

## Practice advice

### Taking a trauma informed approach to third party notes requests

New CPS Pre-Trial Therapy Guidance (2022) details the information sharing legislation to apply when making third party notes requests – but how can officers take a trauma informed approach when making requests for notes? This practice advice sheet sets out a step-by-step approach for officers when approaching victims and support services; and is in line with [Op Soteria best practice](#) and based on the guidance from the [CPS Pre-trial Therapy Guidance](#), [Information Commissioners Office](#) and [Attorney General Guidance on Disclosure](#).



#### Fundamental principles.

- Pre-trial therapy is any type of therapy or support that is accessed when a report has been made to the police, a criminal investigation is underway and before the case has gone to trial. CPS Guidance applies to any support service, not just therapy.
- The new guidelines state that **all therapies and counselling services** can be accessed pre-trial, victims have a right to choose which service is right for them.
- Therapy notes can be requested by the police or prosecution if justification is given that they form part of a reasonable line of inquiry, are relevant to the case and with the agreement of the victim (or their parent/carer). The legal basis for data processing is 'strictly necessary for the law enforcement purpose'.
- Support services have a duty under UK GDPR to be assured that the request is reasonable and relevant; and confirm the victim's agreement before sharing the notes.
- Therapy notes can provide useful evidence and give victims a voice in the criminal justice system, if they want to share them.
- Best practice should allow time for conversations between police, victims and support services, so that the victim has a choice whether to agree to share their notes and be informed that they have a right to refuse.
- If the victim does not agree to their session notes being shared, a Crown Court can issue a court order to produce the notes, on the basis that the request is 'strictly necessary for law enforcement purpose'.
- Support services, investigators and prosecutors must all comply with data protection legislation when processing therapy notes.



#### Disclosure guidance

The **Criminal Procedure and Investigations Act (1996)** states that police are obliged to follow all reasonable lines of inquiry, but *'it will only be a reasonable line of inquiry if there is some reason to believe that the notes will contain material relevant to the case.'* Just knowing that a victim has had therapy or support services is not enough. The **CPS Pre-Trial Therapy Guidance (2022)** is clear that notes cannot be

accessed on a speculative basis. This means when requesting access to notes, officers should consider taking Early Investigative Advice from the CPS and be able to describe what information is being sought, during what time period and how this evidence will assist the case for the prosecution and undermine or assist the defense case. This requirement is strengthened by the **Attorney General Guidance on Disclosure (2022)** which outlines a three-step approach for the OIC and CPS when requesting notes:

- Establishing a reasonable line of enquiry (giving a clear rationale to the therapy or support service and not seeking a speculative request of notes)
- Establishing relevance (detail what is believed to be in the notes and limit the request to the relevant section/time period)
- Balancing rights (aim to maintain the victim's rights to privacy in line with Article 8 of the European Court of Human Rights)

If the notes do not contain information about the allegation under investigation, or a specific piece of information related to the reasonable line of inquiry, services should not release notes to the Police to maintain the victims right to privacy. **Remember the notes belong to the victim and the therapy/support service are data processors with a duty to follow data protection legislation when processing therapy notes.**



### **The legislation on information sharing**

Material generated as a result of therapy or support services constitutes 'sensitive data' and sensitive data can either be processed with:

- Consent of the victim (data subject)
- Law enforcement purposes
- Safeguarding risk - to a child, an adult or someone else

The Information Commissioner's Office has advised that in criminal justice processes, consent cannot be regarded as freely given and so when police request notes during a police investigation, the lawful basis for data processing under the Data Protection Act (2015) is **"Strictly necessary for law enforcement purposes"** and not **"Consent"**. But for this legal basis to apply, the notes requested must form a reasonable line of inquiry and the information requested must be **relevant and proportionate** to the investigation. Police have a legal basis on which to request therapy notes as part of a criminal investigation but only as a reasonable line of enquiry.

Taking a trauma informed approach, regardless of the legal basis for the data request, the CPS is clear that **"When speaking to victims the police should seek the agreement of the victim and inform them of their right to object at any time"** CPS Pre-trial Therapy Guidance (2022). This is because the data within the notes belong to the victim, and support services and police officers can empower them to make choices about what information is shared to support the investigation.

A final element for officers to consider is ensuring that the victim has the time, information and capacity to enable them to make decisions about their agreement to share notes. The Mental Capacity Act (2005) reminds officers that the victim must be able (a) to understand the information relevant to the decision (b) to retain that information (c) to use or weigh that information as part of the process of making the decision and (d) to communicate their decision. The Bluestar Project has created **Pre-Trial Therapy Leaflets** for support services to use when explaining to [adult](#) and [child](#) victims what process that can expect when a notes request is received which can be shared with victims by the Police.



### **A trauma informed notes request**

This section details a step-by-step guide for police officers taking a trauma informed approach to notes requests. At the start of therapy/support, the support service will have explained to the victim what will happen if a notes request is received as part of a criminal investigation. Therapy notes which are written well can provide useful evidence and give victims a voice in the criminal justice system if they want to share them. Therapy notes belong to the victim, they are their voice and it must be their choice on whether their data is shared.

A trauma informed notes request process for the police:

- Seek early investigative advice, where required, from CPS to determine reasonable lines of enquiry
- Seek agreement of the victim to approach their support service, discussing what evidence could be in their notes to support the investigation and giving the victim the choice to refuse. Share with them the Bluestar Pre-Trial Therapy Leaflet to take away and revisit over time.
- If the victim agrees to the request being made, make a request to the support service, setting out reasonable and relevant line of enquiry
- Offer a phone call to the support service to explore what relevant evidence could be in the victims notes to support the investigation – such as new or additional disclosures and impact of the abuse
- Allow time for the support service to collate, redact and review notes with the victim or their parent/caregiver, seeking their agreement to share the redacted notes
- If a victim chooses to refuse to share their notes, and the perpetrator is charged, the court can summons the support services notes. For this to occur the notes request must be “strictly necessary for law enforcement purposes”.

For more information about supporting victims pre-trial and the notes request process visit [Bluestar Project](#) for free online resources or book on an online training course at [bluestarproject@the-green-house.org.uk](mailto:bluestarproject@the-green-house.org.uk)