

Working as an expert witness

We hear from four psychologists about their interactions with the legal system

I wake on the day of the assessment thinking already about going to the prison to assess a 15-year-old boy accused of murder.* Young people who are facing trial for such serious crimes have often lived through more conflict in their short lives than I have in mine. I already have an idea of the circumstances of the alleged crime, according to both the papers from the prosecution and the defence solicitors, but now I go to find out for myself. Today I am assessing this child at the request of the defence, who have learned he has a history of 'special needs' when still attending school, although he stopped attending over two years ago. At this stage it makes little difference who has made the request for the assessment because I am to form my own opinion – one of the key duties of an expert witness to any court.

I have a rushed breakfast but then remember to stop long enough to meditate, clear my head and begin the day with a fresh view of the world. I find this mindfulness-based practice helps me to be even more aware of my own responses and those whom I am to assess.

I take the papers and the assessment materials with me and head for the train. Every time I wish my bag could be lighter as I haul it from car to train to tube to train to taxi. In the taxi to the prison I am given one of those speeches by the taxi driver once he knows I am going to interview someone: 'They should all be shut away and left to rot... they don't deserve to be out in society... life is too easy in prison.' Today I choose to say nothing and keep my focus on the assessment ahead. When I leave the taxi I feel I should say something like 'If it were your son/brother...'. I used to believe these views were rare but now I brace myself for such onslaughts whenever I say where I am going and why.

I arrive at the young offenders prison with a sigh of relief but then panic as I cannot find my driving licence card – the essential ID to get in. I know the staff in the medical wing, I am a regular visitor so I wonder whether I can swing it, despite the security notices all around the entrance reminding all of the ID requirements. I take my Cambridge University student card (photo ID) and my BPS 2013 card and hope this might



be enough – it is, although they looked at me a bit oddly. I always knew that one day the BPS membership card would come in handy!

I go through security, which I now take for granted, but is a bit daunting. Think airport security but with a guaranteed pat down along with an occasional dog sniffing at you. I have learned to carry in nothing I do not absolutely need to avoid delays at security.

Finally I am taken to the medical wing where I am given a room, and the young man comes to join me. He is a slightly built 15-year-old black British youth with a mix of worldly wise and child about him. I spend time taking care to explain why I am there, that he has a choice about taking part, even though in reality it will go against him if he does not. This is one of those times when my awareness of the ethical dilemmas in expert witness work makes me uncomfortable. Psychologists

enter into the legal system at their peril.

We spend hours together, at first getting to know each other. I always feel the first few minutes are the vital ones, when we are both sizing each other up. 'Establishing rapport' is the official name, but for this young man it is a matter of deciding whether he can speak, who in this system of prison warders, solicitors and 'shrinks' he can trust enough to talk about his family and his life before prison. At YOI Feltham I already feel more relaxed than at other prisons because the room is quiet, I know we won't be interrupted and I have time. At other prisons I can find myself in rooms where everyone can see in, or even in a visitors hall with 50+ other inmates and families. Being assertive is certainly a skill – but the last time this occurred I ended up politely sitting on the floor, making it clear I was not leaving until the room previously promised was made available. I have always been a fan of peaceful protest!

The afternoon goes quickly. I feel sad for him, for his victim, for both families and all the people affected by this case. As I travel home again I reflect on the details of the crime itself, the assessment and wonder what the psychometric scores might reveal to add to this picture. I feel both sadness and frustration that so many opportunities to make a difference have been missed.

I arrive home and pick up messages and e-mails. One is about a court hearing (a different case) set for the end of the week. No one seems sure whether I am going to be needed or which day. I start to stress out on how

I am going to juggle this with other my therapeutic work. I am also warned this case is getting nasty. In the past I have had my degrees and chartered status questioned, my history of feminist writing and erotica writing for couples suggested as a bias in favour of women, rather than questioned on the assessment or opinion formed. I remind myself my role is to provide information and psycho-education to the court, not to persuade them of someone's guilt or innocence. Thank goodness I don't have that responsibility. If I did, I couldn't do this work.

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* Case details in all four authors' contributions to this article are composites of actual cases or have been otherwise anonymised.

I have undertaken specialist psychological expert witness work for more than 20 years; recent semi-retirement now means I am able to devote a day to do this at a more leisurely pace. Like many colleagues, I originally started this kind of work by accident, became known as a source of reports and am now asked to undertake a variety of different kinds of investigation. I am therefore an 'expert' by virtue of clinical and medico-legal experience, qualifications and appointment as a Consultant Clinical Psychologist, the ability to write a report a court can understand, and a publication history. The latter is optional. It is for the courts to decide who is an expert and,

although it is now less frequent, I still come across 'expert' reports written by authors, including psychologists, who have strayed from their areas of training and competence, and occasionally by people with no recognisable qualification at all.

A typical 'expert' day will initially involve travelling to a private clinic where I rent a room for an appointment with a client, arranged after a request from a solicitor or intermediary firm. On this day it is a lady who has been involved in a rather nasty car accident, causing significant physical injuries. She has mentioned in a medical assessment that she has been having nightmares, and is

reluctant to drive. Her lawyers have therefore requested a specialist report.

She arrives on time, driven by her daughter, and brings as requested a number of completed psychometric tests sent to her previously. What follows is a standard clinical interview leading to a formulation, prognosis, and recommendation for treatment. Like many victims of road accidents she is prey to conditioned symptoms of anxiety and avoidance, and may well be helped by some cognitive-behavioural therapy.

In my report I sup with the devil and refer to DSM criteria; courts love diagnoses and precision, and one has to use terms with which they are familiar.

Today is Wednesday. This means a short train journey from Cheltenham to Bath, and a quick coffee as I walk to my clinic in a leafy part of Bath city centre. A cheery welcome from the friendly reception staff and a clean, tidy office space all helps to start the day well.

I will be seeing two clients to prepare psychological reports on their reaction to recent accidents they have been in. For one, I have been asked by the solicitors representing them and for one, it is the insurers of the person or company that caused the accident who have instructed me. However, in each case it is 'the court' to whom my independent opinion is directed. In other words, I must arrive at a balanced, reliable and sensible overview of the psychological impact that occurred in each case.

One of my two clients has been in a motorway car accident where a lorry suddenly pulled out without seeing her and a potentially life-threatening crash occurred. Apart from her physical injuries, she reported problems sleeping, a fear of driving and being a passenger, and difficulties coping with work, including the actual journey to and from her workplace.

While being very sympathetic to this understandably very frightening experience, I need gently to put this in context of how she had been coping before the accident and also

find out if there were any other stresses and strains occurring in her life after the accident. Many clients will question why such a full assessment is made, and I have to explain the need 'the court' has for a robust opinion.

My second client has been involved in a serious work accident in which two fingers

help him desensitise 'himself' to both work and social fears. I plan to see him again in six months to see how he is faring.

These two interviews involve me listening carefully to the client's story and experience and also asking appropriate questions to clarify their history before and after the adverse event. I need to be able to listen, talk

and write notes simultaneously and make sure the client feels I am sympathetic and understanding.

When I am finished, I take part in a telephone conference with a barrister and lawyer (based 100 miles away) to discuss a similar report completed 12 months ago. I am being asked to clarify and explain why I came to the particular opinion I did. The barrister's 'agenda' of the discussion is to maximise the level of 'psychological damage' identified – my agenda is to ensure 'the court' or 'ten reasonable psychologists' would come to the same or similar opinion that I have, given the available evidence. Not difficult, in this instance – but can be a problem if I'm put under pressure to alter my view.

I entered clinical psychology and later the medical-legal field to be both sympathetic and helpful to people but also for the intellectual challenges. Leaving the clinic today, I feel I have had both these experiences and the day has gone well.

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day in the life

As with many clients, this lady suffers some, but not all, of the symptoms of post-traumatic stress disorder. In this situation I tend to use the term 'Partial PTSD'; whilst not a formal DSM category it is widely used (Mylle & Maes, 2004), and I have not been challenged as to its use thus far.

At the end of the assessment I explain my formulation to the client. It is not the function of such an assessment to be therapeutic, but it often is. I tell her that her anxieties are common in RTA victims, the natural history is for them to decay, and that this can be hastened by treatment. I explain that she is no more likely to have an accident than she was before; it is her personal estimate of the danger that has been knocked askew.

She has, like most victims, not been offered treatment by her GP, so we discuss options such as private treatment and how it might be arranged. She leaves with her daughter, happier than when she arrived.

During the reading of notes, assessment and writing the report, I keep note of the time spent, a lesson learned from my legal colleagues. Although many reports are produced to an agreed fee, it is important in other cases to keep an eye on the chargeable time spent.

In the afternoon I have a 'Meeting of Experts'. This is a specific procedure under Part 35 of the Civil Procedure Rules, devised under the 'Woolf Reforms' to encourage experts instructed by claimant and defence to meet prior to any trial to try and resolve differences or at least highlight the points of disagreement.

I meet my fellow psychologist (although these meetings can be cross-disciplinary) over a pot of tea to discuss the cognitive status of a client who has suffered a head injury. I have concluded that their abilities have been affected and the injury was probably the cause; my fellow psychologist feels that these discrepancies were more likely than not present before the accident.

Since we are both familiar with the statistics the central point of disagreement emerges quickly – how likely is it that her difficulties pre-dated the accident. We agree to disagree and decide that I should write up our meeting and send it to my colleague for her approval. We will then both sign it and send it to both sets of lawyers. We agree informally that there will probably still be settlement in view of the prohibitive cost of proceedings



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compared with the likely size of the compensation award.

Current 'straws in the wind'? For PI

In many high-value claims for personal injury, arising from road traffic accidents, clinical negligence, and accidents at work, it is often the case that a significant head of damage arises from loss of earnings capacity. The court then may require expert evidence on the quantification of occupational disability. The basic methodology involves on the one hand assessing the potential career and future earnings, until retirement, as a fully fit uninjured individual, whilst on the other hand assessing the impact of their injuries and disability on their future working capacity following the accident. The following three case studies illustrate some of the issues involved.

The first case involves a serving Royal Air Force NCO in his mid-twenties injured in an accident. He was discharged from the RAF on medical grounds, described as suffering from various cognitive and motor impairments. Both of these caused problems in his post-accident RAF work placements, and he had been moved from one placement to another due to his inability to perform to the required standard. After extensive rehabilitation he was regarded as unfit for military service, and unfit to be transferred to another trade. There was convincing evidence that before the injury he had had good prospects for promotion in the RAF. Unfortunately all that is now gone. He returned home and undertook retraining in graphic design, but was unable to cope with the pressures of a degree programme.



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(personal injury) and criminal work, the downward pressure on costs will continue; however, previous attempts to 'bundle up' this kind of work, and have NHS Trusts, for instance, do it on the cheap, have not succeeded.

Mylle, J. & Maes, M. (2004). Partial posttraumatic stress disorder revisited. *Journal of Affective Disorders*, 78(1), 37-48.

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He now has no ambitions to take up any further study, and he feels somewhat demoralised by what he perceives as a failure. It is clear that his self-confidence has taken a blow, as he was initially convinced that he could cope with degree-level academic study. Further vocational rehabilitation will be extremely difficult.

Another case serves to illustrate some of the psychological issues arising. Knocked down as a cyclist in her late fifties the claimant sustained multiple injuries to the hips and legs, with psychological sequelae (mild PTSD and depression). This claimant had an impressive portfolio and contacts in the advertising industry. It was her evidence that at the time of the accident she was about to relaunch herself on the advertising world and pick up on her creative career. My own expert opinion was influenced by the context of this career. The claimant had worked in the USA for many years until she was badly injured in a skiing accident. She returned to the UK, and there are records of her

receiving ongoing treatment not only for her physical injuries but also for psychiatric problems. For a period of seven years prior to the cycling accident she had not been continuously in work, having held only a few short-term jobs, none of which was in advertising. Most people who develop their careers do so from a position of strength, i.e. in employment. In the advertising industry this will be even more so, as it is a very competitive industry. Thus, I was not convinced that there was a serious chance of the claimant at the age she was

resuming her career after such a break, and with a somewhat difficult recent medical history. Needless to say my opposition expert thought quite the opposite, that the claimant was about to re-establish a previously successful career, and eventually we agreed to differ.

Like all court-approved experts doing personal injury work we are guided by the Civil Procedure Rules, under which in the majority of cases one has to identify areas of agreement and disagreement (with reasons why) with an opposition expert. This can occasionally lead to ferocious arguments, very often about the honesty, motivation and career potential of the claimant. In addition to interview and test material (e.g. occupational aptitude tests and job preference inventories) one might be supplied with medical records, educational records, employment files and surveillance evidence. Over the years I have become cautious about believing everything one is told at interview!

A third case involved a claimant, aged 39 at the time of the accident, sustaining extensive severe physical and psychological injuries. At the time of the accident she was a finance manager with

a firm supplying horticultural products. She was earning a six-figure salary and bonus package. About a year or two after the time of the accident, she was expecting to be appointed to a seat on the board and to be earning significantly more in salary and benefits. Given her experience and career development up to this point I did not think it unrealistic for her to have realised this expectation. Further, the claimant considered that she would have worked at that senior level for 12–15 years or so, say to age 55, followed by a five-year winding down period, when she would probably have been a consultant to the company or to other businesses, either on a part-time employed basis or through her own small consultancy. I formed the opinion that in a role of consultant she could have earned £50,000 pa pre-tax, but net of business expenses.

Now, the medical evidence was that she will remain at a significant disadvantage for employment in the future, and suffers ongoing cognitive disability and mood disorders arising from the accident. She was terminated from her pre-accident employment due to loss of capability, and subsequently lost

another position under similar circumstances. She now works with another firm in a much less senior position on a much lower salary than she was earning before the accident. She describes it as a struggle, involving quite a bit of travelling round the UK and absence from home.

There have been false starts in this return to work, and the events as they unfolded provided a real-life account of the claimant's problems in re-adjusting to high-level work demands. It was clear that she could not cope with the high-level decision making required before the accident. Her residual level of employment probably represented her limit, although there may still have been an ongoing risk to the security of this employment with the new employer.

These case studies hopefully give a flavour of some of diverse professional challenges facing an occupational psychologist working in the litigation world.

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