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Title	Conducting remote psychological assessments for vulnerable adult clients in family proceedings: Evidence-based practice considerations for complex presentations
Type	Article
URL	https://clock.uclan.ac.uk/id/eprint/34082/
DOI	
Date	2020
Citation	Horrocks, Leanne and Ireland, Jane Louise (2020) Conducting remote psychological assessments for vulnerable adult clients in family proceedings: Evidence-based practice considerations for complex presentations. Abuse: An International Impact Journal, 1 (2). ISSN 2633-8742
Creators	Horrocks, Leanne and Ireland, Jane Louise

It is advisable to refer to the publisher's version if you intend to cite from the work.

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Conducting remote psychological assessments for vulnerable adult clients in family proceedings: Evidence-based practice considerations for complex presentations

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Abstract

Family Courts make difficult and complex decisions, which can have lifelong and fundamental implications for some of the most vulnerable members of society. Psychological assessments have an important role in assisting Courts to understand complex individual and systemic dynamics, including the capacity of parents to make changes within timescales relevant for their child/ren to prevent the risk of on-going harm. Given the recent Covid-19 pandemic, the changes in moving from direct to remote assessment are considered through a lens of appropriateness for this often complex cohort, with potential caveats and issues for consideration. Focusing on adult assessments, the paper will comment on the lack of in-person presence, practical considerations, ensuring safety and security, preparing for emerging vulnerabilities, considering measure validity, being assured of client consent, and adhering to professional and ethical standards. It raises the questions of *can* and *should* assessments be conducted. In doing so, it proposes a framework to guide professional thinking. Ensuring a fair, ethical and considered process takes place is the ultimate aim of any assessment. The proposed guidance is designed to support this.

Keywords: Family Court; psychological assessment; complex needs; remote-working; Covid-19

Introduction

The quality of independent expert psychological assessments prepared to assist Family Courts can be critical given that the opinion provided can assist in making decisions with far reaching, lifelong effects. These decisions include whether a child can be raised within their birth family, where they will ultimately reside and what contact they may have with non-resident parents or other family members. The Covid-19 pandemic resulted in a shift in working patterns to ensure social distancing measures and to allow for assessments to take place, where possible. Ultimately, this was driven by a need to avoid delays concerning the placement of children within a Court process that was already under heavy demand. In this arena are several complexities, which need to be accounted for. This includes when to apply a psychological assessment remotely, whilst also accounting for client vulnerability and the fundamental life-changing decisions being made (Nuffield Family Justice Observatory, 2020). Prior to considering this, there is value in understanding the need for such assessments and the areas they are likely to cover.

When are psychological assessments employed and to whom do they apply?

There are differences across jurisdiction but in the UK, as an example, psychologists are typically instructed by the Family Courts in cases of Public Law, where the Local Authority (a local Government body) raise concerns regarding “*significant harm*” to a child. This may

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include one or several abuses, such as physical, emotional, sexual or neglect. Psychological assessments can also be requested pre-proceedings and, in some instances, through private proceedings, involving family members but without local Government involvement. Such proceedings typically focus on contact arrangements and do not raise the level of risks concerning welfare that are found when a Family Court and/or Local Authority are involved. In Family Court proceedings, issues of care placement, adoption, emergency protection and contact with family may need to be decided by a Family Judge.

Psychologists can be instructed by the Family Courts to assist in providing an assessment of the risk of abuse or neglect of children, the impact of any such experiences on the child's development, the presence of protective factors in complex family dynamics, as well as the capacity of parents to engage in therapeutic or other support offered by professional services. The role of experts has been described as that of assisting a Court in making decisions, within their expertise (Family Proceedings Rule, Practice Direction 25, Rule 25.3, 2017). A Family Justice Review (Norgrove, 2011), in the UK, reviewed policy and practice in relation to experts (including psychologists), making several recommendations relating to the proportionate use of expert evidence and the development of national standards to improve evidence quality. The Family Procedure Rules (2012) and Practice Direction 25B (2013) each stipulate that experts have, "an overriding duty to the Court" (section 3.1) to provide objective and independent advice that, "conforms to the best practice of the expert's profession" (section 4.1). In addition, Court Judgements have been noted as largely supporting the recommendations of expert psychological assessments, with Bailey, Ostapiuk and Basra (2017), in one study of cases across an eight year period, reporting that this occurred in 84% of cases. This supports the relative importance and potential influence of psychology assessments in family related matters.

Clearly, psychological assessments therefore require a high professional standard, consistent with expected professional guidance. There has, understandably, been scrutiny of independent expert psychological assessments from organisations such as the Transparency Project (2019) researchers and policy makers (Brown et al., 2015; Ireland, 2012). The difficulty with scrutiny is exacerbated by the protected nature of such proceedings, meaning that there can be limited reporting of decisions made in the Family Court. However, certainly in the case of adoption, Judgements such as *RE B (a child) [2013] UKSC33*, and *RE B-S (children) EWCA Civ 1146*, have highlighted the "draconian" nature of an adoption order and the need for Courts to be satisfied that, "nothing else will do." Such language focuses on the requirement of the Court to consider with rigour and scrutiny, assessments that reliably inform decision making given the weight of the decisions being made. Thus, we do not doubt the sensitivity of these assessments and the need for standards to be applied with due care by those conducting them.

We are also mindful of the demographic likely captured by such assessments. Those engaged in Private Law proceedings can be involved in an entrenched high conflict separation, with issues of domestic violence, coercive or controlling behaviour evidenced, or where allegations of harm against, or by, the non-resident parent have been raised and/or there is a fear of child abduction (Cassidy & Davey, 2011). There has also been an increase in issues relating to parental alienation within private law cases, where the child has refused contact with a non-resident parent. Parental alienation can be defined as the pathological rejection of a non-resident parent post-separation, which is seen to be non-justifiable and linked to the resident parent engaging in a campaign of vilification against the non-resident parent. This notion was originally proposed by Wallerstein and Kelly (1976), with Gardner (1987) furthering the idea of parental alienation as a syndrome. The literature on parental alienation has since received some scrutiny due to the paucity of robust empirical studies and, more recently, there has been

emphasis on separating parental alienation from justifiable estrangement due to abuse, violence or impaired parenting (Doughty, Maxwell & Slater, 2018). Regardless, what is evident is that such cases can involve problematic parental issues. This can further extend to capture personality characteristics and other factors, which make the process of assessment complex (Godbout & Parent, 2012). Lack of resolution of these parental issues has the potential for far reaching negative effects on children in terms of their emotional, behavioural, social and interpersonal functioning (Harold & Sellers 2018). This is reflected in the inclusion of Parental Alienation in ICD-11 (WHO, 2018), as a caregiver-relationship problem and within the DSM-5 (APA, 2013) there is inclusion of a condition that may be the focus of clinical attention of CAPRD - Child Affected by Parental Relational Distress. This perhaps evidences the level of clinical concern regarding the emotional impact on children of exposure to entrenched parental conflict and the importance and complexity of family assessments.

Issues are far from dissimilar in Public Law cases, where individuals who experience significant adversity can be represented. Brophy (2006), for example, reviewed key features in the profile of parents and children subject to care proceedings. They found most cases contained a complex interplay of multiple categories of child abuse and neglect, with all containing serious allegations of child harm. Parents and children tended to already be known to Local Authorities, with parents highly vulnerable across several social, personal, financial and environmental variables. Brophy (2006) further identified that in up to 73% of studies reviewed, parents were not cooperating with the authority and related agencies. Concerns about parental mental health, including personality disorder and severe mental illness, were noted in up to 62% of reviewed cases, with this frequently coupled with engagement difficulties. Concerns about impact on parenting capacity due to substance use, including alcohol, featured in up to 31% of cases, domestic violence in up to 65% cases, serious crime up to 61% and chaotic lifestyles in 36%, with an overlap noted between this and drug use. Being unable to cope or control a child was found in 61% of reviewed cases, with poor parenting knowledge and personal, social and financial difficulties all prevalent factors. This study was followed by Bailey et al. (2017) who detailed several parental variables that could warrant further investigation, to determine if they impacted to any degree on the quality of the parenting provided. In their survey of 293 parents, undertaking assessment, they found 41% had mental health difficulties, 19% had learning disabilities (defined as IQ below 70), 36% substance abuse (drug and alcohol) and 51% a history of criminal activity. Domestic violence featured in 48% of assessments, with 53% of the parents disclosing an abuse history as a child. This also provided support for the 'toxic trio', namely a combination of risk factors in childcare proceedings that arguably elevate risk; substance use, domestic violence and parental mental illness (Clarke, 2019).

In addition, many parents involved with care proceedings will already have been involved in such proceedings previously (Broadhurst et al., 2017). In the Broadhurst research, vulnerable birth mothers and their association with recurrent care proceedings was assessed. They used data from approximately 65,000 mothers, across a nine year period. They found one in four birth mothers involved in care proceedings were expected to be involved in repeat proceedings, with a younger child, within seven years. This figure was highest for women who had a previous child placed for adoption. Unsurprisingly, of the mothers involved in repeat proceedings, significantly higher levels of adversity and exposure to harm were identified than expected in the general population; 66% of mothers involved in repeat proceedings had experienced neglect, 67% emotional abuse, 52% physical abuse and 53% sexual abuse. Over half (54%) had been placed outside their home during their childhood, with 64% becoming mothers under the age of twenty.

Consequently, the evidence is arguably unambiguous in terms of the complex and multi-faceted level of vulnerability in the cohort of parents who are involved in family proceedings, particularly public proceedings. These parents are, furthermore, expected to undergo detailed and personal assessments at a time of marked personal crisis where decisions are being made that could have lifelong implications for their child(ren) and wider family. For this reason, the expectations for expert psychological assessments are essential to consider. Determining whether these can be met using remote assessment becomes a core consideration. Before outlining these, it is worth briefly noting what expert psychological assessments consider.

What does an expert psychological assessment for the Family Courts usually involve?

Bailey et al. (2017) argue that what is considered a competent psychological assessment continues to lack clarity. They cite a general expectation in family proceedings that, “the psychologist will act in the best interests of the child and that in doing so will rely on sound psychological knowledge, empirical data and expert objective opinion to aid the Court.” (p.267). The empirical data element is a vital consideration since this needs to be as valid and reliable as possible. To raise the quality of the opinion in terms of validity and reliability, it is generally agreed that assessments should comprise integration of data from a variety of sources. This includes documentation provided by the Court regarding the history of proceedings, medical records and/or Police disclosure, where available. Added to this is the data gathered by the psychologist through clinical interviews. This will capture areas such as the client’s understanding of the current proceedings and concerns raised, their background, mental health difficulties, substance use challenges and offence history, if relevant. Also considered are relationships with professionals, support networks and treatment engagement.

Complementing the assessment and, in some cases a core feature, can be the use of testing. This can include cognitive assessments, standardised assessments for conditions such as autism, ADHD and/or Aspergers, psychometric questionnaires or structured diagnostic interviews, to assess mental health or personality. Assessments can also comprise structured professional judgement tools, to assess risk, such as the Historical Clinical and Risk Management Guide (HCR-20: Douglas, Hart, Webster & Belfrage, 2013), Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER: Kropp, Hart & Belfrage, 2015) and Structured Assessment for Protective Factors for violence risk (SAPROF: De Vogel, Ruiters, Bouman & de Vries Robbe, 2012), to name but a few. Thus, there is a complex interplay between the areas that require assessment and the methods applied to capture them, in a manner that is both valid and reliable.

Expectedly, engagement can be difficult for parents in care proceedings. They may have their own negative experiences of authority, coupled with the risk of having been in care themselves, had a prior negative experience of care proceedings, difficulties with trust or emotion regulation and/or view their engagement as one conducted under duress. It is well recognised that attitude to assessment can trigger stress responses, particularly when we feel threatened or under duress (Scaife, 2013). This is consistent with *Reactance Theory* (Brehm, 1966), which describes how, when an individual perceives they are being forced into certain behaviour, they react against this by engaging in behaviours that appear unhelpful. This can include engaging in the exact opposite of the behaviour expected. Essentially, this response is underpinned by unhelpful emotions, such as distress and anxiety, and is a reaction to the removal of individual choice (Brehm & Brehm, 1981; Steindl et al, 2015). Complex responses, such as this, can add to the multifaceted aspects of engagement that can be expected in Family Court cases. In addition, Butcher and Beutler (2003) identify that exploring our own history in

therapy is qualitatively different from engaging in a *high-stake assessment*, whereby parents understandably may engage in defensive or socially desirable responding.

Thus, psychological assessments for the Family Court are multi-faceted, including several methods and approaches to gathering the required information. The psychologist must be able to then utilise this information to formulate complex systemic dynamics and consider the impact of any problematic factors on parenting behaviour and the potential for significant harm in terms of emotional, physical, sexual and/or neglect. They must further be able to identify strengths in the family network, assess parental capacity to change within a timeframe relevant for the child and provide an opinion in relation to the support that could be provided to maintain a child safely in their family.

The assessment approach prior to and during Covid-19

Prior to Covid-19 restrictions, psychological assessments for family proceedings were conducted in person at a variety of suitable locations, which ensured the safety of the psychologist and client. Predominantly this would include solicitors' offices, Local Authority venues, and secure settings, such as prisons. Assessments could be lengthy and were conducted in a manner that allowed for robust clinical data to be gathered. This could include being sensitive to issues that could impact on the assessment and ensuring that clients had a safe space they could attend to have a break. Significantly, the psychologist would be able to monitor the engagement of the client and support any present or emerging emotional regulation issues and/or developing psychological crisis, thereby supporting safe engagement in the assessment process.

During Covid-19, however, there has been a move to conducting assessments remotely. The process by which this developed was fast paced and dynamic. Ultimately, the need to complete assessments was driven by the importance of avoiding delay for all those involved. This represents a commendable aim but reflection on the process and learning from it is of value. For clarity, remote assessments are defined here as one where the client and psychologist are separated by physical distance and conducted over a video-conferencing facility, or via an audio system. It is not a new approach, certainly not for therapeutic interventions, where it is referred to as tele-therapy (Turgoose, Ashwich & Murphy, 2018). It has been increasingly applied to health based assessments, where it is referred to as tele-health/medicine and primarily brought in following the SARs pandemic, since patients were unable to attend hospitals for assessment (Capra & Mattioli, 2020). There were recognised benefits to such approaches, including greater take up in some areas, likely a result of the relative ease of engagement without the need to navigate transportation issues (Capra & Mattiolo, 2020). However, the scale and application of remote approaches are currently greater. With it has been a swift change to the practice of many who were used to delivering direct therapy only (Scharff, 2020). Alongside this comes a need to become familiarised with remote approaches, in order to provide safe delivery. Guidelines have certainly emerged, such as those from the American Psychological Association (Wright, Mihura, Pade & McCord, 2020). For other jurisdictions, however, guidelines have been in place for a considerable period. In Australia, for example, a need to reach clients residing in rural and remote areas has been well-recognised for some time (Australian Psychological Society, 2020). However, these remain general guidelines and do not tackle the issue of managing clients with potentially complex needs, in family proceedings.

Of the approaches, video-based assessments are arguably by far preferred in comparison to audio, certainly for more complex assessments. Video allows you to monitor non-verbal reactions to a greater degree and allows for more of an interaction, which is essential for many aspects of psychological assessments. Tele-therapy approaches have commented, for example, on the value in monitoring non-verbal interaction through such a medium (Turgoose

et al., 2018). Nevertheless, with what presented as a rapid move to adopt remote assessments, as a result of Covid-19, there appeared several issues of particular relevance to consider. These were concerned less with the principle of *can* a remote assessment be considered to one of *should* it be considered and the *process* by which it could be successfully achieved, particularly with complex clients.

Issues pertinent to remote psychological assessment during Covid-19

The Covid-19 pandemic caused anxiety and stress across the globe (e.g. Ho, Chee & Ho, 2020; Moccia et al., 2020). The impact on mental health and psychosocial considerations was seen as paramount, with guidance published by the World Health Organisation (WHO) to assist the general population, as well as those in key worker roles, to manage the increased psychological load (e.g. WHO, 2020). There was concern that those who might previously have been accessing mental health support, general health support, learning disability services, family support services, drug and alcohol services or educational support, might have been struggling to maintain meaningful service engagement. This was due to the impact of isolation, demand for services and the move to remote working for some. School closure also meant that additional safeguards for vulnerable children and families were no longer in place. Indeed, Department of Education figures in the UK suggested, for example, that only 15% of pupils classed as vulnerable and entitled to attend school were in fact utilising these placements (data accurate up to 22nd May 2020, Department of Education, UK, 2020). Additional social stressors, including unemployment, housing and financial difficulties also represented increased risks for more vulnerable groups. This resulted in the Government producing specific guidance for victims of domestic abuse and sexual violence, and the Children's Commissioner producing local area profiles of child vulnerability (Children's Commissioner Report, 2020).

Thus, assessments were being conducted within a period of raised stress, distress and instability in the lives of many who already had complexity in their circumstances. In accounting for the need to complete assessments, careful consideration has to be given to how transferable and appropriate it would be to switch to remote assessments of parents within family proceedings, given the unique level of potential complexity and vulnerability of this cohort, as previously outlined, as well as the high stake decisions being made. The following represent some core example considerations for psychologists to reflect on, going forward with this approach. They are applied here to family proceedings where adult assessments are being conducted.

No in-person presence

Clearly this remains the most obvious difference between remote and direct assessment. During a remote assessment there may be limited opportunity to gather observational data that can be used to inform a mental state examination, such as detailed observation of appearance or personal hygiene. The ability to access non-verbal cues may be limited by technical variables, such as camera angles, internet connection quality, sound quality and delays between visual and audio output (Luxton, Pruitt & Osenbach, 2014). Use of eye contact can be different when using remote assessments, as individuals tend to look at the image of themselves on screen or the person on the screen rather than the camera, which can potentially impact on relationship building during remote work (Chen, 2002). When eye contact is inaccurate, this can make interpretation of facial expression challenging, which can further impact on mental state examination. To date, although research suggests rapport can certainly be developed using remote assessments, how this applies to the more time-limited assessment only approach is not yet understood, with focus instead on therapeutic rapport, which is built over several sessions of engagement (Turgoose et al., 2018). Equally, how it impacts on the interaction *between* those involved, not just from the assessor to the client, is not yet captured. Lack of in-person

presence can be further damaged by poor network connection, including audio quality, leading to important non-verbal cues being missed, which could be highly valuable to the assessment process. Given that parents involved in family proceedings may find engagement difficult, regardless of the medium being used, being mindful of this becomes important.

Practical considerations

When conducting remote assessments, additional practical aspects must be accounted for. For example, the client should be guided in expecting that the assessment will take some time and thus they should seek to make themselves as comfortable as possible. If they are using a phone, for example, they should not be encouraged to hold this for a prolonged period but instead to have it secured in a stable place. Simple instructions, such as requesting they have their phone charged and/or plugged into a power source become key, as well as alerting them to directly access the application that is being used to conduct the assessment. Psychologists cannot presume, for example, that clients will all have the same knowledge base of using remote systems and thus guidance should be given. They may well have to be advised, for example, that they need to log onto the application to join the video-conference. This will avoid them waiting, unsuccessfully, for their system to contact them. Importantly, there should be an alternative means of contacting the client, if there is an issue, along with setting time aside to prepare them for using remote systems. On a very basic level, ensuring there is access to a stable Internet connection is important. This could be difficult if the client does not have this or a suitable device, which can be used. Afterall, the concept of digital poverty is far from new (Hernandez & Roberts, 2018) and recognises that many of the most disadvantaged in society (e.g. those with disabilities, of low-income and older age groups) may not have access to digital devices, an issue that will need to be addressed.

Ensuring client safety and security

Conditions for conducting assessments appropriately need to account for the environment being safe and secure. With remote assessments, the psychologist is more limited in their ability to control environmental circumstances, which can be of heightened relevance when working with those known to be at an increased likelihood of chaotic lifestyles. For example, parents with housing instability or in shared or temporary accommodation may not be able to ensure privacy for the duration of a long interview. If the parent being assessed has children in their home, this raises the potential for children being unsupervised or being exposed to adult information and material that may be distressing and/or inappropriate.

Family proceedings and associated assessments are protected and private. Thus, ensuring assessment content is not overheard, recorded and/or posted publicly on the internet or via social media is a further consideration. However, it is extremely difficult for the psychologist to ensure this remotely, even with the use of written and agreed guidelines beforehand. Ensuring sufficient privacy to allow openness becomes essential, particularly if issues of domestic violence are being discussed. Assuring, for example, that there is no-one else present in the room that could be influencing, coercing or distracting the client, or anyone being exposed to inappropriate assessment information, is not completely within the control of the psychologist. This is, of course, particularly key where there are concerns over domestic violence.

Of course, assessments can be ended when concerns arise. Nevertheless, difficulties will emerge when the psychologist is unaware of the presence of another simply due to them relying on what they can see on their screen. This becomes of particular relevance when assessing two adults residing in the same home, where the adult lives with multiple others, where there may be concerns regarding domestic violence and/or where the adult is a single

carer for their children, who may overhear the assessment content. The question that arises here is the safety of conducting the assessment and also of the assessment results being fed back in such a circumstance. Regardless of the need to conduct an assessment, the safety of those involved is an over-riding consideration. If safety cannot be assured then the assessment, we would argue, cannot proceed.

Managing and preparing for vulnerabilities

As outlined earlier, there is an expectation that some adults assessed within care proceedings will be vulnerable due to learning disabilities, physical disabilities, trauma, exposure to domestic abuse, mental health difficulties and/or substance use difficulties, to name but a few. It also extends to language issues and a potential need for interpreters. In addition, being in self-isolation and/or having restricted movements in place during a pandemic can activate new or exacerbate pre-existing mental health difficulties. It requires some consideration therefore to understand mental health difficulties and the impact on functioning historically *and* given current circumstances. For families, where there are relational difficulties or domestic abuse concerns, these risks are increased due to confinement and a paucity of external protective factors. Being able to manage and contain distress is an integral aspect of a psychological assessment but being able to manage this remotely is more challenging and could require more preparation with a client. This includes setting, as part of standard engagement guidelines for remote assessments, the need to have a safe place in their home where they can try to relax, to plan a relaxing exercise and/or engage in distracting activities after the session. It also includes ensuring they have access to support both during and after the assessment, if required. For those without a social support network of good quality, this can require determination of support agencies that are available and the days they operate, so that sessions can be planned accordingly.

However, assessing someone remotely whose mental health is not sufficiently stable may not be possible, even with additional safeguards. This is well-recognised (e.g. Australian Psychological Society, 2020). The timing of the assessment becomes a core consideration in that instance, as the psychologist must remain mindful of a potential risk to client wellbeing. Of course, some issues may not become apparent prior to the assessment, or the severity not realised until the assessment is progressing. This captures again the need for careful preparation for all possible outcomes. Being able to manage this set of vulnerabilities requires prior information, which includes the location of the client, their GP/local health provider details, a pre-arranged safety plan for contacting others in regard to sudden disengagement, overwhelming distress and/or loss of connection at a distressing point in the assessment. Assessing the mental state of an individual accurately can be less reliable when there is inconsistent information regarding non-verbal cues, which may be further impacted by poor Internet reception or a variable view of the client if they are using a mobile phone to conduct the assessment. The psychologist needs to remain aware of all possible outcomes and have sufficient information available to them in order to protect the client.

Considering assessment validity

Robust psychological assessments include clinical interviews, a review of collateral information and, as required, test-based measures (e.g. ability assessments, psychometrics). The latter may not have been developed to be reproduced orally and changing the protocol of administration can impact on validity. Remote administration of psychometrics, for example, can potentially impact on the reliability and validity of data gathered. Although some test providers have made provision for digital access to psychometrics (e.g. Q-Global, Pearson, 2020), they have caveats as many were not originally validated to be employed in this way. There are further issues, relating to data honesty, with the risk increased for respondents using

the Internet to assist in test taking, resulting in invalid responses, or requesting someone else complete the test for them. This could certainly occur in instances where measures are provided to clients beforehand, which in itself could breach copyright if psychologists are relying on survey applications to transmit the questions. The British Psychological Society (2016), for example, is very clear on highlighting the responsibility of psychologists to maintain the confidentiality of test materials and to ensure content does not fall into the public domain in a manner that may compromise the use or validity of future test use.

Some types of testing, such as ability based approaches (e.g. cognitive assessments), are not designed for remote administration or validated to be employed in this manner. This is not to say they cannot be done since they have been applied in tele-health/medicine settings for cognitive assessments of patients, such as those with Alzheimer's (Capra & Mattiolo, 2020), for some time. However, these forms of cognitive assessment are not the form applied within psychological assessments, where there is a need to handle materials as part of the process, or those that require very discrete timing. The latter is an important consideration since many cognitive ability tests emphasise performance based on seconds, or less than a second, which cannot account for the time delay that can appear with remote assessments. An assessor is clearly compromised in being able to ensure the strict testing criteria can therefore be adhered to.

Remote administration of certain semi-structured diagnostic interviews, such as the IPDE (International Personality Disorder Examination: Loranger, Janca & Sartorius, 1997), SCID (Structured Clinical Interview for DSM-5 Disorders; First, Williams, Karg & Spitzer, 2016) and/or clinical psychopathy assessments (e.g. Hare, 1991), are less susceptible to administration difficulties, as these were designed to employ a diagnostic and/or structured interview. But they do, nevertheless, rely on the psychologist's interpretation of demeanour and non-verbal cues, ensuring that only a video-based assessment could be considered.

Being assured of client consent

Parents involved in family proceedings are often in a state of crisis and may feel they have to agree to remote assessments for fear of appearing as though they are not complying with Court directions. Clearly, this is a very distressing position for any adult to be in, resulting in significant competing emotions. They are, after all, likely to be externally driven to complete the assessment and not always internally driven. Their motivation to engage becomes a key consideration. As of yet, there is no research exploring the factors associated with consent for those who were invited to engage in assessments as opposed to those who are informed by a Court that it is a required part of the process of inquiry connected to the parenting arrangements for their child(ren).

The validity of any psychological assessment is clearly modulated by the degree to which a participant is *willing* and *able* to participate meaningfully. This includes being able to manage the technical challenges of remote assessment, their emotional state and maintain their attention. Poor or inadequate acceptance of the modality of assessment has been linked to poor validity and will deplete the robustness of the assessment (Luxton et al., 2014). Any adult engaging in a remote assessment would need to be made aware of the caveats identified here and express a willingness to engage in such an assessment. To ensure that informed consent is obtained, however, clients need to be fully informed of what a remote assessment comprises in terms of practical expectations, what they should expect from the assessor and what they are expected to have in place during and after. This ensures that clients should be given time to consider their position on remote assessments, through the use of detailed guidelines of expectations being produced by assessors for clients, so they can be informed on their involvement.

This is no different to a standard expectation for ‘information sheets’ to be provided as part of gaining informed consent. What is being suggested here is that this should include an ‘information sheet’ on what to expect from all those involved in a remote assessment. It should also include what is available to them following the assessment. For example, they may wish to challenge the validity of the assessment, should they feel it was inadequate, and/or they may feel they have more to offer in terms of detail. Ensuring there is a clear route to provide this information post assessment, through the professionals involved, is vital.

Adhering to professional and ethical standards

Attention to ethical standards and professional codes of conduct remains pertinent when conducting all assessments, with remote assessments no exception. However, as outlined here, remote assessments bring with them additional considerations. For example, it would be inappropriate to modify assessment measures without disclosing the subsequent impact on validity. The assurance of confidentiality in terms of technological safeguards also needs to be seen as paramount. Whilst the psychologist may be able to make steps towards increasing in privacy and confidentiality from their end of the remote assessment, they are limited in how to manage this with a vulnerable adult client group (e.g. managing who else is present or can overhear, coping with unexpected interruptions). The safety of the client during and after the assessment therefore needs special consideration and a safety plan required prior. All of these represent key considerations, not just for the client but also to ensure that the psychologist is working within professional guidelines.

This returns us again to the importance of considering not if we *can* complete a remote assessment with the client but, rather, *should* we. Luxton et al. (2014), for example, detail how clients with a history of panic, anxiety, risk of harm to self or others many not be routinely appropriate candidates for remote assessments in clinically unsupervised settings. Again, this is not a new consideration (Australian Psychological Society, 2020) and it points to a need to have a detailed understanding of an individual’s history and profile of risk before considering such an assessment. Protective factors also become important in terms of identifying those who may, or may not, be suitable for remote assessment. Given the vulnerability of the adults seen in family proceedings the importance of this point cannot be underestimated.

Additional professional issues that require equal consideration include the wellbeing and safety of the psychologist who may be conducting such assessments. The assessment may be completed within their homes. Thus, not only are there issues of ensuring that the privacy of the psychologist is maintained (e.g. an awareness of what is on display in the background whilst assessments are on-going), but, equally, a need to be mindful of how the home-work separation may become blurred. In addition, assessors need to ensure they are adhering to the rules of privacy and confidentiality in their own home, which means their location has to be safe and that others cannot overhear the assessment content.

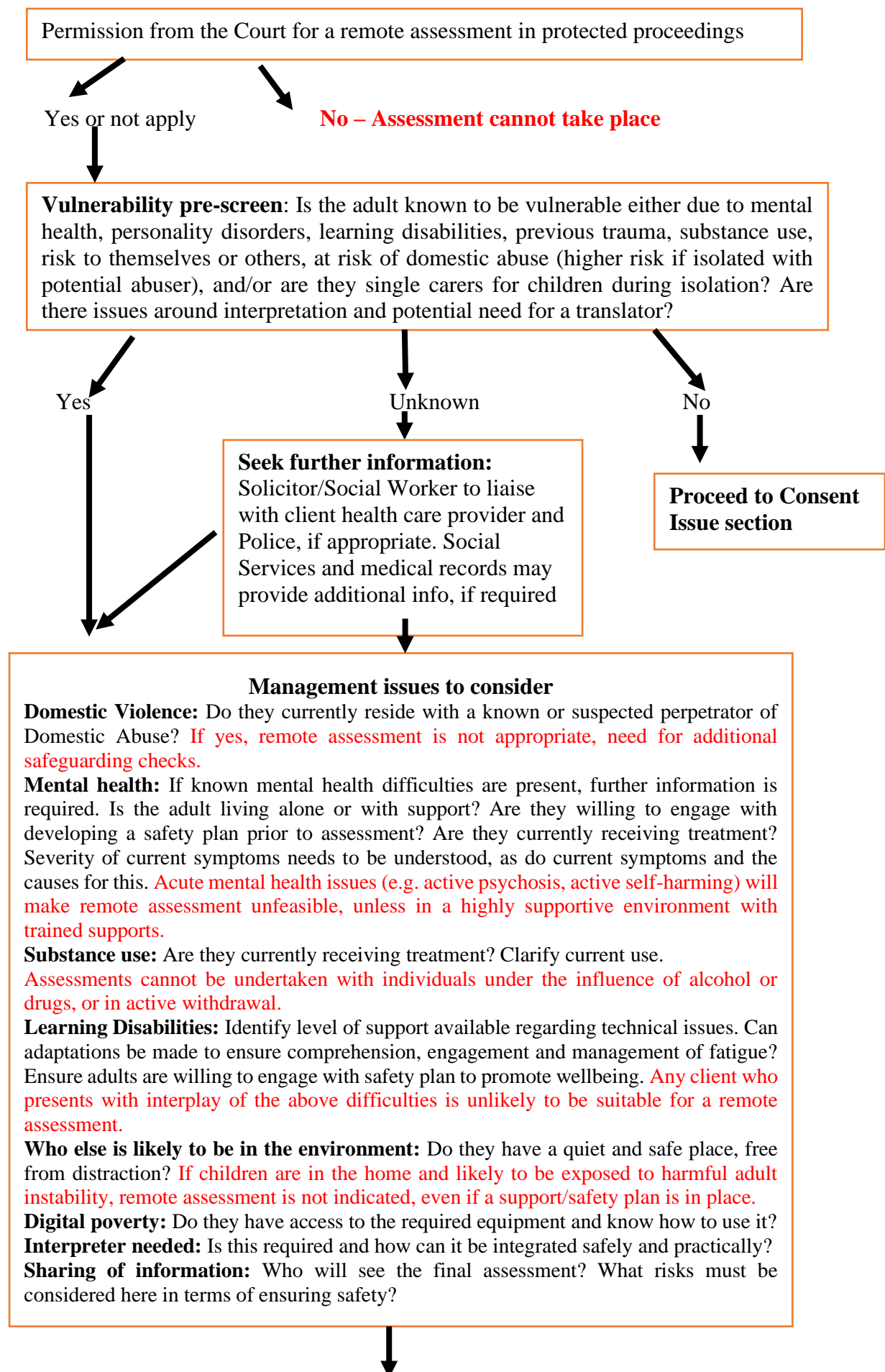
Can these issues be managed for psychological assessment of parents involved in Family Law?

Remote assessments are not clinically indicated for all clients due to safety concerns, risk issues, clinical contraindications, technological limitations, social situations and/or personal preference. It is critical that all those in Family Law, including instructed psychologists, are aware of the potential gains and risks of remote assessments and that each case is considered individually. Evidence from the wider literature on remote psychological assessments cannot be assumed transferable to this often complex cohort, where decisions based on assessments have far reaching implications and where it cannot be assumed that they have opted into the process.

There may be certain clients for who the risk issues noted here can be well managed, with remote assessments a justifiable, valid and reliable approach. Regardless of potential appropriateness, it would need to be underpinned by a preparatory approach that accounts for individual case needs and screens for concerns that cannot be safely accommodated in a remote assessment. Involving advocates, and other professionals, such as Social Workers, in this pre-process becomes an integrated part of the decision-making process.

To commence the process of decision-making, presented here is a guiding framework to support decision-making regarding the use of remote assessments in family care proceedings. Presented in Figure 1, it outlines a guide for professional thinking in order to maximise the safety of those involved. The psychologist must also be responsible for informing those instructing them of any changes to the standardised protocol of assessment, which may impact on the validity of the conclusions reached as well as the additional steps taken to ensure the safeguarding of vulnerable adults.

Figure 1: Deciding if a remote assessment can be applied



Are any identified risks manageable using safety planning and supportive systems?

Support systems may include secure or residential settings for those with more complex needs, with appropriate systemic support and access to professional support planned for those with less complex needs. Appropriate safety plans may include details of healthcare provider/emergency contacts, with additional contact details, such as address and phone number. Attention should also be given to planning with the client on how to manage distress during and following the assessment.

No. Management issues, including risks, cannot be managed via safety planning and/or there are multifaceted risks. Remote assessment cannot proceed.

Yes. Risks can be managed but must be detailed in a written safety management plan.

Consent issues to consider

- Is the adult willing to engage in a remote assessment? Clients should not feel coerced or compelled to engage in remote assessment, if they do not feel it is suitable for them.
- Do they understand the benefits and limitations of remote assessments? Has this been outlined to them?
- Is there an agreement as to session numbers and/or length?
- Do they consent to privacy requirements, which include ensuring no-one else is present in the room, can over-heard and that there is to be no filming or recording of the assessment through any means, by them?
- Do they understand how information from the assessment will be shared and with who?

Assessment can proceed if criteria indicated here are met, with consent and safety plans agreed.

Perspectives emerging from other areas of Family Law

There are certainly perspectives emerging from areas of Family Law that echo the concerns identified here, but in relation to the use of remote Court hearings within the Family Justice system. In the UK, for example, The Nuffield Family Justice Observatory (2020) was requested by the President of the Family Division (England & Wales) to conduct a rapid consultation (April 2020) regarding the use of such hearings in Family Court, since the Covid-19 pandemic. The report noted the need for Family Courts to rapidly adjust to social distancing measures by increasing the use of video and telephone hearings. It was noted that across *all Courts* and tribunals in England and Wales (not only Family Courts) in a two-week period, use increased

by 500% for audio hearings and 340% for video hearings. Positives were noted for the less complex cases, which could easily switch to remote hearings, including the ability to conclude cases. However, as echoed in the current paper, more complex matters, including some Family Law hearings, were found less suited to remote working due to the lack of face to face contact impacting on the ability of professionals to adequately support vulnerable adults, difficulties associated with ensuring privacy, confidentiality and equal participation of those involved. The latter is a key element of Court hearings and cannot be underestimated since it represents a principle underpinning fairness. In addition, and similar to the current opinion, vulnerable groups were identified to include victims of domestic abuse (particularly where they continued to reside with the abuser), those requiring interpreters, and those with physical, learning disabilities and/or mental health issues.

Issues relating to the primary purpose of Family Courts in providing fair hearings, have been well identified in recent Judgements (e.g. RE P [a child: Remote Hearing] 2020, EWFC 32). It highlights the need to ensure a fair and just process. There are already several family cases coming before the High Court, or the Court of Appeal, due to concerns regarding the use of remote hearings, with the need for a fair and just process particularly highlighted when the care plan is one of adoption (e.g. RE A [Children] [Remote Hearing: Care and Placement Orders], 2020, EWCA Civ 583; RE B [Children] [Remote Hearing: Interim Care Order], 2020, EWCA Civ 584). This has led to guidance from Sir Andrew McFarlane, President of the Family Division in the UK, to state that just because a family hearing could be heard remotely, does not mean it should (McFarlane, 2020). This resonates with the ethical and professional issues that we outlined earlier.

On reading the Nuffield Family Justice Observatory report, what is striking is the need to ensure that a parents' participation in proceedings remains ethical, humane and respectful, that they are able to engage fully with the process and receive support at a time of personal crisis. Also noted was the psychological impact on legal professionals of managing complex family matters remotely and feeling they were unable to fully support their clients, at such times. Whilst many examples of good practice were noted, there was clear recommendation for more formal guidance for parents taking part in remote hearings and for expert witnesses to outline the need for standardised procedures and processes that enable transparency and allow for fairness, as well as detailed scrutiny of their opinions.

Conclusions

The importance of the role of psychologists in providing robust and well evidenced assessments for Family Court cannot be underestimated. However, it is right and just that the opinion of psychologists providing such reports, and the process by which they were reached, is held up to account and critically reviewed, given the far-reaching decisions that must be made by in family proceedings. It is the role and responsibility of psychologists undertaking such assessments to ensure that they uphold professional and ethical standards. Equally, psychologists are in a position of potentially assisting other professionals involved in family proceedings to develop guidance and models, which can help in safeguarding professionals and parents to prioritise their mental health and wellbeing, as we move towards a more accepted and widely used remote assessment practice.

Although Covid-19 has led to a need for swift reaction by professionals, in terms of practice and methods of working, there is now an opportunity to reflect on the appropriateness of such assessments, remaining mindful not solely on *how* should they be conducted but *should* they be conducted. Indeed, as noted by physicians promoting tele-health/medicine approaches, "well-designed schemes of monitoring, diagnosing, and treatments should be implemented, beyond the Covid-19 emergency, to become part of the new normality rather than the

exception, particularly for chronic and vulnerable people and to make the health sector more resilient” (Capra & Mattioli, 2020). There is a developing argument that they should become the ‘new normal’, even after the Covid-19 crisis passes (Bloem, Dorsey & Okun, 2020). A review of the application of this to remote psychological assessment is thus an important part of this process of reflection, if tele-assessments are to become customary practice.

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