



**Solace Consultation Response June 2025:**  
**Victim information Requests: code of practice**

The Home Office is currently consulting on a draft 'Requests for Victim Information Code of Practice', which will shape how police and other authorities request third-party material from victims, including sensitive records like counselling notes. As part of this consultation, the Government is also seeking views on how the term 'counselling services' should be defined under the new duties in the Victims and Prisoners Act 2024.

**Overview**

Solace Women's Aid (Solace) is the leading provider of violence against women and girls (VAWG) services in London. In 2023/2024 we provided support to 18,862 women and children across our services which include refuges, advocacy and advice services, counselling and specialist services for children and young people, and women experiencing multiple disadvantages.

- 1) Part 1 of the Code of Practice gives an overview of the guidance contained within the Code, and defines key terms used in the victim information requests legislation. To what extent do you agree or disagree that the introduction in the Code of Practice gives a suitable overview and background of the duties under Chapter 3A of the Police, Crime Sentencing and Courts Act 2022?**

Disagree.

Although the TPM guidance applies to all criminal offences, the majority of requests for TPM arise in investigations into sexual offences, where almost all requests will be for sensitive data, such as information about a person's health and/or sex life. Requests for sensitive data, therefore, need a stricter test. Wherever there is reference to "necessary and proportionate" information requests, the Code should also state that the threshold is "**strictly** necessary and proportionate," where third-party material (TPM) contains sensitive data. Although there is a better understanding by police/CPS around keeping TPM requests relevant and proportionate, there is still a need to limit excessive requests for victims' data in sexual offences investigations, and so the code must make it explicit that a higher threshold for TPM requests exists in these cases.

We would strongly recommend that point 5 of Part 1 be made a separate point. Point 5 refers to the section in the code which sets out when counselling information requests may be necessary and proportionate, as required by section 44D(2) of the Act. It would be helpful for this to be made a separate point so that it is not missed by readers and is emphasised sufficiently.

Thirdly, in Section 1, Paragraph 17, we have concerns that officers/constables are stated as a possible 'authorised person'. We would call for this to be set at senior officer level at a minimum. Alternatively, we would welcome 2 further changes. Firstly, that the recommendation made for Paragraph 118 – that a TPM being signed off by a senior officer – be mandatory/required as opposed to being best practice. Second, that this requirement is referenced initially in Paragraph 17, and then again in Paragraph 118.

**2) Part 2 of the Code gives an overview of the purpose of the victim information request duties. To what extent do you agree or disagree that the information in Part 2 provides a clear summary of the duties which authorised persons must adhere to under Chapter 3A of the Police, Crime Sentencing and Courts Act 2022 when requesting victim information?**

Disagree

In paragraph 20(c) relating to Section 44A(3)(c), we would recommend that within the necessary and proportionate considerations to the TPM request, an addition is made so that 'the authorised persons balance the *wellbeing* and *experience* of victims', and this is added to the sentence related to balancing the 'victim's right to privacy'. Similarly, as mentioned in Section 1, we recommend the word 'strictly' is put in front of 'necessary and proportionate' for the reasons explained above.

Secondly, paragraph 20(d) must explain what it means by 'substantial probative value' within this section. It does not do this until paragraph 83. If it is unable to define said term here, it should be footnoted or linked to paragraph 83 at the very least. This should be done throughout the code. It is imperative that those reading the code understand not only that counselling notes, of which pre-trial notes fall within (p62), are subject to a higher threshold for requesting information, but also what that threshold is. We request the same of references to 'reasonable line of enquiry' – in particular that the line 'not mere conjecture or speculation' referenced in paragraph 61 is cited or linked in paragraph 30.

Third, paragraph 22 states that 'the victim... is adequately informed that the request is being made, unless inappropriate to do so'. We would strongly recommend that further examples be given at this point on other circumstances in which it might be deemed 'inappropriate' to inform the victim. We are concerned that this phrasing, without better clarity, may result in a broad interpretation in favour of not informing the victim. If at this stage it cannot list additional examples, it must link or footnote to the relevant appendix or section.

Whilst we recognise it is not practical to define every term at every use, they must be linked to their definition each time – especially at the first use given it is an overview section. Practitioners utilising this Code will not read the document in full every time they need to refer to it, and we are risking misunderstandings and misapplication by failing to do this.

- 3) Part 3 of the Code provides an overview of how the new duties work alongside existing legislative frameworks, including the data protection regimes of the Criminal Procedure and Investigations Act 1996 (CPIA), Data Protection Act 2018 (DPA) and human rights legislation. To what extent do you agree or disagree that the guidance that the Code of Practice provides on the compliance of the duties in accordance with data protection and human rights legislation is accurate?**

Disagree

We strongly recommend that the point made in paragraph 33 that a third party is 'typically under no obligation to provide access', is stressed throughout the code, including in the introduction. Current approaches, language, templates and methodology of third-party requests often imply to victims and data holders that the request is obligatory. For example, in the current NPCC Interim Third-Party Material Request Forms, the police are not making it clear that the request is voluntary, and that the third party does not necessarily have to comply. It is also a long document with an over-reliance on legal jargon. We would encourage stricter guidance on ensuring that requests are written in a way that makes their voluntary status explicit, and that it is clearly understood that this is not a court order. It should also acknowledge that the organisation receiving the request may also have their data protection guidelines and processes to follow.

Secondly, we are concerned that the 'data minimisation principle that underpins GDPR and the Data Protection Act 2018, e.g. that only the minimum amount of data is processed and limited to what is necessary, is mentioned just once - in paragraph 49. This principle should be highlighted at all relevant places in the Code. The guidance could also better address the risk of intrusive information gathering and its impact on safeguarding, particularly in relation to how sensitive information is handled.

Third, we would also that any decisions regarding Article 8 of the ECHR (privacy) rest with the Crown Prosecution Service and not the police, to ensure impartiality and independence.

Fourth, paragraph 62 should be updated/removed to reflect the fact that pre-trial therapy notes are counselling records, and therefore do not fall under the same remit of 'all TPM' but are subject to the higher test of 'likelihood of "substantial probative value" to a reasonable line of enquiry.'

- 4) Part 4 of the Code offers guidance on determining whether a request for victim information is necessary and proportionate, in pursuit of a reasonable line of enquiry. To what extent do you agree or disagree that the guidance offered in Part 4 of the Code on assessing necessity, proportionality, and relevance to a reasonable line of enquiry when complying with the duties is accurate?**

Disagree

We are supportive of paragraph 65, that requesting a TPM should be the 'last resort', but we would recommend that in paragraph 70, a definition be provided for 'reasonable lines of enquiry' (paragraph 61).

We would also strongly recommend that more explicit and practical examples, including those that relate to sexual violence and rape cases, are provided in paragraph 75 when it offers an example of a request unlikely to meet the 'necessary and proportionate' test. These could be included in the annexes. This is because we regularly see requests that fail this test, yet remain being filed. For example, a service user of ours was subject to multiple requests, the first of which was for counselling notes, which were from the period before the incident was going to trial. She has not had counselling since the reported rape, specifically to avoid her privacy being violated and her notes being used in court.

The defence council have made repeated requests for her notes to be scrutinised, which may contain any reference to self-harm or previous allegations of SA. With the help of CWJ, the request was reduced to just references to self-harm, but this has been incredibly traumatising for our service user and is evidently being used towards a bad character argument.

After being unable to successfully retrieve counselling notes, the CPS returned with further TPM requests to the aforementioned service user. This time for social service records. Instead of the police asking whether she had ever had an social service involvement, to which, as based on her understanding she would have answered no, the police asked her evasively to provide a list of which counties she had lived in throughout her childhood (again concerning years before the incident going to trial). After co-operating with this informal CPS request, the police then proceeded to perform their search into whether an S/S records exist. They discovered that there is a record which she and her family were not aware of. It is in relation to an incident totally separate and irrelevant to the trial. The police informed she that this record exists, which was incredibly alarming for her and her family. They then sent a form in order to request the material without any scope for allowing her to read and understand the content of the record about herself before they would access it.

Secondly, within this section it should be further explicitly recommended that authorised persons keep a clear record of how they have considered and applied each of the steps. This will ensure transparency, accountability, and the ability to explain or justify the decision if later questioned (e.g. in court or by oversight bodies). Keeping detailed records will also help create an audit trail to demonstrate compliance with the presumption against requesting counselling records, reinforcing victim confidence and legal robustness.

On point 79, we would welcome a reference to how safeguarding should be considered, in addition to the well-being and experience of victims, especially in consideration of those who are vulnerable victims or in cases of honour-based abuse, e.g. the release of the information could put the victim at further risk of harm.

**5) Part 4 also offers guidance on determining whether the presumption that a victim's counselling records are not necessary and proportionate can be rebutted (including the steps that must be taken) and how to assess whether the counselling records are likely to have substantive probative value before they can be requested.**

**a. To what extent do you agree or disagree that the guidance for requesting counselling records outlined in the Code is clear and practical for authorised persons?**

Neither agree nor disagree.

We recommend that a link to the definition of substantive probative value be made at point 81(a), 83-86, and additional examples be given. We also recommend that additional consideration of the well-being of the victim be made in paragraph 72 in relation to necessity and proportionality.

Similarly, in point 82, where 'it is recommended that a record of these considerations be kept', we request *recommended* be changed to *mandatory*.

We are also supportive of *the concept of* paragraph 88, which lists reasons that are insufficient to make a request. It is vital, however, that 88(c) - that the records merely relate to the incident under investigation - is not understood as meaning any record that contains an account from the victim of the facts of the offence is reasonable. Paragraph 88 must make it the existence of a factual account from the victim within counselling records is insufficient to meet the threshold to request access to the records

If that reason for making requests is not explicitly excluded, such requests will continue, and victims will not be able to tell their therapists about what happened to them within a safe space, knowing that the records will not end up in court. This is the most common reason for requests, and without this falling under the remit of insufficient, such requests will continue.

It is vital that 88(c) is also clearly distinguishable from 87(a). Fundamentally, it is vital that victims feel confident in sharing their experiences with their therapists, knowing that it will not be made visible to others. Paragraph 86 should be amended to use the word 'should' instead of strongly recommended, to make the expectation clearer and more directive, reducing ambiguity – again we reiterate the aforementioned service user case study as an example.

**b. To what extent do you agree or disagree that the considerations set out in paragraphs 81a to 81e are the appropriate steps authorised persons should take when rebutting the presumption against necessity and proportionately?**

Agree

Paragraph 81(b) sets out that authorised persons must consider “whether all less intrusive alternatives for obtaining the required information have been exhausted or deemed impractical”; however, there is no accompanying explanation or examples as to what this entails. We would welcome examples to ensure that officers are clear on this.

We would also suggest that safeguarding considerations in cases of sexual violence are added to paragraph 81(d). Furthermore, in order to adhere to 81(d) as well as the victims' views, this stands in contradiction with the later guidance stating that notification of the third-party request can be given post-submission (103A, Section 44b(3)). It is not possible to provide sufficient notice for the victims' views to be received before the TPR, if the TPR has already been issued.

**c. To what extent do you agree or disagree that the guidance for requesting counselling records offered in Part 4 of the Code will introduce stronger safeguards for victims' confidential counselling and therapy notes?**

Agree.

This is a step in the right direction, and we welcome this consultation and further consultations when the draft and supporting documents have been reviewed. However, the guidance will only introduce stronger safeguards for victims' confidence in protecting their counselling and therapy notes if it is ensured that the mere presence of their account of the incident does not meet the threshold as set out above. This is also under the expectation that a sensible and broad definition of counselling is adopted, as explained below.

## 6) Defining Counselling

- a. To what extent do you agree or disagree that a counselling services definition needs to cover a range of psychological and emotional counselling and therapeutic approaches and support?**

Strongly agree.

Any definition of counselling must include the full range of psychological and emotional approaches and support.

We fully endorse the definition proposed, and position taken by Rape Crisis England and Wales and the Centre for Women's Justice. They rightly point out that the purpose of introducing a higher threshold for counselling notes was to ensure that survivors can speak openly and confidently during therapy, and that their emotional well-being is protected and safeguarded. The assumption must be that counselling notes offer little value in terms of evidence as they pertain to feelings, not facts. The onus must therefore be on demonstrating how any request meets the substantive threshold, and a broader definition of counselling – one that reflects the reality of therapeutic services currently available to survivors – will give assurance of this.

- b. To what extent do you agree or disagree that any definition should only apply to qualified practitioners and those undergoing such training?**

Strongly Disagree.

Counselling services must apply to all practitioners irrespective of their qualification status. The focus of the Victim and Prisoner Act 2024 is to protect the victim/survivor, not to regulate providers. Victims/survivors seeking support from unqualified practitioners or those in training are entitled to the same level of protection as those seeking support from qualified practitioners.

- c. To what extent do you agree or disagree that any definition should cover individual, family and/or group services?**

Strongly Agree.

[We strongly agree for the same reasons described above. This is the benefit of a broader definition including emotional support, as this would include but is not limited to, the support provided by Independent Sexual Violence Advisers (ISVAs) – so should be covered under the Act in the same way. The focus must be on the victim themselves and ensuring that counselling proceeds in a way that prioritises their recovery and their needs – they should not be preoccupied with ensuring those they feel comfortable talking to meet a legally set definition of an unprotected term. The purpose of introducing a higher threshold for access to counselling records was to ensure that victim-survivors can speak openly to a counsellor or other therapeutic support worker in order to facilitate recovery from abuse.

- d. To what extent do you agree or disagree that any definition should cover NHS, voluntary sector agencies and private practice?**

Strongly Agree.

As described beforehand, any definition should cover NHS, voluntary sector agencies and private practice for the same reasons described above. The focus should be on the service provided as opposed to who is providing that service.

**e. Are there any other factors the government should consider when drafting a definition?**

Yes.

We strongly support the following definition proposed by Rape Crisis England & Wales, Centre for Women's Justice, End Violence against Women Coalition, Imkaan, Rights of Women, British Association for Counselling and Psychotherapy (BACP), The National Counselling and Psychotherapy Society (NCPS), United Kingdom Council for Psychotherapy (UKCP) and the British Psychological Society (BPS):

**“Counselling services are services provided by a person in a professional capacity, whether that person is paid or unpaid, registered or unregistered, who provides therapeutic and/or emotional support for the counselled person’s emotional, psychological and/or mental health”.**

Below are some explanatory notes to support this definition, many of which refer to questions above.

- The definition of a “counselling service” should be based on the nature of the activity, not the provider.
- ‘Professional capacity’ means activity that is part of a role or service, not a personal capacity, such as a friend or relative.
- ‘Counselling services’ should include: statutory services, including NHS; private services/providers; voluntary services, such as services from charities, including support workers; volunteer and trainee providers.
- ‘Registered’ persons means those persons who have completed relevant qualifications and who are registered with a professional association that holds an Accredited Register with the Professional Standards Authority for Health and Social Care.
- ‘Unregistered persons’ are included in the definition in recognition of the lack of statutory regulation of counselling services in England and Wales, which means that any person can call themselves a ‘counsellor’ or ‘therapist’ and provide services. Service users who seek counselling from unregistered persons must also be protected by the provisions of the Act.
- ‘Emotional’ support includes, but is not limited to, the support provided by Independent Sexual Violence Advisers (ISVAs), Independent Domestic Violence Advisers (IDVAs), sexual violence caseworkers, holistic, intersectional support provided specialist ‘by and for’ services, helpline workers, professionally facilitated support groups and other support roles.
- ‘Mental health’ and ‘psychological’ support services can be provided by the NHS, private, charity and third sector organisations, including, but not limited to, support from psychiatrists, psychiatric nurses, practitioner psychologists, and community mental health services.



**7) Part 5 of the Code provides guidance on providing information to a victim about whom information is being requested. To what extent do you agree or disagree that the guidance the Code of Practice provides on provision of information to victims is suitable?**

Strongly Disagree

Without the sample request form published within the consultation, it is difficult to assess its appropriateness (101) but we would recommend an additional clause be made to paragraph 100, whereby it is expected that the voluntary nature of the TPM is mentioned within clause (a). An additional line reflecting the higher threshold needed for therapy notes should be added to 99(b) in regard to providing information on how the request meets the requirements.

On paragraph 103, we do not support the rule that victims must be informed “on or before the day they send the request to the third party,” as this is not enough time. The third party should know what the views of the victim are before they make the decision. It is not acceptable for victims to be given notification on the same day that the request is sent to the third party. This would not only make the notification meaningless as they have no time to give their views or seek legal advice, but in doing so, it fails to meet the criteria of ‘reasonable’. The same applies to any notice given to them after that date. It also undermines paragraphs 105 and 106, which state that victims should be told that they can make representations and have their views sought and recorded. They would be unable to adhere to paragraph 106 or have time to seek independent legal advice. Indeed, this is particularly problematic for meeting the requirements of 108. ISVAs and IDVAs are given little time or notice in supporting victims with last-minute requests, and this does not give sufficient consideration to their well-being or safety.

For example, one service user was referred into our young women ISVA service in September 2022. She was the victim/survivor of a rape in late 2021, which has been charged and was due to be tried in December 2024. In the weeks leading up to trial, the CPS began a series of last minute disclosure requests which had not been requested by the defence at any point prior to this and further more detailed requests about points that had already been answered. The case was therefore adjourned until September 2025 on the grounds that not all the requests had been satisfied. Since December they have received invasive third-party material requests from the CPS with increasing frequency. In each of these incidents, the requests have not been narrow, are not proportionate or grounded in a reasonable request, and the Annex 6 form has been sent to her with little to no notice and therefore has left her little time to seek help.

More broadly, (paragraph 106) the change from victim/survivor consent to “notification” TPM requests is a step backwards. The Victims and Prisoners Act states that all requests for TPMs for any offence (not just sexual offences) should not be based on consent as it is now of the data subject, i.e., victim/survivor. The police will instead rely on a different data protection principle - law enforcement. The new law has not yet come into force, but the police can use this approach under the current law. If the request is not a reasonable line of enquiry, then it should not be made by the police, and it makes no difference whether the survivor is objecting to a “notification” or to a request for consent.

Finally, we would ask that ‘encourage’ is changed to ‘strongly recommend’ for paragraph 104 which references using sample request forms, as whilst we recognise authorised persons may want to use their own forms, consistency of language, application and format will help streamline the process, ensure consistent application, minimise inaccurate or incorrect requests and also save significant resources and time for services like ours who have to fill out different forms that may not cover everything it is supposed



to – causing potential unnecessary back and forth and therefore further delays.

- 8) Part 6 of the Code provides guidance about what must be included in the content of a victim information request about a victim. To what extent do you agree or disagree that the guidance the Code of Practice provides on provision of information to third parties is suitable to satisfy the duty?**

Strongly Disagree

We are concerned about the limited knowledge and understanding of CJS processes by TPM data handlers who may see emails from authorities, such as police, and share sensitive information with no clearly defined parameters. Data handlers may not realise the request is voluntary and not a court order. We have had situations where private counselling services handed over full, unredacted notes, and as such, have valid concerns that, without clear guidance, third parties will just provide the entire record, rather than materials within set parameters, such as certain dates. TPM holders follow their own data protection processes, and these are not consistent across the board. It is similarly important to inform the third party that they should consider their own duties towards the victim/data subject. The third party may have professional duties towards the victim, for example if they are a patient or therapy client towards whom they have professional ethics duties.

Finally, the information provided to the third party should include what the victim's views are. At the moment the guidance only states it should say whether the survivor's views have been sought and recorded, and how they'd like to be contacted – not the views themselves. This is especially pertinent in cases where the victim's consent has not been sought, as third parties should be aware of this view before determining whether to disclose data about them.

- 9) Part 7 of the Code provides advice to authorised persons about how they should actively seek early advice from the CPS where appropriate in an investigation. To what extent do you agree or disagree that the guidance on how authorised persons should engage with the CPS to ensure they understand when early advice should be obtained is suitable?**

Disagree.

Whilst we fully support the guidance recommendation that early advice should be sought, the caveat of 'where appropriate' (paragraph 144) hinders the likelihood of this being followed. We already see that survivors are rarely given sufficient notice. We would recommend that the guidance make clear that early advice should be standard unless there are exceptional circumstances, and offer guidance on what might fall under this category. We strongly recommend that in any instance of early advice, sufficient notification is given, and we would welcome a realistic timeline on this as an example to those reading the guide.

We would also welcome a repeat of the 'it is strongly recommended to seek early advice in rape and serious sexual offence cases' line present in paragraph 144, in 146 – whereby early advice is sought in advance of the TPM request.

- 10) Part 8 of the Code provides information on how to best support vulnerable victims during the process of making a victim information request.**

**a. To what extent do you agree or disagree that the guidance that the Code provides on how authorised persons should engage with vulnerable adults is suitable?**

Neither agree nor disagree.

Any discussion of support available to victim-survivors to understand a TPM request (see, for example, paragraphs 157, 166, 176) should also refer to assistance from an independent legal advice service, where available.

Also, we do not support the statement that an interpreter can be replaced with ‘another supporter available’ to assist, as there is no way to verify that this translation is accurate or, more concerningly, involved in the abuse of the victim. Translators must be impartial and qualified, and approved by the victim (so as to avoid any safeguarding issues, such as being known to the survivor). It should also be made more explicit that whilst additional support such as ISVAs and IDVAs might be present, it remains the responsibility of the authorised person to arrange translators.

**b. To what extent do you agree or disagree that the guidance that the Code provides on how authorised persons should engage with child victims is suitable?**

Disagree

We would welcome clearer guidance on the notification of the TPM for children, whereby the parent or guardian of the child is the [accused] perpetrator of abuse (para 179). Whilst paragraph 182 states ‘if it is not appropriate for the notice to be given to the parent or guardian’, this is preceded by ‘if the child is in care AND’, and as such, circumstances which do not meet this should be clarified. Concerning paragraph 186, we recommend that the age of 15 be considered for the text and ensuring that their voice is heard and they are afforded agency.

**c. To what extent do you agree or disagree that the guidance that the Code provides on how authorised persons should engage with adults without capacity is suitable?**

Agree.

We are supportive of the recognition that without capacity can be temporary. We would also recommend that where references are made to requesting additional support, it is in language easily understandable, e.g. ‘if you have difficulty’. We also recommend where feasible, interactions should be with the best interest of the person in mind, such as the location of the meet to avoid retraumatisation – especially in the case of victims of rape and sexual assault. Again, it should be reiterated that this is not obligatory, and there must not be unintentional pressure on the victims through certain language or rushed timings.

**11) Are there any gaps in the guidance that should be addressed?**

Yes

There should be further opportunities for specialist victim services to be consulted on the guidance/templates/annex that this draft guidance refers to, such as TPM request forms and FAQs. The responses to this consultation are otherwise based on incomplete information.

**12) Does the Code contain links to all relevant material that an authorised person would need to ensure lawful use of the duties?**

No

See previous answers in relation to relevant footnotes and linking to additional definitions.