

321.2a *Female defendants*

R v Perrett 2019 EWCA Crim 695 D was convicted of six counts of indecent assault against a boy. She had sex with a 14-year-old boy, B, on two occasions. Held. The guidelines are gender-blind to assist judges in all cases of sexual offending.

321.6a *Severe/significant/serious psychological harm, How to determine*

R v Chall and Others 2019 EWCA Crim 865 Five defendants, C, M, W, N and D, had their cases joined together to decide the proper approach to determining ‘severe psychological harm’ in the guidelines. The main offences were, indecent assault for C, assault of a child by penetration for M, wounding with intent for W and rape for N and D. It was agreed that expert evidence was not necessary in every case. Held. It is an assessment which the judge alone must make, even if there is expert evidence. The judge is making a judicial assessment and not a medical judgment. For example, it is not for the judge to say, in the absence of expert evidence, that the account given in a victim personal statement (VPS) and/or the demeanour of a victim when giving evidence shows that the victim is suffering from PTSD. To list categories of adverse impact or of commonly encountered signs and symptoms would be impracticable. An analogy might be drawn with the assessment a judge has to make when considering whether an offender is dangerous.

para 22 Save where there is an obvious inference to be drawn from the nature and circumstances of the offence, a judge should not make assumptions as to the effect of the offence on the victim. The judge must act on evidence. The court is not prevented from acting on it merely because it comes from a VPS. para 23 Whether the VPS does provide a sufficient basis for the judge to make a finding of severe psychological harm will depend on the circumstances of the case and the contents of the VPS. To take an obvious example, a VPS written by a mature adult setting out the effects of historic sexual abuse in his or her childhood may provide very clear evidence of the long-term and severe psychological harm which has been suffered; whereas a VPS written only a few weeks after the offence may provide clear evidence only as to the immediate consequences of it and be insufficient to enable the judge to make any safe finding as to the severity and likely duration of any psychological harm. In *R v Forbes 2016 EWCA Crim 1388* the court said, “The effect on the victims can be devastating. Where the judge has heard evidence from the victims, then he will be well placed to make that assessment. However, it must be borne in mind, so that double counting is to be avoided, that the starting points and sentencing ranges provide for the effect on the victim which is the inevitable effect of this type of serious criminal behaviour. There has to be significantly more before harm is taken into account as a distinct and further aggravating factor and/or before a judge makes a finding of extremely severe psychological or physical harm so as to justify placing the offence in the top category of harm.” In a rape case there will inevitably be at least some psychological harm. The sentence levels for category 3 harm reflect that baseline level of harm. Within the category range, a sentencer may move upwards from the starting point to reflect the fact that the psychological harm suffered in a particular case, though falling short of ‘severe’, is significantly greater than would generally be seen in a case of rape.

The judge must keep in mind that the intensely personal nature of a VPS may sometimes call for caution as to whether the harm suffered by the victim may, unintentionally, have been overstated. It is important that the VPS should express the victim's own experience, and it is entirely understandable that the expression will sometimes be in very emotional terms. The judge must, nonetheless, make a dispassionate assessment. Whilst the defence are entitled to cross-examine the author of a VPS, we agree with counsel's submissions that it is a right which will only very rarely be exercised, for a number of obvious reasons, including the risk that the process of cross-examination may actually increase the psychological harm suffered.

para 36. In summary: 1 Expert evidence is not an essential precondition of a finding that a victim has suffered severe psychological harm. 2 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 whilst giving evidence. 3 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. 4 [Not listed as it sets out the law Re VPS which is set out elsewhere in the book].

321.7a Very serious offending

(offending with a pre-plea discount of 25+ years)

R v Falder 2018 EWCA Crim 2514, 2019 1 Cr App R (S) 46 (p 309) D pleaded to 137 offences all of which were either sexual in nature or sexually motivated. The offences included intentionally encouraging rape (and rape of a child), causing or inciting sexual exploitation of a child, causing or inciting a child to engage in sexual activity involving penetration, blackmail, fraud by representation, forced compulsory labour, making indecent images of children, possession of extreme pornography and voyeurism. The offending started with voyeurism in 2007 and moved to offending on the Internet in 2010. The Judge divided the offending into six categories. The voyeurism offences involved eight female victims of whom D had taken 27 videos by using eight hidden cameras. He secretly recorded them in bathrooms and lavatories, including student halls of residence, his parents' home and at the family's holiday home. Some of the victims regarded D as a friend. He hacked into one of the victim's Facebook account and replaced her profile picture with an image of her naked. He sent an e-mail to one of his victims containing naked images of her and said that unless she responded to him he would share the images. The second category of offences involved blackmail, sexual exploitation, fraud and distribution. D ruthlessly targeted more than 20 victims, most of them female and aged under 18. One victim was aged only 13. D sought out victims who were both young and vulnerable by using websites such as those dedicated to people suffering from anorexia. In one of his deceptions, he posed as a female artist who suffered from depression and who found therapy in making life sketches from photographs. D offered money in return for naked pictures. Once his selected victim had been persuaded to provide initial images, D would ask for more and continued to offer (though never actually made) further payments. Having acquired the images he wanted, D then threatened to disclose them to family and friends unless his victim obeyed his commands. Other victims were required not only to provide sexual images of themselves but also to engage in utterly degrading and demeaning conduct such as making recordings of themselves licking soiled toilet brushes, pinning bulldog clips to their breasts and vaginas and holding up signs containing racist or homophobic remarks. In an e-mail exchange with another like-minded individual about one of D's victims whom he knew to be aged 14, D boasted that he was trying to make her trust him so that she would send him nude photographs. He added that he was "also encouraging her to try to be anorexic too." D also said that he wanted to "see how much I can mentally fuck her up. I think there's even a bit of a chance of suicide." D plainly derived pleasure from the anguish he caused to others. He threatened one teenage girl that he would harm her friends and family and arrange for Social Services to take her younger brother into care. He boasted that, because he was completely untraceable, any attempt by a victim to end communication with him, "won't hurt me but will end badly for you." Many of D's victims began to self-harm and four attempted suicide. The third category of offending involved D encouraging rape and other sexual offences against a child, aged 2, in the United States. D was acting jointly with two US citizens, one of whom was the child's father. He has recently been sentenced in America. D encouraged the man to provide images of the child being raped. He received images of the child being orally raped and other images of torture. The fourth category related to offences involving forced compulsory labour, blackmail and child sexual exploitation in relation to a man, V, in the United States then aged 19 or 20. D first enticed V to send indecent images and then proceeded to blackmail him over many months. During that time D instructed V to carry out and record increasingly degrading and unpleasant acts such as smearing faeces over his face and eating soiled lavatory paper. D ordered V to make covert recordings of his mother and sister using the bathroom and to upload to an internet chatroom a video in which V spelled out, in repellent and racist terms, a fantasy of kidnapping and raping a young black girl. D said that if V committed suicide, which V had indicated he was considering, it wouldn't stop D from distributing the images and

recordings to V's friends and family and that he would make them available on websites where blackmail victims are shared and "people basically compete to see how much they can ruin the victim's life." The fifth category of offending related to encouraging others to commit offences and peddling material on chat websites. D encouraged the making and distribution of indecent images of children and posted videos and images of a sickening and distressing nature. The final category involved the possession and distribution of indecent imagery. A search of D's computer after his arrest revealed nearly 14,000 indecent images of children, 1,251 videos, 49 prohibited images and 52 extreme pornographic images. D was now aged 30 with no previous convictions. He grew up in a loving family and excelled at school. He had a degree and a PhD and was a university lecturer at the time of his arrest. The Judge found D to be a dangerous offender and considered whether the offending justified a life sentence. He concluded that public safety would sufficiently be protected by a lengthy extended determinate sentence. He took four of the categories and passed four consecutive extended sentences for the overall offending and went on to give an overall sentence for each category of offending which resulted in a total sentence of 65 years. The Judge gave full credit for the pleas, making 43 years and 4 months and made a further reduction for totality. Held. The most serious aggravating features were: a) the duration of the offending which was continuing when D was arrested, b) the targeting of many vulnerable victims, which was followed by a cynical exploitation of their specific weaknesses, c) the remorseless, protracted pursuit of his victims, d) D's disregard of their suffering and pleas to be left alone, e) the recording and preservation of the imagery, which was used not only as leverage for blackmail but as a form of currency with like-minded individuals on the dark web, f) D's encouragement and incitement of others to commit dreadful crimes against very young victims, g) the conspiracies with other individuals, h) the careful planning and i) the elaborate steps taken to conceal his identity. The Judge failed to have sufficient regard to totality. There can be no criticism of his approach of dividing the offending into categories. However, this approach inadvertently caused him to lose sight of the full extent of overlap between categories of offending, and therefore to make insufficient allowance when considering totality in this very difficult case. 33 years' extended sentence (**25 years'** custody, 8 years' extended license) not 38 years' extended sentence (32 years' custody, 6 years' extended license).