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## GUIDANCE

# Psychologist expert witnesses undertaking remote psychological assessments

For courts in England and Wales, Scotland and Northern Ireland

## BACKGROUND

Social distancing restrictions associated with the Covid-19 pandemic have resulted in significant changes to working practices for psychologists acting as expert witnesses working within the judicial system across England and Wales, Scotland and Northern Ireland.

As a consequence of travel restrictions arising out of Covid-19, the use of remote psychological assessments is being recognised as an acceptable method of assessment and has been sanctioned as such by HM Courts & Tribunal Service. For practitioners working within the judicial system, it has been acknowledged that the reality is remote hearings for the foreseeable future, and by implication remote psychological assessments within judicial proceedings, will likely become the norm<sup>1</sup>.

The British Psychological Society has published guidelines<sup>2</sup> [Psychological Assessments Undertaken Remotely](#) for UK practitioner psychologists conducting psychological assessments of individuals under the specific restrictions in practice which are in place during the Covid-19 pandemic.

This current guidance is specifically to assist psychologists who work as expert witnesses and are conducting remote psychological assessments within the civil, family and criminal judicial system.

## LEGISLATIVE CHANGES

New legislation allows for emergency powers under the Coronavirus Act (2020) to ensure suitable social distancing restrictions are adhered to. In addition to these restrictions, psychologists working as expert witnesses continue to remain subject to the procedure rules in relation to acting as an expert witness in the civil, criminal and family courts.

Psychologists working as expert witnesses are reminded to review the relevant procedure rules within which they operate. These include:

The Criminal Procedure Rules (CrimPR) – Practice Directions are referred to as Part 19

Expert Evidence, the Family Procedure Rules (FPR) referred to as Part 25

Practice Directions 25, Experts and Assessors (Practice Directions 25A to 25F), and

The Civil Procedure Rules (CPR) Part 35 Experts and Assessors.

## EMPIRICAL SUPPORT FOR REMOTE PSYCHOLOGICAL ASSESSMENTS

The use of video-link technologies is widely used within mental health and criminal justice settings for the assessment of clients and offenders and in cases of giving oral testimony to courts. However, while there is little by way of formally published guidance, the British Psychological Society (BPS) guidance<sup>3</sup> Psychologists as expert witnesses in the Family Courts in England and Wales: Standards, Competencies and Expectations (January 2016) makes provision for indirect assessments:

*'completion of psychological assessment generally involves direct assessment and contact with the individual and one or more members of the family. Indirect assessment (relying on documentation and other sources such as video evidence) may be appropriate' (p.5).*

There is a reasonable volume of research reports and examples where remote assessments (including telephone and video-link technology) are used in the assessment, diagnosis and treatment within the field of clinical psychology more widely.

There are many benefits to remote assessments, such as the ease of access for clients, the ability to specialise the service, the ability to gain access to clinicians who speak the same language as the client and the chance to work with specialists in particular areas<sup>4</sup>.

Smartphone or tablet-based evaluations have been shown to be as accurate as an evaluation by a trained clinician<sup>5</sup> in cases where psychometric measures have been administered via a mobile device relative to a paper form<sup>6</sup> and in the assessment of trauma<sup>7</sup>. Similarly, there is some evidence for the efficacy of web-based personality assessments being comparable with traditional methods of paper-based assessments<sup>8</sup>.

## PRACTICAL CONSIDERATIONS

Psychologist expert witnesses should specify their provisional plans on receipt of the first enquiry (or as soon as practicable) and clarify if there are aspects that are likely to be problematic within the context of Covid-19 restrictions in completing the psychological assessment. The psychologist expert witness may consider a number of options prior to formally accepting instruction and inform the instructing party as soon as possible as to any limitations on the assessment.

These discussions will likely include the feasibility of face-to-face assessments while maintaining social distancing, access to sanitising equipment at the location of the assessment and whether the assessment can be completed using video-link technologies. Early discussions with instructing parties should clarify any specific additional needs (for those without capacity, or where an intermediary or interpreter is required) so that solicitors can arrange this with appropriate providers.

Practitioners are advised to check with their indemnity insurance provider to ensure they have appropriate insurance cover during a pandemic outbreak which may include cover when completing face-to-face assessments as well as remote video-link assessments. When making technical arrangements it remains important to follow BPS guidelines. Preparing participants may involve contact by telephone or letter to establish the most appropriate platform on which to conduct the assessment. It may be important to offer a 'dry run', or to keep sessions shorter or allow more frequent breaks. Professional judgement about this and security needs to be balanced against pragmatic requirements.

To some extent, expert witnesses may be reliant upon those instructing them to provide identification details of the client to be assessed, which can be checked with the client at the point of assessment. Psychologist expert witnesses should confirm the client's full name, date

of birth and address for verification. For younger/vulnerable participants, a parent/carer may be expected to assist at the beginning of the assessment.

Practitioners should confirm that the client is not making an audio or visual recording of the assessment and that they are alone in the room and not being influenced by other parties during the assessment.

If the assessee appears distracted, this needs to be explored and efforts made to help them focus attention. It is important to explore any suspicion that the adult or child is under duress, or that another person, who may be off camera, could be prompting/influencing the participant's responses.

Confidentiality may be difficult to monitor remotely as well as external influences and managing the environmental circumstances in which the assessment is taking place may be further complicated during a video-link assessment. The practitioner should ensure that interviews are conducted from a place that is quiet and confidential, and that the interview can proceed without interruption. It may be helpful to keep sessions shorter or allow more frequent breaks.

Practitioners may need to adapt how they interact with people to get the best out of online interviews. This may include simplifying questions and checking more often that the client understands and is able to hear clearly. Similarly, the pace of questioning may be reduced.

If the psychologist wishes to make a recording, this must be agreed in advance and done with full adherence to GDPR and this fact should be written in the clinical notes.

The usual rules of consent and confidentiality expected in a patient-therapist relationship are, by definition, different within the context of the procedure rules. Expert witnesses may also need to amend existing consent arrangements to reflect the use of technology to conduct assessments.

In order to maintain the most effective therapeutic alliance during online assessments, expert witnesses may need to consider a number of practical points, such as:

Setting up the frame so that it allows for non-verbal communication;

Looking at the camera to establish eye contact;

Asking simpler questions and checking their pace to allow for problems with slow connections, delay or echoes;

Ensuring the client and the assessor are in a quiet, secure and confidential setting without a busy visual background;

Being explicit about whether you are making notes;

Giving attention to developmental and additional needs, and the level of anxiety in relation to Covid-19 (in addition to other matters) should be considered in all interviews. Be aware that some people may feel more comfortable and find this easier than meetings. Consideration should be given to spending more than would normally be expected to develop rapport.

Engagement may be enhanced by:

Using less verbal assessment tools with younger children may be helpful, such as picture drawing, story making or using finger puppets. Observing them playing games (pre-arranged with the foster carer) may provide useful observations about turn taking, sharing and social skills.

During the pandemic psychologist expert witnesses should continue to follow the BPS Code of Ethics and Conduct (2018)<sup>9</sup> and Health Care Professions Councils Standards of Conduct, Performance and Ethics (2016)<sup>10</sup>.

Practitioners are advised to check with their indemnity insurance provider to ensure they have appropriate insurance cover during a pandemic outbreak, which may include cover when completing face-to-face assessments as well as remote video-link assessments.

## SPECIAL CONSIDERATIONS

As the use of video-link technology in the assessment, diagnosis and treatment of psychiatric conditions in clients is relatively new, there remain a number of cautions. There may be a number of conditions or circumstances where video-link psychological assessment and diagnoses may be problematic and may require special consideration – below is not an exhaustive list.

Cultural factors may also adversely impact on a video-link assessment, including the client's age, technological familiarity and culture-specific norms to assure valid and reliable assessments. For example, the remote physical presence inherent may create a barrier that reduces a client's engagement in the assessment process, especially among members of cultures or groups that emphasise inter-personal connectedness or that rely heavily on nonverbal interactions. Clients that are less comfortable or have less experience with technology, such as elderly, very young children, or severely impoverished populations, may display a more drastic discrepancy between in-person and video-link assessments.

Those with communication and/or known learning difficulties may not be easily or appropriately engaged online. An attempt should be made, and if insurmountable, discussions are needed with the instructing party as to how these difficulties can be overcome. It may lead to an initial report being filed to be followed up with an addendum later. Extra attention needs to be given to engaging children as well as vulnerable adults during video-link assessments.

Assessments of individuals with complex psychiatric conditions may be more challenging via video-link, such as Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, and certain neuropsychological assessments (including assessments of cognitive decline/dementia or assessments of major mental illness, e.g. delusional disorder, schizophrenia). This is particularly relevant where the client is required to sit still for a prolonged period of time or where the assessment of non-verbal behavioural cues and nuances (e.g. avoidant gaze, interpersonal exchange) are central to the assessment and diagnosis, which may be lost due to the video-link. Such assessments, and subsequent diagnoses, will likely be equally reliant upon collateral information as the clinical interview itself. Similarly, assessments of the impact of trauma (sexual abuse, exploitation, violence) will also need careful consideration and may require the additional interview of friends and family to corroborate symptoms.

Certain types of cognitive or neuropsychological assessments may be more challenging when using video-link technologies. Practitioners should refer to the test publisher guidelines in the administration of psychometric measures. Some psychometric measures may permit short-form tests and report pro-rated results as estimates of ability. Instructing parties should be informed if testing should be delayed until it can be carried out face-to-face.

Within family law proceedings, there may be the requirement to observe contact or family interactions. Addressing this at an early stage of the assessment process is important as it may not be receiving much attention. Careful placement of the camera during a contact family session will determine how much is visible to ensure that all interactions are captured. Extra effort should be made to access previous contact records to help inform the assessment.

When engaging children and young people in an assessment for court it is recommended that the BPS guidance<sup>11</sup> [Considerations for psychologists working with children and young people using online video platforms](#) (2020) is considered.

## SAFEGUARDING

Many clients may find interviews demanding and distressing and the support available at the end might be severely limited due to the social distancing restrictions. Practitioners should consider taking the time at the beginning of the assessment to put the client at ease.

Other issues of importance when using video-link technologies to complete psychological assessments is the safety of the client during remote assessment sessions and having a safety plan in place. A principal concern involves what to do if a client becomes distressed or has a medical emergency during a remote assessment session. Safety plans should include procedures for contacting emergency services in the client's locale, alternate contact methods in case the remote connection is lost (e.g. backup phone contact), and plans for resolving technical problems.

Unpleasant memories can be triggered during psychological assessments and emotional distress may be unavoidable. It is essential before, during and after the session appropriate emotional support has been considered and if necessary, is in place.

Participants may be vulnerable due to pre-existing mental or physical health conditions or by the stressful nature of proceedings. Interviews can be demanding and distressing and the support available at the end might be severely limited given the social distancing. Consideration should be given to the provision of support after the interview is concluded.

## ORAL TESTIMONY

Due to social distancing restrictions, psychologists working as expert witnesses may be asked to give oral testimony using video-link technology.

The Civil Procedure Rules: Practice Directions Part 35 Experts and Assessors (2010)<sup>12</sup> make provision for video-link oral testimony where those instructing experts should, "...give consideration, where appropriate, to experts giving evidence via a video-link (Section 19.2, subsection C).

Section 51 of the Criminal Justice Act 2003<sup>13</sup> enables the court to allow witnesses (other than the defendant) in the United Kingdom to give evidence by live link if the court is satisfied that giving evidence in this way is in the interests of the efficient or effective administration of justice.

## LIFTING COVID-19 RESTRICTIONS

It is likely, as the Covid-19 social distancing restrictions are lifted, some form of social distancing measures will remain in place and psychologists working as expert witnesses may be expected to continue to complete remote psychological assessment using video-link technologies.

## CONCLUSIONS

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For the period while social distancing restrictions are in place, it is likely psychologists working as expert witnesses will continue to complete psychological assessments for courts using video-link technologies.

Practitioners will need to use their clinical judgement as to how they apply these practical and clinical considerations when completing remote psychological assessments in judicial settings.

## CONTRIBUTORS

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## APPENDIX 1: STATEMENT OF VALIDITY AND RELIABILITY

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As part of the civil, criminal and family procedural rules, expert witnesses are required to include a declaration to the court, a statement of truth and a statement as to the validity and reliability of the assessment and any limitations of the assessments.

For assessments conducted via video-link technology, it is recommended an additional statement of limitation is included. This is an example of a statement of validity and reliability when using video-link technology.

‘This assessment was completed during the Covid-19 pandemic 2020. Every effort has been made to apply the principle of best endeavours to provide the Court with a reliable and valid opinion.’

‘This assessment was completed using video-link technologies. Particular care was taken during the administration of psychometric measures to ensure the assessment did not deviate from the test publishers’ manuals on test administration. The use of video-link technologies presents a number of constraints on psychological assessments which would ordinarily be easily overcome during face-to-face assessments (e.g. environmental control and the management of distractions). In some circumstances, the recording and observation of non-verbal behavioural cues (e.g. avoidant eye gaze) may be compromised when using video-link technologies. In some circumstances, preliminary findings such as a diagnosis, formulation or judgement, based on explicitly acknowledged compromises or constraints on the assessment process should be acknowledged when using video-link technology. Effort was taken during this assessment to overcome such difficulties and test administration was in keeping with test manual recommendations.’

‘I have considered and applied the guidance regarding the engagement of clients remotely and at all times applied the expectations of the Procedure Rules relating to Expert Witnesses. Where necessary I have made appropriate adjustments to the usual assessment practice, notably undertaking all/some of the work remotely. I have been explicit in how the information was obtained, any limitations placed on the assessment and how this process helped or hindered the formation of my opinion.’

‘This statement is in keeping with the British Psychological Society recommendations when conducting remote psychological assessments.’



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