



The Facilitate Factor

Welcome To Our Monthly Newsletter
December 2018

Featuring article by Professor
Gus A Baker and much more!

Facilitate Expert Solutions Ltd look
after a number of Clinical Neuro-
Psychologists throughout the UK
together with other Medico-Legal
Experts in different fields.

We are a small company whose ethos
is to ensure personalised, efficient service
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**Facilitate
Expert**

Solutions Limited

facilitateexpertsolutions.co.uk
07971 012 645

14th Floor
The Plaza
100 Old Hall Street
Liverpool
L3 9QJ





This month our guest author
is Professor Gus A Baker

M Clin Psychol, C Clin Psychol, PhD, FBPSS

When is an opinion, an expert opinion?

The last three decades has seen a proliferation in the use of Clinical Neuropsychologists as expert witnesses in the legal medical setting, particularly in the areas of medical negligence or personal injury compensation.

Clinical Neuropsychologists are being recognised as having an expertise regarding brain and behaviour relationships. It is this expertise that has been recognised as being important in these areas.

This development raises two important issues: [1] How does the court determine expert neuropsychological opinion? [2] What are the attributes of an expert in the field of Clinical Neuropsychology? In this short article I will try to draw out what I believe are the critical issues to address the above questions.

Defining expertise

In the US "a witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if: [a] the expert's scientific, technical or other specialised knowledge will help the trier of fact to understand the evidence or to determine a fact or an issue; [b] The testimony is based on sufficient fact or data; [c] The testimony is the product of reliable principles and methods; [d] The expert has reliably applied the principle and methods to the facts of the case.

Importantly in the US, the testimony provided by the Clinical Neuropsychologist [CN] has to be sufficiently valid and reliable and generally accepted in the profession.

The recent BPS Guidelines (2018) point out the following:

"When lawyers seek to introduce expert psychological evidence, it is the judge in the case who decides whether an individual has the requisite expertise to give evidence with the potential to be relevant to the case. The judge also decides whether what the expert asserts is relevant and therefore admissible in law. There will be instances where the judge accepts the expert as such, but ultimately excludes the expert's evidence in part or in full."

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Attributes of an Expert Clinical Neuropsychologist

In UK the list of attributes that are necessary for an individual to be deemed a psychological expert are as follows:

- Qualifications and/or degree(s) in the area(s) in question;
- A number of years of post-doctoral/post-qualification experience;
- Academic, professional and scientific publications in relevant areas;
- Demonstrations of professional practice, competence, specialist knowledge and expertise with a bearing upon the issues in the case; and
- Current experience in applying psychology in the area of claimed expertise.

In respect of Clinical Neuropsychology, there are very specific attributes and these include the following:

- That the CN practices scientific and ethical neuropsychology
- That the CN utilises specialist knowledge
- That the CN avoids jargon in their evidence
- That the CN is knowledgeable about neuropsychological methods.

HAVE YOUR SAY

Seeking articles for the next edition.
Wide ranging topics, share your experiences.

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The Neuropsychological report

The preparation of the Neuropsychological report can be challenging and complex and usually requires a significant amount of work, particularly in high value cases. The report should contain multiple sources of data including clinical observation, history prior to the index event, collateral sources, results of formal testing using a battery of standardised tests, consideration of the impact of the index event and importantly a clinical formulation.

The opinion section should take consideration of all relevant sources of information. There should be awareness of minimising bias. Care should be taken when making diagnosis. The CN should be aware of the rates of relevant symptoms and all possible etiological considerations when developing differential diagnosis. The CN has also to be aware of the limits of their own competencies.

Challenges and Pitfalls to providing expert opinion

There are several challenges and pitfalls to providing expert CN opinion and I have addressed them as questions to be considered:

[1] Are you familiar with the minimum standards necessary to provide expert opinion?

[2] Are you familiar with the court rules relating to the content and scope of reports and the duties of an expert generally?

[2] Have you kept abreast of developments in the fields relevant to the report?

[3] Do you have the relevant experience and qualifications?

[4] Would you be considered an expert by your peers?

[5] Have you got indemnity insurance?

[6] Have you undergone specific training or do you have specific experience in presenting evidence in court, participating in joint statements and attending case conferences.

Unfortunately there are no specific training programmes in the UK in relation to being recognised as an expert witness in CN. The most appropriate path is gaining supervision by those already recognised in the field. There is another challenge!

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an event or seminar?
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We are currently planning our events for the next six months

Our first event 'Speed Dating for Experts' will take place in Spring 2019.

With a real mix of Claimant and Defendant lawyers together with fellow Medico-Legal experts you are sure to gain more exposure in the field. To register your interest please visit our website.

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Professor Gus A Baker PhD • C Clin
Psychol, M Clin Psychol FBPSS MEWI



Claire Labio
Director

claire@facilitateexpertsolutions.co.uk

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We also run a **Barrister Practice Management** business. This links together nicely with Facilitate as we use some of our experts for **Seminars, Mock Inquests, Trials** etc. If you would like to be considered please contact us > claire.labio@completecounsel.co.uk