to reduce the risks posed to the public, presumably by minimising risks of reoffending (assuming the offender is released from custody). If the offender does not reoffend then there will be no risk of further punishment by the criminal justice system, which is to the offender's and society's benefit.

The question of which system of ethics the 'forensic' psychiatrist is working under has been debated before (Royal College of Psychiatrists, 2005). It is clearer that the Scottish psychiatric risk assessor will operate outside traditional medical ethics, perhaps in a broader ethical framework that takes a wider view of the benefits to justice and society that his expertise might bring. If one accepts this view, does the medical risk assessor have to have any regard to medical ethics? For example, would the duty of a doctor to inform patients of the risks of investigations or procedures apply to the risk assessment process? If the doctor believed that the risk assessment process was equivalent to a medical investigation, he would be bound to inform the offender that risk assessment would be more likely to result in an OLR than if the offender did not participate in the assessment. This would go further than the RMA's current guidelines (Risk Management Authority, 2006b) on information for offenders, which state that 'the interviewee must be made aware that:

- the risk assessment is being conducted because of a court order
- the assessment is part of the sentencing process and not part of a therapeutic/treatment process
- the information provided might be used in the risk assessment report.

There is no appeal against a risk assessment order and the offender will be told by the court that it is to inform their consideration of an OLR, but of course it is up to them how much they participate in the interview itself.

Psychiatrists who have ethical objections to the involvement of doctors in risk assessments for courts might argue that risk assessments where no mental disorder is involved could just as well be carried out by appropriately qualified 'generic' workers – such as psychologists or social workers. Indeed, the selection of a risk assessor under the new Scottish system is likely to be generic in the above sense, that is the assessor will be drawn from a multidisciplinary pool of assessors. Risk assessors can list an interest in particular types of cases

(e.g. mental disorder, young people etc.). In practice many, if not most of these offenders will have a personality disorder, a mental disorder usually diagnosed by psychiatrists and psychologists; it will be interesting to see how the assessors and the courts deal with this issue.

Legal changes

The inauguration of the RMA also raises thorny issues for lawyers. The Solicitor General for Scotland singled out in his lecture the provision in the Criminal Justice Act that unproven allegations of criminal behaviour by the offender may be taken into account in the risk assessment report, and may influence the opinion in the final report.

The Scottish adversarial system of law allows the defence to instruct experts, and for the experts' evidence to be tested by examination and cross-examination in the court, which occurs most often when evidence is contested. The RMA guidelines state that assessors commissioned by the offender must have regard to the guidelines and standards published by the RMA. However, the relatively demanding requirements on the conduct of the risk assessment, such as a minimum of three face-to-face interviews with the offender, adding up to at least 6 h, are likely to inhibit potential risk assessors. The time spent on preparing the first risk assessment order raised in Scotland has come to 60 h (Dr Rajan Darjee, Consultant Forensic Psychiatrist and accredited risk assessor, personal communication). Defence lawyers might have difficulty persuading the Scottish Legal Aid Board of the need for a medical or psychological report whose cost is likely to run into thousands of pounds. There is also the possibility that a report produced by an expert not accredited by the RMA might carry less weight with the court. One might envisage then that the RMA-accredited risk assessor will usually be the only expert providing a report to the court on the offender's risk, which brings the process closer to an inquisitorial system with a single court-appointed expert. Given the thoroughness of the risk assessment process, it seems unlikely that this will result in unjust decisions, but no clinical assessment can be free of value judgements, and different interpretations of the same data are common. Such differences do not uncommonly lead to differing opinions on the degree of risk, but it seems less likely that different or opposing views will be put before the courts under the new arrangements.

Conclusion

These issues, and many others that we have not considered, will become more important as the Scottish courts gain experience with risk assessment orders. At least the issues will now be out in the open, when previously they were for the individual expert to wrestle with. Despite the potential difficulties, we welcome the introduction of a system that will undoubtedly improve the quality of advice given to courts in this difficult and complex area.



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Declaration of interest

None.

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