

British Psychological Society Publish Guidance on Recording of Neuropsychological Testing

Posted On: 16/06/2021

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In May 2021, following preparation by an advisory working group of its Professional Standards Unit, the British Psychological Society, Division of Neuropsychology, published Good Practice Guidelines on the recording of neuropsychological examinations and testing under the title "*Guidance on the Recording of Neuropsychological Testing in Medicolegal Settings*". The Guidance is aimed at Clinical Neuropsychologists undertaking cognitive testing as part of their medicolegal practice, although the recommendations may be of interest to a wider audience. The Guidance follows an increase in litigants either requesting, or in some cases, covertly attempting to record their neuropsychological testing.

Recording of medical examinations is a phenomenon which has increased in recent years. Ten years ago it was unusual. The development of technology and, during the pandemic, the incidence of remote assessment, has led recently to an increase in its occurrence. A reading of the decision of Master Davison in *Mustard v Flower* [2019] EWHC 2623 (QB) confirms the practice of some solicitors, generally on the Claimant's side, of advising their clients that this should be done. In that case, the Defendant was sufficiently appraised of the approach likely to be taken, to have advised their experts to commission their own recordings as well. (For more on this, see Katie McFarlane's recent blog on the [admissibility of covert recordings of medical examinations](#)).

The validity of clinical testing by a Neuropsychologist depends upon trust and open communication by both sides. Furthermore, the tests performed rely upon adherence to standard conditions which relate to the test methods and the testing environment, each of which may be undermined or at least altered (thus having the potential to jeopardise the results) where one or both parties considers it necessary to record the testing process. There are wider issues in addition, which arise in the field of copyright in the clinical tests or in the compromising of test security should test materials find their way into a non-clinical or public domain.

The Guidance identifies six key considerations underpinning the recommendations, which can be read [here](#) in detail but which are summarised as follows:

1. A Psychologist is expected to provide a reliable and valid evidence-based assessment which meets high standards;
2. A benefit by way of transparency may arise from recording neuropsychological assessments forming part of a legal or clinical process;
3. The mere fact of recording, or the presence of a third party, can undermine the Claimant's test performance;
4. Neuropsychological tests are standardised, but the standardisation was not undertaken in contemplation of the recording of such tests;
5. There is a real risk that recorded content could be misused or disseminated in a way which would undermine the testing process;
6. Test materials are subject to copyright and therefore protected in the interests of their publishers.

The Guidance itself consists of ten points and is set out below.

1. In accepting instructions for medicolegal assessment, instructing solicitors should be informed that both deliberate covert and unregulated overt attempts to record the formal neuropsychological assessment do not represent best practice and potentially invalidate any assessment conducted. If assessments are recorded, this should also be made clear in any subsequent report produced for the Court.
2. Psychologists have a duty to maximise the validity of tests administered such that their intended purpose can

be safeguarded and to: a. ensure that clients are not given opportunities to practise or familiarise themselves with test materials beyond the stipulation of manualised and standardised approaches; b. and to minimise the risk that test scores are either positively or negatively influenced by the act of recording.

3. Psychologists have a duty to protect the security of tests administered and recognise that recording potentially facilitates test processes being disseminated within public domain. Such dissemination has the potential to reduce the reliability and validity in the testing of the wider population.
4. Psychologists have a duty to minimise the risk that copyright is violated and to take reasonable steps to prevent distribution of test materials wider than the audience directly benefiting from test administration.
5. Deliberate covert recording of the neuropsychological assessment is not acceptable under any circumstances and steps should be taken to prevent this (asking the patient/signed contractual document etc.).
6. Recording neuropsychological testing by the claimant is not usually advisable and steps should be taken to prevent this (asking the patient/signed contractual document etc.) other than when it is agreed that the benefits significantly outweigh the risks. The decision to proceed or not with recording should be made on clinical grounds for a range of claims that might include: traumatic brain injury, mental health, child assessment, pain e.g. by the expert responsible for administering the testing.
7. Psychologists should ensure that clients/claimants and any accompanying persons are clearly advised of The British Psychological Society's advice on recording prior to the assessment. The clinician should explain that such recording is contrary to professional guidance for neuropsychologists and may well infringe legal copyright.
8. Psychologists should utilise established protocols to deal with such issues including the completion of a signed document by the client claimant to agree that they will not record any aspect of the procedure without prior consent.
9. If the clinician becomes aware of deliberate attempts at covert recording, they should ask the client politely to stop recording, to delete the record and discontinue any formal assessment should the client refuse to accede to this request.
10. Neuropsychologists in legal medical practice have a duty and responsibility to work ethically, adhere to the code of conduct of their professional and/ or regulatory body, protect copyright of the test materials and to ensure patient safety.

Discussion

Recording of clinical examinations has grown in recent years. It is of particular relevance in the neuropsychological field, which depends upon the administration of standardised tests to assess psychological function. Covert recording of an assessment will never be acceptable in such circumstances. While the open recording of testing may carry a benefit, it is rarely advisable for this to be undertaken by the Claimant, unless it is agreed that benefits outweigh risks. The decision as to whether or not a recording should proceed is one which should be made on clinical grounds.

The attempt at standardisation of the approach to this issue, I suggest, is something to be welcomed. If it serves to define the procedures to be adopted and helps to promote openness and cooperation between parties it is likely to prove a force for good. The essential issue is one of trust in the medico-legal examination and assessment, to which the Guidance contributes. If this leads to improved testing and, critically, reliable reporting, the overall benefit will prove tangible.

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