

# Psychological Assessment within Family Court Proceedings and Covid-19

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## Introduction

One of the challenges facing all of us during the current pandemic is ensuring that our client's cases can proceed in a timely but fair way.

When ordered, psychological assessments of parents or children will be a very important piece of the evidence before a Court. The issue of how these can be conducted fairly during the current time is an important question.

At the end of May 2020 the Association of Clinical Psychologists published guidance for Psychologists who act as expert witnesses within the Family Court. The guidance sets out additional issues or considerations for their members carrying out assessments during the current pandemic.

A link to the guidance can be found below:

<https://acpuk.org.uk/wp-content/uploads/2020/05/Expert-witness-guidance-during-Covid-19-mw.pdf>

The document is not too long at 19 pages and I would recommend that you take the time to consider it as it provides and insight into the sort of matters that a psychologist (and probably any expert) will need to consider when carrying out assessments during the course of the pandemic.

In this short presentation I thought it would be helpful to set out the additional considerations which I think we as legal professionals need to take into account. When instructing and challenging these assessment there additional factors will need to be taken into account.

### Impact of the pandemic on a client's mental health and psychological presentation

I am sure many of you, and I include myself in this, have found aspects of the current restrictions and the limitations they bring challenging. Imagine then how our client's, who are often vulnerable and have pre existing psychological difficulties find the current situation.

Many of the client's I represent suffer from anxiety and depression stemming from historic trauma. The current situation for many of them seems to have exacerbated these conditions. This is clearly something that will need to be taken into account when these clients are being psychologically assessed.

The ACP UK guidance makes clear that the timing of the assessment and the context that it is taking place during a global pandemic should be taken into account;

*It is essential that the Psychologist expert takes account of the impact of the current climate upon the psychological well-being of the person being assessed. Many people have experienced increased anxiety and hardship during the current climate. This adds an extra level of complexity to the assessments, particularly those focused on an adult's future capacity to parent and any psychological needs."*

The heightened level of anxiety may not be representative of the client in "normal" times. If it is not clear that the expert has taken into account the current situation or you feel not enough weight has been given to this within the assessment I would suggest that it is a point of challenge.

The impact of the current pandemic may impact the client in other ways. They may have been looking after children for sometime in these challenging circumstances. Children are also impacted by the current pandemic. Their routine will have been changed immeasurably with the closure of schools, nurseries and inability to enjoy the usual activities they enjoy. This could lead to atypical behaviour. The guidance is clear that the psychologist will need to take carer stress and the impact on children into account.

Contact between the children and the parent being assessed may not have taken place for some time. This again will need to be taken into account if interactions between them form part of the assessment.

Speaking with the client about how they are finding the whole situation of Covid-19 whilst dealing with undoubtedly stressful Children Act proceedings will be very important. This could be something which is included in the letter of instruction.

### Initial exploration with the expert / pre application enquires

Having previously practiced as a solicitor I know how time consuming and frankly annoying this task can be! However, it will be important to ascertain which experts can or are prepared to do what and set out what will need to be assessed.

Following the relaxations in some of the restrictions since the guidance was published it may be that the assessment could take place in person. In my view this seems to be preferable to a virtual assessment (see more below).

The expert may be open to meeting the client whilst observing social distancing. Ensuring that there is either a room free at your offices or somewhere else will be important. Making this clear in the initial enquiry and in the letter of instruction will be vital.

If part of the assessment will involve observation of the client with the children checking that this can take place is also obviously very important. Contact centres are beginning to re-open and depending on funds some ISW's provide a supervision service.

If the assessment has to take place virtually using IT, consideration will need to be given to how in practice it can take place. Clients, particularly those involved in public law proceedings can suffer the effects of poverty. They are unlikely to benefit from the multitude of electronic devices that others benefit from. Wifi connection will also need to be considered.

It may be that the client can lend a laptop from your firm or come into the office and use the technology and internet connection. If this is safe it may be preferable because of the increase stress and anxiety constantly cutting out or not being able to work a phone or lap top could have on the client.

During the pre application exploration phase it may be a good idea to ensure that information about your own / firm's ability to help facilitate the assessment is provided. This may impact on costs and timescale. Both of which will need to be considered by the Court when determining the application.

### **Letter of instruction**

These are typically very standard with clauses being edited or added to . During the current pandemic it may be helpful to add a couple of additional paragraphs or additions.

I would suggest that it is made clear that you expect the psychologist to take into account and consider the impact of the current situation on the psychological presentation of the client. It should then form part of the written assessment.

If the assessment is being conducted virtually it will be important that the psychologist sets out the potential limitations of a virtual assessment and how they have taken these into account when formulating their conclusions.

## Limitations of remote assessments

The ACP UK guidance sets out that there are clear limitations and additional considerations when psychologists conduct assessments remotely.

No doubt you are all aware of the additional fatigue that comes following hearings or providing advice remotely. Matters seem to take longer and more draining. The guidance suggests that this will also apply to virtual assessments. The guidance comments on video conferences that;

*"Whilst these can facilitate communication with some people, for others they can be tiring and intense, which could affect how that person communicates and interacts with the Clinical Psychologist."*

Remote assessments can lead to a loss of the more subtle observations that are needed for the psychologist to gain a complete view of the client. The Guidance sets out the following:

- close up faces can lead to a change in eye contact and make the process more intense
- Additional fatigue of taking part in an assessment remotely
- Potential lag time can give the appearance of reticence
- Difficulty in establishing rapport
- Difficulty in gauging a parent or child's non verbal communication when not physically present. The guidance points out:

*"There is no substitute for the wealth of clinically relevant information that is gained from a person's body language, appearance and social circumstances during face to face contact."*

These points should be considered within a report following a remote assessment. They are also points that could be used to challenge the conclusion of such an assessment.

## Conclusion

As the guidance is at pains to point out if an assessment at the current time is a good idea for the client or how it should take place will very much depend on a case by case basis. Very much a barrister's answer I know. However, given the nature and importance of such assessments legal teams will need to consider the issue very carefully.

If an assessment is necessary then as the guidance suggests I think that a physically attended assessment would be better than a remote one. I am sure that remote assessments can give the psychologists enough information to be able to complete a report but as above there are limitations and risks.

Additional planning and consideration will be necessary. The above is not exhaustive and I am sure there are other matters that you can think of or are idiosyncratic to individual clients.

However, with Courts and practitioners finding ways to ensure proceedings can continue and conclude in a way that are fair to all involved the same is true of psychological assessments.

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