

**The British
Psychological Society**
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Statement on the conduct of psychologists providing expert psychometric evidence to courts and lawyers



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Psychological Testing Centre

Context

Clinical, educational, occupational, counselling, forensic and other applied psychologists often provide expert opinion to courts, tribunals, barristers, solicitors and advocates on the basis of psychometric testing. In addition to their duty to the court, psychologists need also to consider their obligation to the profession and the ethical standards required of those employing psychometric instruments. These include, for example, ensuring that the expert opinion they provide does not exaggerate the attributes of test materials and that they do not go beyond their level of competence in making any relevant comment.

This statement sets out guidance to psychologists and other users of psychological tests concerning their obligations in providing any evidence or opinion which rests on the results of psychometric assessment.

Confidentiality and security of tests

Psychologists should be mindful at all times of the confidential nature of test materials. Many tests are invalidated by prior knowledge of their specific content and objectives. Those who use tests are required to respect the confidentiality of test materials and to avoid release of these into the public domain, unless this is explicitly allowed in its nature and by the test publisher. A court may legally request details of materials and such disclosure is allowed within the Data Protection Act.

In addition, psychologists should take reasonable steps to prevent misuse of test data and materials by others. Misuse includes release of such data and materials to unqualified individuals as this may result in harm to a client, and / or release of such data and materials without an adequate explanation with regard to how outcomes will be interpreted or used.

Legal scrutiny of tests

Some court proceedings are open to the general public and may be a matter of public record. In those cases where the practitioner has used standard materials, such as psychometric tests, he or she will need to be careful to ensure that all parties are aware of the possible dangers of discussing the content in open court. This may give rise to a leaking of confidential information and may put information into the public arena, which would damage the integrity of subsequent assessments based upon standard materials. Most courts which are open to the public will be sympathetic to a request that the details of such tests remain confidential or are restricted to a small group of participants in a specific case.

This will enable the practitioner to make reference to tests in a general manner which will not affect their usefulness following proceedings. Psychologists should not engage in detailed presentation and discussion of the content of test materials in open court. Such a restriction may be less important in cases not routinely open to the public; nevertheless, it is still wise for the practitioner to guard the integrity of materials in this way. A practitioner should raise this matter with the instructing solicitor, or with a lead solicitor in the event of joint instructions, to provide reports.

Why is the security of test materials important?

These issues have been addressed in detail by the American Psychological Association in its *Statement on the Disclosure of Test Data* (1996).

It states that:

'Availability of test items to an unqualified person can not only render the test invalid for any future use with that individual, but also jeopardises the security and integrity of the test for other persons who may be exposed to test items and responses. Such release imposes very concrete harm to the general public – loss of effective assessment tools. Because there are a limited number of standardised psychological tests considered appropriate for a given purpose (in some instances only a single instrument), they cannot easily be replaced or substituted if an individual obtains prior knowledge of item content or the security of the test is otherwise compromised'.

Development and refinement of items and norms for individual intelligence tests, personality assessment techniques, and achievement tests often require many years of research and considerable effort and expense. Improper disclosure of test items or other test materials also may result in damage to those parties which have developed or have ownership in the test and possibly result in breach of contract claims against psychologists who violate the terms of their test purchase or lease agreements.' (page 4, para. V. Release of Data and Test Security).

What action should be taken if a court or other legal entity requires the psychologist to release detailed test data?

Very rarely, a psychologist may be required by a court to disclose information regarding test materials or data so that it comes into the public domain. If the psychologist believes that such disclosure may invalidate or damage the integrity of the test, then he or she should inform the court of the consequences of compliance. The psychologist should make the court and any relevant lawyer aware of the British Psychological Society's (BPS) policy concerning the security of test materials, and the psychologist's obligations under this and other ethical and professional codes, including the BPS's *Code of Good Practice for Psychological Testing* (2016).

In many cases those concerned will be able to negotiate an accommodation which minimises the degree to which the psychologist's professional standards are compromised by his / her overriding obligation to the court. An example of such an accommodation may be to allow a scoring sheet to be observed in court by the advocates but not for this to leave the court or for any copies to be made. Judges will generally be open to such compromises and will not seek to deliberately invalidate tests by allowing unguarded or full public disclosure.

When conflicts in reaching negotiated accommodation do arise, psychologists should identify the relevant issues, make known their commitment to relevant standards, and attempt to resolve them in a way which conforms both to professional practice and the law. In rare cases where, following such negotiations,

a psychologist finds that the court's demands have nevertheless compromised his/her position in relation to these issues, he or she should notify the British Psychological Society's Ethics Committee and Committee on Test Standards.

Summary

Psychologists are required to maintain the confidentiality of test materials and to ensure that details of their specific content do not fall into the public domain. This should be borne in mind when providing written or oral opinion to the court. The general nature of a given test may be explained to the court without disclosing specific details of content which compromise its subsequent use.

References

American Psychological Association Committee on Psychological Tests and Assessment (1996). *Statement of the disclosure of test data*. Washington, DC: Author.

For further information on the work of the Society and to download a copy of our annual report, please visit our website or contact us at:

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