

Supporting victims when they need it most

We must do better for victims of crime. Now is the time for all therapists to finally get to grips with pre-trial therapy, says **Jill Swindells**

Imagine you've suffered or witnessed a serious crime, like rape. Perhaps yesterday, or 15 years ago, and it's haunting you. You're unsure what to do - report it to the police or not? Or, after reporting, you're regretting it. You're fearful of everything the process might involve: how long it will take - perhaps a year or more; the scrutiny of your private life; family and friends' judgment; intimidation; appearing in court and so on - the list is endless and it's eroding your mental health. It would seem like the ideal time to seek professional therapeutic support to help you cope and make some important decisions that could affect your ability and resolve to seek justice and stay sane, or alive. But victims and witnesses of crime are sometimes advised by the police and others in the Criminal Justice System (CJS) not to seek therapeutic support, lest it 'taint' their case and, as a result, it fails to proceed to court or is thrown out.

Rape and sexual violence survivors are forced to 'choose between accessing mental health support or abstaining for the best possible chance of securing a conviction - and endangering their mental health in the process',¹ concluded an investigative news report published last year. In July this year, the Crown Prosecution Service (CPS) released data showing that convictions for rape were at an all-time low in the UK. Max Hill QC, the Director of Public Prosecutions, said: 'It is clear that more needs to be done both to encourage victims to come forward with confidence, and to support them through the criminal justice process so the gap between reports of rape and cases that reach the courts can be closed'.²

Part of the CPS strategy to close the gap and provide better support includes updating the 18-year-old guidance on pre-trial therapy (PTT),³ emphasising that victims of crime

should never be discouraged from PTT. I wonder if we, as a profession, are ready and able to play our critical part going forward? To date, I believe we have failed to embrace PTT and deliver it successfully, so we share some responsibility for letting down victims on whom the prosecutions are dependent. You may not offer pre-trial therapy; you may not even have heard of it, but I believe all therapists have a responsibility to victims and witnesses of crime to know what it involves.

What is PTT?

Essentially, PTT is an adapted form of your usual therapeutic practice that supports victims of crime while remaining objective, ensuring their credibility as witnesses is maintained. It's a bit of a minefield but as one of my PTT clients put it, the therapist's job is to show the client 'where the mines are, how they can explode and how it can be limited and worked around, rather than stamping on it to see if it explodes'.

It was designed to support the more vulnerable victims and witnesses and enable them to give their best evidence in court. The Ministry of Justice provides funding to some specialist counselling agencies to provide PTT free of charge. Alternatively, victims and witnesses may be able to seek a commissioned service from their local victim support provider. But it's a postcode lottery and their

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only other option is to self-fund and seek criminal injuries compensation to cover the cost post-trial (if they're lucky enough to be advised that this is possible).

Those eligible for PTT include all children under 18 years and adults deemed to be vulnerable or intimidated, such as those with physical or mental health difficulties or learning, hearing, speech and language difficulties or capacity issues, the elderly or frail, all victims of sexual or domestic abuse or weapon-related crime, and anyone at risk of being intimidated. Unless their vulnerability increases in the meantime, all other adult victims and witnesses are advised against any therapeutic interventions pre-trial and, ideally, signposted to Victim Support in the community and the Witness Service in court for practical and emotional support.

Flaws in the system

There is a serious lack of awareness and understanding of PTT within both the CJS and the counselling world, as well as confusion about what PTT is and the use of inconsistent terminology - is it counselling? Is it a niche area or relevant to all therapists?

The original PTT guidance³ highlighted the need for appropriate training to better equip therapists, as well as to help criminal justice professionals overcome their reservations about PTT. It stated, 'As the courts become more familiar with the provision of therapy prior to the criminal trial and more confident in the standards and knowledge of the agencies providing it, anxieties will become less. Training for professionals providing therapy and for the judiciary and legal profession will be of value.' Yet, to my knowledge, no such training has been provided and the situation today is much the

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same as 18 years ago. A few PTT practitioners, myself included, are sharing their knowledge and experience in workshops commissioned by increasingly concerned specialist agencies and groups of independent therapists.

For my counselling degree research project,⁴ I interviewed 10 independent and agency therapists who worked with victims and witnesses of crime, primarily sexual or domestic abuse. I found that limited awareness, understanding and use of the PTT guidance among therapists (along with inadequate supervision) risked therapy being inappropriate or ill-conceived for both potential and actual pre-trial clients. The key requisites of therapy in the context of criminal justice, along with potentially conflicting legal and ethical issues, appeared not to be fully appreciated by therapists at all stages in the process.

I found that there was an abysmal lack of promotion, information, advice and

training in PTT, and that both the CPS and the counselling profession have failed to raise awareness of PTT effectively, or provide appropriate training for therapists and CJS stakeholders at all levels (including judges, the police and victim support volunteers).

Better training would enable everyone to offer appropriate and proportionate responses to victims and witnesses to inform, reassure and signpost potential clients, as well as raise the understanding and expertise of therapists delivering PTT.

Key revisions

Although there was never a requirement for a client to ask permission from anyone in the CJS to receive PTT, it was advised that PTT commenced after a police statement had been taken whenever possible. However, the revised guidance allows therapy to start immediately. It suggests that therapists simply encourage

clients to report the crime(s) suffered as soon as possible, where relevant.

The previous guidance recommended therapists 'avoid discussing the evidence... including exploring in detail the substance of specific allegations made'. It acknowledged clients may derive therapeutic benefits from talking about their experiences, but cautioned that 'any detailed recounting or re-enactment... may be perceived as coaching... [and] the criminal case is almost certain to fail as a consequence of this type of therapeutic work'. It suggested that clients 'should never be encouraged to extend their account of the offending behaviour which they have suffered'.³ This approach was perceived to help preserve the integrity of the victims' and witnesses' evidence and their ability to provide a freely recalled, untainted account to both police and court, despite any time lag.

The revised guidance⁵ acknowledges that 'therapy that meets the particular needs of a victim will serve to enhance the ability of that victim to give their best evidence at court', and that 'all victims must be fully supported to be able to give their best evidence with the minimum of distress'. Clients will be able to discuss what has happened to them, but therapists are required to document verbatim, on a record sheet, all client disclosures not yet known to the police; then to notify the police personally, with the client's consent, or encourage clients to contact them again directly. As therapists are rarely privy to the details contained in statements, this could be quite difficult to navigate.

Some aspects of the guidance are relatively unchanged, but are more detailed and explicit:

- Clients must be made aware when contracting that confidentiality cannot be guaranteed, as therapy notes and records can be requested (or subpoenaed if not forthcoming).
- The therapist may be required to interact with the police or CPS, as well as called to court as a witness.
- Brief, factual notes of each session, including the date, time and who was present, need to be kept.
- All notes and records, including art work, can be requested.
- After a written request is received and before copies are sent on securely, clients should be given the opportunity to review their notes.

Therapist and client frustrations

For all of these reasons, therapists may still feel intimidated by and cautious of PTT, as it continues to expose them to a legal and ethical minefield. Based on my experience in the field, some avoid the work for fear their notes might be subpoenaed or they are called to give evidence themselves, potentially compromising the therapeutic relationship. Others seem unaware or uninformed and unconcerned, believing that it has little or no relevance to their practice.

Therapists have also had to deal with client frustrations caused by the old guidance. One client described PTT as 'therapy where I can't speak about what's happened - it's ridiculous... Everything that has happened and the way I'm feeling is a direct result of that incident, yet when I go to these therapy sessions, I'm not allowed to talk about it, and I'm aware that when I do, I'm either going to be stopped or I'm going to be warned against it.' Another said her PTT therapist was 'doing their best to help', but that, 'while I can talk about how I'm feeling now or last week, I can't relate back to why I'm feeling like that'. Being able to talk about what's happened removes one obstacle which many therapists and clients struggled with, but presents us with a new challenge - that of working out when verbatim note-taking is necessary.

But I believe that, when delivered with confidence, PTT has provided appropriate therapeutic support to clients, and can continue to do so. One of my PTT clients said: 'I found the first few sessions difficult because you're finding the boundaries. But I also felt supported, listened to, believed, encouraged. I was spoken to like an adult, not the child I felt. If you have someone talking to you as an adult when you're feeling like a child, it makes you stand back, grow up and think, hang on, I am an adult! I do have a brain, I can say that and do this. I do want justice.'

Recovery and justice mindset

At the beginning and end of my in-depth PTT workshops, I invite a show of hands on whether participants feel PTT silences or empowers clients, and often the majority opt for 'silence'. At the end of my workshops, the show of hands favours the view that PTT has the potential to empower our clients.

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Therapists feel better equipped to explain PTT to clients, obtain their fully informed consent (or refer them on), provide choices, enable clients to be more proactive and work appropriately therapeutically. Consequently, clients start to regain the power taken from them as victims of crime, which is so much part of the recovery process.

I always recommend workshop attendees discuss the PTT guidance in supervision and find their own way of working with it. I urge all therapists to do the same. Even therapists who have no intention of offering PTT need to be aware of the potential pitfalls of working with any client who has been a crime victim or witness, even though the client might not see themselves as such, nor present initially with any intention of reporting it. If they later decide to report the crime, the notes of their therapy may be called as part of the evidence. Also, as more enlightened practitioners, we will be able to challenge and update misinformed CJS stakeholders, as I have done many times.

I don't believe victims need to choose between justice and recovery. PTT has the potential to help us balance our clients' recovery with gaining justice. Achieving justice can itself have real therapeutic value, when appropriate support is in place.⁶ And we can resume our normal therapeutic approach post-trial or if the case fails to get to court as 'the same concern about external evidence... necessary in the courtroom is not required in recovery and healing'.⁷

We must do better by victims, and I believe that we can. The revised guidance, and the public consultation on it, is a good first step. But without widespread PTT training for therapists and CJS stakeholders, as well as successful promotion and adequate funding, too many victims of crime will continue to be left to navigate the CJS and suffer the impact of crime without appropriate support. ■

■ The public consultation on the new PTT guidance is open until 30 October 2020. It can be accessed here: www.cps.gov.uk/consultation/public-consultation-guidance-pre-trial-therapy

■ The BACP Good Practice in Action resources Legal Resource: *Working with CPS guidance on pre-trial therapy with adults (GPIA 070)* and Legal Resource: *Sharing records with clients, legal professionals and the courts (GPIA 069)* can be found at www.bacp.co.uk/gpia

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