

## Victim Personal Statements and assessing psychological harm CPD VIII F (R v Chall and others)

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Corporate Crime analysis: Whether a victim personal statement (VPS) provides evidence which is sufficient for a finding of severe psychological harm depends on the circumstances of the particular case and the contents of the VPS when determining sentencing. Clea Topolski, barrister at Charter Chambers, discusses R v Chall and others to aid those practitioners advising victims of crime to prepare a VPS.

*R v Chall and others* [\[2019\] EWCA Crim 865](#)

### **What are the practical considerations of this judgment for those advising the victims of crime, particularly in respect of creating a victim personal statement?**

The court was specifically constituted to deal with five cases that concerned the significance of VPS in sentencing exercises. The five cases were otherwise un-connected.

The court gave guidance as to what practical considerations should be given when advising the victims of crime to prepare a VPS, with particular emphasis on adherence to the relevant Criminal Practice Direction.

Part VII (Sentencing) F of the consolidated Criminal Practice Directions 2015 makes clear that, if a victim chooses to make a VPS, the court will take it into account when determining sentence. The VPS and any evidence in support should be considered and taken into account by the court, prior to passing sentence. Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be in proper form, that is a witness statement made under [section 9](#) of the Criminal Justice Act 1967 or an expert's report, and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. The maker of a VPS may be cross-examined on its contents.

In all cases, it will be appropriate for a VPS to be referred to in the course of the sentencing hearing and/or in the sentencing remarks. The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

### **Why did the issue in respect of a judicial finding of severe psychological harm arise?**

All five individuals brought their respective complaints in respect of judicial findings of severe psychological harm, in their individual cases. The appellants (and in one case the applicant) argued that in each case, the judge was wrong to find severe psychological harm in his/her assessment of the victims.

In each case, a VPS had been read by the court in advance of sentencing. At the centre of each of the grounds of appeal, was the submission that the judge reached a manifestly excessive sentence as a result of the finding of severe psychological harm. In one case, it was submitted that there should have been expert evidence to assess the severity of psychological harm to the victim.

The court was asked to resolve each of the individual grounds of appeal, and also assist in answering the following questions:

- must the court obtain expert evidence before making a finding of severe psychological harm
- if not, on what evidence can it act
- in particular, can the court make such a finding on the basis only of the contents of a VPS

## **What is the relevance of this to the sentencing process in general and, more specifically, the tendering and assessment of VPS?**

The sentencing process is governed by the principle found in [section 143\(1\)](#) of the Criminal Justice Act 2003, that states:

'In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused.'

Harm and culpability underpin the structure of certain sentencing guidelines which, at step 1, direct the sentencing judge to assess culpability and harm by reference to specified factors. Once the level of harm and culpability have been identified, the offence/offender is then placed into a particular sentencing category. Within the categories a sentencing starting point is identified, as well as a sentencing range.

The provision of a VPS is used by a sentencing judge to assess what psychological impact a particular offence has had on the complainant, which in turn provides the judge with evidence to assess the harm caused by any offender (step 1 of an applicable sentencing guideline).

A VPS will be used to inform the judge as to whether the psychological harm expressed by a complainant is at a level that could normally be expected as being the victim of crime, or better categorised as severe in the circumstances.

If severe psychological harm is found to be present, this could elevate the offending into a higher category altogether.

## **How did the court deal with these issues?**

The court addressed the issues globally as a means of laying down the principles underpinning the sentencing process (as outlined above) and the fact that, when a judge comes to assessing the psychological harm of any complainant, this must be an evidence-based exercise. This exercise was considered to be fact specific, which could be based on the judge's assessment of the complainant in live evidence, and/or what is said in a VPS. It could, of course, be a combination of the two.

The court drew the distinction that such an assessment is not a clinical assessment of the victim's psychological state. Of course, it would be open to a sentencing judge to order further expert reports to address any mental health difficulties that any victim experienced either present day or historically. But the court made clear that such expert evidence was not obligatory if, in the sentencing tribunal's judgement, it was an un-necessary exercise.

## **What guidelines did the court lay down firstly in respect of the assessment of severe psychological harm and secondly in terms of tendering and assessing VPSs in the context of the sentencing process?**

The court lay down the following guidelines in answer to the above question:

- expert evidence is not an essential precondition of a finding that a victim has suffered severe psychological harm
- a judge may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a VPS, and may rely on his or her observation of the victim while giving evidence
- whether a VPS provides evidence which is sufficient for a finding of severe psychological harm depends on the circumstances of the particular case and the contents of the VPS

- a VPS must comply with the requirements of the Criminal Practice Direction and be served on the defence in sufficient time to enable them to consider its contents and decide how to address them. If late service gives rise to genuine problems for the defence, an application for an adjournment can be made

*Clea Topolski is a criminal defence barrister with several years' experience. Topolski specialises in defending those accused of serious violence and sexual offences. Topolski practises regularly on the south-eastern circuit and beyond and is regularly instructed on high profile and complex cases.*

*Interviewed by Barbara Bergin.*

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