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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 22/019385
	Delivered: 27/05/2026

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST**

THE KING

v

THOMAS McKENNA

**IN THE MATTER OF AN APPLICATION BY THE LEGAL SERVICES AGENCY
FOR THE RECOVERY OF DEFENCE COSTS**

**Charles MacCreanor KC & Fiona O’Kane (instructed by the Public Prosecution Service)
for the Crown**

**Gregory Berry KC & Kevin Magill KC (instructed by The Elliott-Trainor Partnership
Solicitors) for Thomas McKenna**

**Aidan Sands KC & Chris Summers (instructed by Departmental Solicitor’s Office) for the
Legal Services Agency**

**Patrick Lyttle KC & Conan Fegan (instructed by McNamee McDonnell Solicitors) for
some of the victims of Thomas McKenna**

HHJ GILPIN

The application

[1] This ruling, made in the course of criminal proceedings, concerns an application by various victims of Thomas McKenna (“the assisted person”) that they be “heard” by this court when, in due course, it considers the substantive application by the Legal Services Agency that a Recovery of Defence Costs Order (“an RDCO”) be made. This ruling is not the adjudication as to whether an RDCO should be made.

[2] While the court has been informed there are 17 victims making this application, they have not been specifically identified, even to the court. No issue with this was taken by the Legal Services Agency and for the purpose of this

application the court is prepared to proceed in this somewhat unconventional fashion.

Background

[3] The assisted person was charged with committing serious sexual offences against numerous individuals. He wished to have his legal costs in conducting his defence met out of public monies, namely those forming the Legal Aid Fund.

[4] To require the Legal Services Agency, who administer the Legal Aid Fund, to meet his legal costs, the assisted person needed to obtain a 'Defence Certificate' from the court.

[5] In such circumstances the court will only grant a Defence Certificate, pursuant to Article 29(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, if it appears to the court that:

- (i) The defendant's financial means are insufficient and
- (ii) Either:
 - The defendant faces a charge of murder; or
 - The court considers it desirable in the interests of justice that he should be granted a Defence Certificate.

[6] In the instant case to satisfy the court that his financial means were insufficient the assisted person, in accordance with standard practice, completed a Statement of Means Form dated 13 September 2020 in which he provided details of his finances for the court's consideration.

[7] Having considered both the assisted person's financial means and the interest of justice test, on 10 March 2021 the court granted the assisted person a Defence Certificate, meaning the legal costs of conducting his defence would, in the first instance, be met out of the Legal Aid Fund.

[8] However, under the provisions of The Criminal Legal Aid (Recovery of Defence Costs Orders) Rules (Northern Ireland) 2012 ("the 2012 Rules") the Legal Services Agency is empowered to seek an RDCO against an assisted person, who has been convicted in the Crown Court, in respect of some or all of the costs the Agency has incurred in funding the defendant's defence on foot of a Defence Certificate.

[9] The purpose of obtaining an RDCO is to allow the Legal Services Agency to seek to have returned to the public purse such part of the costs of the legal representation provided under the Defence Certificate to the assisted person as is

reasonable in all the circumstances of the case. If the Legal Services Agency is successful in obtaining an RDCO against an assisted person, it may, pursuant to Rule 17 of the 2012 Rules enforce the RDCO as it would a civil debt against the assisted person.

[10] In the instant case sometime after the Defence Certificate was granted on 10 March 2021, the Legal Services Agency, took the view the assisted person's financial means merited further investigation and invoked Rule 3(2) of the 2012 Rules sending the assisted person a Financial Means Enquiry Form in which a series of questions were posed in relation to his financial means.

[11] The assisted person completed this form, dated it 2 June 2021 and returned it to the Legal Services Agency.

[12] In relation to his financial means in both the 2020 Statement of Means Form and in the 2021 Financial Means Enquiry Form the assisted person disclosed he had the following assets:

- (i) A Bank of Ireland bank account, which as at 31 March 2021 stood at £55,642.49;
- (ii) A Crossmaglen Credit Union account, which as at 1 December 2020 stood at £5,845.05; and
- (iii) A property at 10 Dundalk Road, Crossmaglen, County Armagh which was not subject to mortgage.

[13] Given the information the Legal Services Agency had received it decided to apply to this court for an RDCO. On 20 April 2023, it filed its application.

[14] The next day, 21 April 2023, the assisted person, having previously pleaded guilty to 162 sexual offences against 23 victims, was sentenced to an extended custodial sentence of 16 years with the extended license of seven years pursuant to the provisions of the Criminal Justice (Northern Ireland) Order 2008.

[15] In sentencing the assisted person, the sentencing judge did not make a Compensation Order pursuant to the Criminal Justice (Northern Ireland) Order 1994 as she was empowered to do so at that stage if she considered it appropriate.

[16] After the assisted person had been sentenced, by a letter dated 18 May 2023, McNamee McDonnell solicitors wrote to the solicitors acting on behalf of the Legal Services Agency. The heading in the said letter indicated their clients were "Victims of Thomas McKenna." In the body of the letter they explained they were acting for 17 of his victims. These victims were not identified in the said letter.

[17] The letter from McNamee McDonnell explained that the 17 victims wished to “be added” to the Legal Services Agency’s application for an RDCO.

[18] The concern the victims had was explained in the said letter as being, if the Legal Services Agency were successful in recovering the costs it had incurred in funding the assisted person’s defence from his assets:

“there is a risk of our clients, the victims, not being able to recover compensation from the defendant...”

[19] The letter from McNamee McDonnell:

- (i) indicated they would be “inviting the Crown Court judge to make a compensation order”; and
- (ii) invited the Legal Services Agency to withdraw its application for an RDCO or seek to have it adjourned until such times as their clients had pursued civil proceedings in the High Court against the assisted person.

[20] In due course the sentencing judge did receive submissions on the issue as to whether a Compensation Order pursuant to the provisions of the Criminal Justice (Northern Ireland) Order 1994 should be made. The Prosecution were of the view that in the circumstances of the case the making of a Compensation Order was not appropriate and in due course the sentencing judge declined to make a Compensation Order.

[21] In response to McNamee McDonnell’s letter of 18 May 2023 solicitors acting on behalf of the Legal Services Agency replied by letter dated 14 September 2023 in which they, inter alia, set out their view that:

- “(i) the 2012 Rules “were made to serve the wider public interest of ensuring that where a convicted defendant had the means to fund his own defence then he should pay some or all of his costs of legal aid rather than the public purse.”
- (ii) there was no evidence that the making of an RDCO would unfairly prevent the victims from being fully compensated.”

[22] The Legal Services Agency did not accept the invitation from McNamee McDonnell to withdraw its application for an RDCO.

[23] The victims of the assisted person, represented by McNamee McDonnell, have commenced civil proceedings in the High Court seeking damages from him

and others. These proceedings have not yet concluded with psychiatric reports on the injuries sustained by the victims awaited. While Writs of Summons have been issued and served, Statements of Claim have not been served.

[24] In addition to the civil proceedings in the High Court the victims are also pursuing criminal injury claims for compensation under the applicable scheme administered by Compensation Services.

[25] Given the Legal Services Agency is continuing with its application before this court for an RDCO the victims wish to be “heard” when the substantive application is being considered and, in doing so, will invite the court to decline to make the order sought.

[26] The prosecution has to date played no role in this application. Solicitors representing the assisted person have been in attendance but otherwise have not participated.

[27] The court is grateful to both counsel for the victims and the Legal Services Agency for their written and oral submissions.

The positions of the victims and the Legal Services Agency

[28] In respect of the application for an RDCO the victims are not inviting the court to make them a party to the application brought by the Legal Services Agency.

[29] Rather they seek a ruling from this court that they, “have a right of standing to be heard” including being separately “legally represented” at the substantive hearing of the application for the RDCO.

[30] The victims’ written submissions succinctly set out the basis of their case where it is stated the right to be heard arises:

- “- pursuant to the 2012 Rules themselves
- and/or when [the 2012 Rules] are read with A1P1 and Article 8 ECHR, the Victims Directive 2012/29/EU and Practice Direction 2/19 Case Management in the Crown Court.”

[31] The Legal Services Agency submits that the 2012 Rules do not provide any statutory basis for the court to hear from victims. They further contend that the additional matters raised by the victims, even if read alongside the Rules, have no bearing on the proper construction of those Rules by the court.

Pursuant to the 2012 Rules themselves

[32] When in due course the court comes to determine the substantive application for an RDCO it will do so in accordance with Rule 5 of the 2012 Rules which provides:

“5.—(1) The judge hearing the case shall make an RDCO against an assisted person except as provided in paragraph (2) or (3).

(2) Subject to rule 12, an RDCO shall not be made against an assisted person who —

- (a) has not been convicted;
- (b) is directly or indirectly in receipt of —
 - (i) income support;
 - (ii) income-based jobseeker’s allowance;
 - (iii) guarantee state pension credit; or
 - (iv) income-related employment and support allowance;
- (c) has none of the following assets —
 - (i) capital over £3,000;
 - (ii) equity in that person’s principal residence over £100,000; or
 - (iii) gross annual income of over £22,235; or
- (d) is under the age of 18.

(3) Subject to rule 12, an RDCO shall not be made where the judge hearing the case is satisfied that —

- (a) it would not be reasonable to make such an order, on the basis of the information and evidence available; or

- (b) the payment of an RDCO would, owing to the exceptional circumstances of the case, involve undue financial hardship in respect of the assisted person, their dependants or immediate family.”

[33] The victims submit that as Rule 5(3)(a) requires the court to determine whether it would not be reasonable to make an RDCO based on available “information” and “evidence” it should hear, ie evidence from the victims and/or submissions from their lawyers, as to how the making of an RDCO will impact on the victims.

[34] In support of this reading of the 2012 Rules Mr Lyttle KC prays in aid both Rule 7(b) and Rule 15.

[35] Rule 7(b) empowers the judge hearing an application for an RDCO to:

“order that any further information which is required shall be provided.”

[36] The submission made by Mr Lyttle is that the use of the word “any” in Rule 7(b) does not confine the court to requiring information from the parties to the RDCO application but is sufficiently wide to include information provided by or on behalf of the victims of an assisted person. Mr Lyttle submitted a judge hearing such an application will want to know what the position of such victims is.

[37] In relation to Rule 15 this gives a right to:

“the assisted person and any other person affected”

to appeal the making of an RDCO to HM Court of Appeal.

[38] In relation to Rule 15 Mr Lyttle submits the use again of the word “any” when describing the range of persons affected by the making of an RDCO having a right of appeal is sufficiently wide to encompass victims of an assisted person. He submits if such persons have a right of appeal it follows they have standing to be heard at first instance.

[39] In relation to the 2012 Rules generally the Legal Services Agency submit that while in other proceedings in the Crown Court, eg under section 46 of the Youth Justice & Criminal Evidence Act 1999 or Article 160A of the Proceeds of Crime Act 2002, specific provision is made for the participation of non-parties, no analogous provision is to be found in the 2012 Rules. In short, the Agency submits, the legislature could, in making the 2012 Rules, have chosen to expressly afford non-parties, including victims, a right of participation as has been done in other types of cases, but did not do so.

[40] In relation to Rule 7(b) the Legal Services Agency submit that the power of the court to order that further information is provided by this Rule, “is designed to complement and complete the powers of the Agency in Rule 3.”

[41] Rule 3 provides the Legal Services Agency the power to carry out “an investigation or further investigation” into the financial means of an assisted person.

[42] The Agency submits that as Rule 7(b) covers the obtaining of “further information” it is confined to the seeking of information within the general category already obtained ie that relating to the assisted person. They submit it does not give the court carte blanche to obtain information from anybody it wishes to.

[43] In further support of this reading of Rule 7(b) the Legal Services Agency note that Rule 12 sets out the mandatory consequence if information required by the court in exercise of the power in Rule 7(b) is not provided namely:

“an RDCO shall be made for the full costs of legal aid under the criminal aid certificate.”

[44] The Agency’s submission is if Rule 7(b) was to be read as the victims submit, the effect of Rule 12 would mean if the court asked the victims to provide information and they failed to do so, the court would be mandated to make an RDCO for the full amount of costs incurred under the Defence Certificate.

[45] Mr Sands, who appeared on behalf of the Legal Services Agency, noted the Rules do empower the court to seek information from others but drew the court’s attention to its restricted reach being only to the solicitor for the assisted person. Rule 10 provides:

“where requested to do so by the judge ... the solicitor for the assisted person shall provide an estimate of the total cost of legal aid which is likely to be incurred under the criminal aid certificate.”

Court’s conclusion on the 2012 Rules

[46] The legislature has chosen not to make express provision in the 2012 Rules for non-parties to participate in an application for an RDCO in the way that it has done so in other proceedings before the Crown Court.

[47] Tellingly it has done so for one category of a non-party and in respect of one discrete matter namely the solicitor for the assisted person and then only in respect of an estimate of costs (Rule 10).

[48] I am not persuaded that the Rules are to be read as affording such a right to victims of an assisted person by implication.

[49] In relation to the submission made on behalf of the victims that Rule 7(b) empowers the court to receive information from the victims, Rule 12 makes it clear that where a court has sought “information” pursuant to Rule 7(b) and it has not been provided then:

“... an RDCO shall be made for the full cost of legal aid incurred under the criminal aid certificate.”

[50] The sanction provided for in Rule 12 leads to the conclusion Rule 7(b) is directed solely against the assisted person.

[51] If Rule 7(b) was to be read as the victims contend, this could result in a situation where an assisted person has been fully co-operative and provided all information required of them but a non-party eg the victims have failed to provide information asked of them, yet the court has no discretion other than to make an RDCO for the full amount of legal aid incurred. To read the Rules in this way would be irrational.

[52] In relation to the submission that Rule 15, which allows “the assisted person and any other person affected” by the RDCO to appeal the decision to HM Court of Appeal, I am not persuaded the victims fall with the definition of “any other person affected” by the making of an RDCO.

[53] I note that Rule 5(3)(b), which sets out part of the test for the making of the RDCO, refers to two categories of persons, other than the assisted person, who could be affected by the payment of monies made by reason of it, namely the assisted person’s “dependents or immediate family.” No mention is made of an assisted person’s victims.

[54] Furthermore, an RDCO operates in personam against an assisted person. By reason of Rule 17 the Legal Services Agency can, if it chooses, enforce the RDCO as it would a civil debt. Rule 17 provides that the Legal Services Agency:

“... may enforce an RDCO in any manner which would be applicable to a civil debt between parties...”

[55] It will be a matter for the assisted person if the stage is reached whereby an RDCO is made against him as to how he chooses to satisfy it. It is premature at this stage to state that the victims will be affected by the making of the RDCO. It is not known what amount the assisted person will have to pay to satisfy any successful civil claims in the High Court; what financial resources he will have at that stage to meet them and how much of any damages awarded to victims will be paid by the

various other defendants (various legal entities being part of the Gaelic Athletic Association) sued alongside the assisted person in the High Court proceedings.

[56] Therefore, for the reasons set out above, I am not persuaded that the victims have a right to be found in the 2012 Rules to be heard in the extant application by the Legal Services Agency for an RDCO.

A right to be heard based on the 2012 Rules read with A1P1 and Article 8 of the European Convention on Human Rights (ECHR), the Victims Directive 2012/29/EU and Practice Direction 2/19 Case Management in the Crown Court

[57] In addition to their submission that the 2012 Rules provide a standalone right for the victims to be heard in an RDCO application, they also submit such a right exists when the 2012 Rules are read with A1P1 and Article 8 ECHR, the Victims Directive 2012/29/EU and Practice Direction 2/19 Case Management in the Crown Court.

The Convention Rights

[58] Mr Lyttle submits in the instant case two convention rights are engaged namely:

- (i) a right to property pursuant to Article 1 of Protocol 1 of the Convention (“the A1P1 right”); and
- (ii) a right to respect for private and family life pursuant to Article 8 of the Convention (“the Article 8 right”).

[59] The victims submit both these rights impose duties on the court in this case. Firstly, by reason of section 3 of the Human Rights Act 1998 that this court must read down the 2012 Rules in a Convention compliant manner and, secondly, by reason of section 6 whereby this court must not act in a way that is incompatible with any of the rights set out in the Convention. The result being, the victim’s submit, the court is required to “hear from the victims and receive representations on their behalf.”

A1P1 right

[60] Article 1 of Protocol 1 of the ECHR provides:

“(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as

it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

[61] In relation to the A1P1 right, the victims submit their extant civil proceedings for damages in the High Court against the assisted person create a legitimate expectation of obtaining enjoyment of property, namely the assisted persons financial resources and thus they enjoy a propriety right in them.

[62] In this regard, Mr Lyttle relies on two decisions of the European Court of Human Rights (ECtHR).

[63] In *Prince Hans-Adam II of Liechtenstein v German* (No. 42527/98, ECHR 2001 - VIII), a Prince sought restitution of a painting, by the Dutch artist van Laer, confiscated by Czechoslovakia in 1946 and later loaned to Germany. In its judgment at para [83] the court said in respect of A1P1:

“The Court notes that, according to the established case-law of the Convention organs, “possessions” can be “existing possessions” or assets, including claims, in respect of which the applicant can argue that he has at least a “legitimate expectation” of obtaining effective enjoyment of a property right.”

[64] In *Pressos Compania Naviera SA v Belgium* [1995] 21 EHRR 301, the applicants were shipping companies whose vessels were involved in maritime accidents in Belgian waters at a period before 17 September 1988. By a legislative measure named the “Act of 30 August 1988” the Belgium government sought to retroactively remove liability for incidents involving maritime pilots that occurred before 17 September 1988. However, the court held this retrospective extinguishment of claims amounted to unlawful deprivation of property. It was in this context, the deprivation of a right to bring a claim for compensation, the court held at para [31], a claim of this nature “constituted an asset” and therefore amounted to “a possession” within the meaning of the first sentence of A1P1.

[65] Given Mr Lyttle’s submission that the victims of the assisted person’s chances of succeeding in being awarded substantial damages in their civil proceedings are “a certainty” he argues the assisted person’s financial assets are properly to be considered as the victims’ property and thus they enjoy a “legitimate expectation of obtaining effective enjoyment of their right to damages as a property right.”

[66] Finally, in his oral submissions Mr Lyttle submitted the victims’ civil claims in the High Court constitute choses in action ie rights in the property of the assisted person enjoyed by the victims, which they can only recover by taking action rather than by taking physical possession.

[67] Mr Sands, on behalf of the Legal Services Agency, submitted the victims do not presently enjoy a right over the property of the assisted person and thus A1P1 is not engaged. He submitted the enforcement of any RDCO will result in the assisted person being deprived of his property, rather than the victims being deprived of theirs. He also submitted the instant case differs from *Pressos Compania Naviera SA* given in that case the various claimants were being deprived of their right to seek redress, something that is not what is happening in the instant case.

The court's conclusions on A1P1

[68] I do not agree with Mr Lyttle's submission that any judgment the victims obtain in the High Court will be akin to them having an equitable or beneficial interest in the assisted person's property, a judgment 'in rem.' The victims' civil cases, if successful, will result in the High Court making decrees that the assisted person must pay them a sum of damages. Such a decree will be a judgment, 'in personam' given it resolves the personal obligation resting on the assisted person to pay damages. Thus, the instant case differs from the scenario in *Prince Hans-Adam II of Liechtenstein's* case in which the Prince, unlike the victims, was seeking restitution of a specific item, a painting.

[69] Furthermore, as I have noted above in the civil cases pending in the High Court the assisted person is not the only defendant given various entities within the Gaelic Athletic Association have also been sued. If the victims succeed in their civil claims, they may well obtain a decree against one or more of the assisted person's co-defendants and could find one or more of these entities satisfy any award made in the victims' favour resulting in the victims having no recourse to seek damages from the assisted person.

[70] Similarly, if the Legal Services Agency's application before this court is successful they will obtain a Recovery of Defence Costs Order which they may, pursuant to Rule 17 of the 2012 Rules, enforce as "a civil debt between the parties." Such an order is also once again made 'in personam' and not 'in rem.' The Order will not be one made over the assisted person's property. It does not become a statutory charge in the same way property recovered or preserved by an assisted person under Article 17(7) of the Access to Justice (Northern Ireland) Order 2003 does.

[71] Finally, in relation to Mr Lyttle's submission that the victims' civil claims in the High Court each constitute a chose in action it is settled law that a chose in action does not include a right of action, such as, a legal right to recover damages arising out of an assault. *May v Lane* (1894) 64 LJQB 236 at 238, CA, per Rigby LJ.

Article 8

[72] Article 8 of the ECHR provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

[73] In relation to Article 8 Mr Lyttle relied on a decision of the Divisional Court in England & Wales, *R (on the application of B) v Stafford Combined Court* [2007] 1 All ER at 102. This case concerned the procedure when a defendant facing criminal charges seeks to obtain disclosure of the complainant’s medical notes and records. The Divisional Court held that procedural fairness required the complainant to be given notice of the defendant’s application and if she wanted to she could make representations to the court given her Article 8 rights in her own notes and records.

[74] Mr Lyttle submitted in the instant case the victims enjoy an interest in the assisted person’s financial assets in the same way the complainant did in her notes and records in the Stafford Combined Court case and thus like the complainant they too should be able to make representations to the court.

The court’s conclusions

[75] In my view the victims do not enjoy an interest in the assisted person’s financial assets. The assisted person’s financial assets are not the victims’ assets in respect of which they could claim some form of protection afforded by Article 8 which might give rise to a basis upon which they might make representations in the application for an RDCO before the court.

[76] In *R (Countryside Alliance) v HM Attorney General & another* [2007] UKHL 52 at para 10 Lord Bingham said of Article 8:

“the purpose of the article is in my view clear. It is to protect the individual against intrusion by agents of the state, unless for good reason, into the private sphere within which individuals expect to be left alone to conduct their personal affairs and live their personal lives as they choose.”

[77] In the instant case “the individual” Lord Bingham was speaking of as having the article 8 right is the assisted person not the victims.

[78] Therefore, for the reasons set out above on the facts of the instant case I find there to be nothing in the 2012 Rules that is incompatible with the convention rights relied on by the victims, namely Article 8 and/or Article 1 of the 1st Protocol, these rights are not engaged. The interpretative obligation in section 3 of the 1998 Act does not arise.

Victims Directive 2012/29/EU

[79] In addition to inviting the court to read the 2012 Rules with the convention rights noted above, the victims' submissions also invite the court to read them with the Victims' Rights Directive 2012/29/EU ("the Directive").

[80] The Directive is a measure of The European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

[81] In their written submissions the victims drew the court's attention to various provisions in the Directive which they submit:

"places an obligation on the state to provide appropriate support which facilitates the recovery of the victims and ensures that victims have sufficient access to justice. This includes protection from repeat victimisation, the right to be heard and the right to receive compensation".

[82] In relation to the Directive Mr Lyttle drew the court's attention to various provisions which he submitted are of relevance in the application for the RDCO namely:

- (i) Article 10 – a right to be heard in criminal proceedings;
- (ii) Article 13 – a right for victims who have the status of parties to be afforded legal aid;
- (iii) Article 16 – a right to a decision on compensation in the course of criminal proceedings;
- (iv) Article 19 – a right to avoid contact between the victim and the offender; and
- (v) Article 23 – a right of victims with specific protection needs to be afforded protection during criminal proceedings.

[83] However, in Mr Lyttle's oral submissions he indicated the victims were relying on the Northern Ireland Victim Charter of September 2015, this being the means by which the Directive has largely been given effect in this jurisdiction.

[84] The Victim Charter has its statutory foundation in section 28 of the Justice (Northern Ireland) Act 2015 (“the 2015 Act”).

[85] Section 28 provides:

- “(1) The Department must issue a Victim Charter.
- (2) The Charter must set out —
 - (a) the services which are to be provided to victims by specified criminal justice agencies and the standards which are to be expected in relation to those services;
 - (b) the standards which are to be expected in relation to the treatment of victims by such agencies.
- (3) In particular the Charter must include provision for a victim —
 - (a) to be treated with courtesy, dignity and respect;
 - (b) to be informed about the services available to victims;
 - (c) to be informed about —
 - (i) the progress of relevant proceedings, and the reasons for any delay in those proceedings, at such intervals or at such times as are specified;
 - (ii) the final outcome of relevant proceedings, within such time as is specified;
 - (d) where in the course of relevant proceedings a decision is taken not to prosecute a person in respect of the criminal conduct concerned, to be given the reasons for that decision within such time as is specified;
 - (e) to be informed about any special measures which may be available to the victim under Article 4 or 5 of the Criminal Evidence (Northern Ireland) Order

1999 if called as a witness in criminal proceedings arising out of the criminal conduct concerned;

- (f) to be informed about the opportunity to make a victim statement under section 33;
- (g) to have considered by an independent body any complaint against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency.

(4) The Charter may restrict the application of any of its provisions and, in particular, may restrict the application of any of its provisions to –

- (a) specified descriptions of victims;
- (b) victims of specified offences or descriptions of conduct;
- (c) specified criminal justice agencies;
- (d) cases where the criminal conduct concerned has been reported to the police.

(5) The Charter may provide for exceptions to its provisions, including in particular exceptions for the purpose of –

- (a) ensuring compliance with any statutory provision or order of a court;
- (b) avoiding jeopardising any criminal investigation or criminal proceedings;
- (c) avoiding endangering any individual.

(6) The Charter may include provision requiring or permitting the services which are to be provided to a victim to be provided to one or more other persons as well as the victim.

(7) The Charter may not require anything to be done by –

- (a) a person acting in a judicial capacity;
- (b) a person acting in the discharge of a function of a member of the Public Prosecution Service for Northern Ireland which involves the exercise of a discretion.

(8) In this section “criminal justice agency” means a body or person which has any functions relating to –

- (a) victims; or
- (b) any other aspect of the criminal justice system.

(9) A criminal justice agency must, in carrying out any functions mentioned in subsection (8), have regard to the Charter.

(10) In this section –

“criminal conduct concerned”, in relation to a victim, is to be construed in accordance with section 29(1);

“relevant proceedings”, in relation to a victim, means the investigation into the criminal conduct concerned, the taking of a decision whether to prosecute any person in respect of that criminal conduct and any criminal proceedings taken against any person in respect of that criminal conduct;

“specified” means specified in the Victim Charter.”

[86] Mr Sands provided the court with the “Transposition Note” being an Annex to the Explanatory Memorandum for The Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015, which sets out, in tabular form, how the various provisions of the Directive including those referred to by Mr Lyttle noted above have been implemented in the Victim Charter.

[87] While the Victim Charter provides a range of entitlements to victims in the course of criminal proceedings I am not persuaded they can be relied on by the victims in the instant case to require the court to hear from them in the course of the application for the RDCO.

[88] In *Arthurs v Chief Constable* [2024] NICA 70, the applicant sought to rely on certain provisions of the Victim Charter in support of her application that where the

police are contemplating an alleged offender's release on police bail she, as the alleged victim, had the right to be consulted by the police about whether bail should be granted and possible bail conditions.

[89] In dismissing the applicant's appeal the Court of Appeal said:

"In essence the appellant's case proceeds on the assumption that the Charter is, like the Human Rights Act, a human rights protection instrument which can be invoked by the individual in legal proceedings. We have substantial reservations about the correctness of this. These are based on, inter alia, section 28(9) of the 2015 Act and the absence of anything remotely comparable to the Human Rights Act machinery. However, given our primary conclusion and in the absence of any argument on the point, elaboration is inappropriate".

[90] I share the Court of Appeal's general reservations about any attempt to rely on the Victim Charter by an individual in legal proceedings.

[91] However, in the instant case the court notes that section 28(7)(a) of the 2015 Act makes it clear that the Victim Charter cannot impose a duty on "... a person acting in a judicial capacity."

[92] The outworking of this can be seen when one peruses the column in the Transposition Note as to who is responsible for implementation of the different parts of the Victim Charter (derived from the Directive) and finds no mention of it imposing a duty on the judiciary.

[93] I am not persuaded that the Directive, nor the Victim Charter impact on the reading of the 2012 Rules.

Practice Direction 2/19 Case Management in the Crown Court

[94] Practice Direction 2/19 revised, Case Management in the Crown Court, provides procedural guidance on how cases in the Crown Court should be conducted. Alongside the substantive Practice Direction there are ten annexes.

[95] Annex A is entitled a "Protocol for Vulnerable Witnesses in the Crown Court."

[96] The victims in the instant case satisfy the definition of "vulnerable witnesses" provided for in the Criminal Evidence (Northern Ireland) Order 1999.

[97] In Annex A at para A2 the 'Overriding Principles' of the protocol are set out.

[98] The victims in the instant case place reliance on para A2.1 which begins:

“it is the duty of the court to take ‘every reasonable step’ to encourage and facilitate the attendance of witnesses; to facilitate the participation of all relevant persons in the criminal justice process ...”

[99] It is accepted by the victims that Practice Direction 2/19 revised does not provide a free-standing right which can be invoked by an individual in legal proceedings. I agree with this.

[100] The section in Annex A on which the victims place reliance seems to me to be directed to the duty the court undoubtedly has to promote the participation of witnesses where they are required to attend court and give evidence. I do not find Annex A speaks to the issue of victims having a right to be heard in applications such as the instant application for an RDCO.

Conclusion

[101] For the reasons set out above, I am not persuaded that the victims of the assisted person, “have a right of standing to be heard” including being separately “legally represented” at the substantive hearing of the application for the RDCO.

[102] In *Blackstone’s Criminal Practice* 2025 at D 3.39 the learned authors state:

“The usual parties to criminal proceedings are the prosecutor and the accused. In *Re Pinochet Ugarte* (2000), The Times 16 February 2000, it was indicated that while there were many bodies representing the interest of victims and other persons who might wish to take part in such proceedings, there would need to be overwhelming reasons why they should be allowed to intervene in cases other than those being heard by the Supreme Court which concern pure points of law and which might merit different consideration.”

[103] This court’s conclusions in relation to the rights of the victims of the assisted person to be “heard” as they seek to be in the application by the Legal Services Agency for an RDCO is in accordance with that statement.

[104] As noted previously the court, in this ruling, has not determined whether an RDCO should be made as the Legal Services Agency wishes.