

How to choose a psychological expert

What questions should lawyers ask claimants to justify rehabilitation to third-party insurers and recognise evidential inconsistencies? Dr Mark Burgin reports

Two common presentations of psychological injury in personal injury cases are situational anxiety and low mood.

Situational anxiety may be associated with panic attacks, avoidance, nightmares and flashbacks. Low mood is associated with feeling fed up, stressed or tearful and can lead to angry outbursts, which may cause significant losses or even disability.

A combination of these factors can sometimes result in depression. However, causation can be difficult to demonstrate without the right expert.

Here, I consider the questions a lawyer should ask to confidently case manage a psychological injury (see box one) taking into account any evidential inconsistencies (see box two).

The claimant should be advised that, even if they do not wish to take anti-depressants or other medication, the frequency of attendance at their GP is a primary factor used to assess psychological severity.

Lawyers should offer four sessions of private talking therapy to any claimant who has been offered but declined medication for their psychological symptoms. Where there is a significant alleged psychological injury (post-traumatic stress disorder or depression), the full GP records must be reviewed to consider whether there were pre-accident psychological symptoms that the claimant has forgotten.

A report from the four sessions of talking therapy provides the expert with a description of the claimant's injuries, response to treatment, and investigates the claimant's continuing symptoms. Additional records will usually only need to be considered when the generalist recommends their review.

For most psychological injuries the generalist medical expert report, with or without a records review, will be proportionate in terms of cost, speed of report and expertise. However, where there are unresolved material issues (see box three) then a further report (see box four) will be necessary.

Claimants with no previous mental health problems can then be assessed by a psychologist who can use psychometric tools to measure accurately the severity of the accident-related injury.

Where the claimant has a history of brain damage or learning problems, a neuropsychologist or psychiatrist can best distinguish between the hardware and software problems and thus identify the accident-related injuries. Where the claimant has severe enduring mental illness, their own psychiatrist or mental health team will have previous formulation reports, which should be made available to the consultant psychiatric expert.

Claimants with substantial forensic histories are best assessed by a forensic psychiatrist or a specialist social worker.

Where the claimant has a history of failing to engage, I recommend a home visit from a community psychiatric nurse expert.



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Box one: what questions should a lawyer ask?

What symptoms does the claimant have?
Has loss from psychological injury occurred?
Does the claimant require rehabilitation?
What documentary evidence will the expert require?
Which is most useful psychological expert?
What type of psychological report is best?

Box two: evidential inconsistencies

- * Inaccurate past psychological history
- * Failure to attend GP
- * Treatment less than severity
- * Unable to explain psychological symptoms
- * Other significant events e.g. bereavement
- * Out of proportion reaction
- * Denying non-accident factors

Box three: material issues for a psychological report

Substantial time off sick – has more than three weeks off work been taken for psychological reasons?
Disability – restrictions in motivation, social skills, personal relationships and emotional control?
Severe enduring mental illness – under long-term follow up and medication from a mental health team?
'Did not arrive' (DNA) – history of failing to engage with the mental health services?
No response to the four sessions of talking therapy?

Box four: types of psychological injury report

1. The descriptive report comes as part of a generalist report. It uses simple language and can be combined with the medical records review to simplify the issues.
2. Psychometric report is a measurement of severity using psychometric tests, but is limited when there is a significant pre-accident mental history.
3. Formulation-type report is an assessment which combines pre-accident psychological problems within a complete description of the claimant's psychological diagnoses.
4. Psychodynamic report is the gold standard report. It finds logical connections between an accident and a claimant's psychological symptoms and losses, but takes many hours of assessment.