

**Office of the Victims' Commissioner briefing
on the Home Office consultation on third-
party material**



We urge you to respond to this important [Home Office consultation](#) on third party material. It is vital the responses reflect the extent of the issue and encouraging government to legislate in this area.

We have provided our guidance to inform your answers below.

Background

The consultation seeks to understand the extent demands on victims for material about them in the hands of third parties, so-called third-party material. We are aware from stakeholders that this is a particular issue in rape and serious sexual violence cases (RASSO cases), when complainants are asked to submit to scrutiny of all manner of records including social services, medical, school and therapeutic records. The consultation suggests some high-level policy recommendations and asks respondents to state whether they will make a difference.

The consultation has two ways of responding: you can complete an online questionnaire or send a written submission to tpmconsultation@homeoffice.gov.uk or Police requests for Third Party Material, The Data and Identity Directorate, 2 Marsham Street, London SW1P 4DF

We will be responding in the latter fashion (by email) as it gives an opportunity to provide wider commentary than on the questions alone.

We have created this briefing in the hope it will assist you to answer the questions in the consultation.

Firstly, we would signpost you to the [letter we sent to then Minister Rachel Maclean seeking to understand the basis for this consultation in the first place and her response to us](#). It is unusual for government to seek to understand a problem that has already been established to exist by various reports, inspections and indeed by its own 'End to End Rape Review'. It is more usual for government to consult on concrete policy propositions but here the propositions are tacked onto the end of the consultation and are very brief in description. As such, we will reiterate some of these points in our preamble to the consultation questions.

Guidance for responding

Preamble

We are pleased that government continues to consider this issue and is actively considering ways of changing what has become a culture of disproportionate intrusion on the privacy of rape complainants. We were pleased that government improved on the digital extraction clauses in the PCSC Bill (now Act 2022) to ensure better protections for victims, but we were equally disappointed the same did not happen around so-called third-party material. It is sense that you cannot expect a culture change by limiting only one half of the problem or offering victims protection against intrusion around some of their personal material whilst leaving the rest as 'fair game'.

It is well established that demands for material are ubiquitous and wide-ranging for anyone reporting sexual violence. Indeed, in the last two years alone we have seen the Government's End to End Rape Review research report¹ discuss how CPS prosecutors described to researchers:

'.. the importance of obtaining as much digital and third-party evidence as possible in all cases to ensure prosecutors could make robust charging decisions.'

The HMICFRS and HMCPSI joint inspection² on rape found that:

'In no other crime type is the focus on the victim to such an extent; usually it is on the suspect. In our case files, we saw examples of victims who experienced detailed and personal questioning and searches, who gave up their phones (sometimes for 10 months or more), and whose medical records, therapy records and sexual histories were reviewed in minute detail. The approach towards the suspect tends to be somewhat different, with far less intrusion. The effect of this approach on all rape victims is unjust.'

The ICO has just (May 2022) issued an opinion³ on this very subject which amply demonstrates the relative routineness and disproportionality of these requests. In fact, he called on the criminal justice sector to *'immediately stop collecting excessive amounts of personal information from victims of rape and serious sexual assault cases.'*

The evaluation of the pilot in Northumbria⁴ which provided free legal advice to rape complainants around their Article 8 rights⁵ found that around 50% of requests were not strictly necessary and proportionate and therefore did not fit the legal requirements for such requests.

A CPS internal report⁶ (as yet unpublished by them but reported on in the Guardian) showed that almost two-thirds (65%) of rape cases referred by police to the CPS for early investigative advice (EIA) involved 'disproportionate' and 'unnecessary' requests for information.

The Victims' Commissioner's survey of rape complainants⁷ showed that, for some, scrutiny of their personal lives including their digital lives was a consideration in their decision not to report. For those who did report, the experience was felt to be invasive and traumatic with many feeling the process was not adequately explained.

*Article 8 rights refer to article 8 of the European convention on Human Rights which is the right to

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994817/rape-review-research-report.pdf

²<https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/joint-thematic-inspection-of-police-and-cps-response-to-rape-phase-one.pdf>

³ <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/05/information-commissioner-calls-for-an-end-to-the-excessive-collection/>

⁴ <https://needisclear.files.wordpress.com/2020/11/svca-evaluation-final-report-1.pdf>

⁵ Article 8 rights refers to Article 8 of the European Convention on Human Rights and refers to respect for your family and private life. <https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life>

⁶ <https://www.theguardian.com/law/2020/mar/15/cps-failed-to-tell-inspectors-of-internal-review-revealing-case-failings>

⁷ <https://victimscommissioner.org.uk/news/survey-finds-rape-victims-have-lost-faith-in-the-justice-system/>

That is, as stated above, in the last two years alone. Prior to this, there were other inspections and reports which only demonstrate that this has been an issue for some time. It therefore seems to us that there is significant evidence already available to demonstrate that there must be a significant cultural change in practice.

We have been firm that what is needed to bring about a step change in the culture here is:

- A clear statutory obligation on police to limit requests to that which are proportionate and strictly necessary in pursuit of a reasonable line of enquiry and as per the case of *Alibhai*⁸ only where the officer suspects that the third party holds material capable of passing the disclosure test i.e. that it will undermine the prosecution or assist the defence.
- The legislation must insist upon informed non-coerced consent from victims/ witnesses.
- There must be an accompanying code of practice which insists that police give victims clear understandable information about their rights. It should outline that in order for there to be informed consent police must also give details of what specifically is being sought, how it meets a reasonable line of enquiry and details of how they have considered strict necessity and proportionality.
- Victims must be provided with free legal advice and representation by a qualified lawyer when their Article 8 rights are engaged.
- Government must pass legislation which makes notes of therapy for victims of sexual violence privileged as per the Australian model. The model scheme has been in force in New South Wales since 1997 and is now law in all the Australian states but Queensland. The Australian adversarial system is near-identical to the system in England and Wales. It is the law there that a victim of sexual assault can consent to the release of protected confidences (can 'waive privilege') but only in writing and with independent legal advice and we would recommend this same additional protection in England and Wales to avoid any risk of the process being sidestepped. We commend this as a well-tried model which by requiring an appropriate balance of interests has safeguarded both victim privacy and defendant fair trial rights and has had a chilling effect on demands for this confidential material.

These measures would in combination make clear the intention of government to reduce the intrusion on victims of sexual violence and would bring about the greatly needed change in practice on the ground, this in turn would help assure victims that it is safe to come forward without fear of intrusion into their private lives and help reduce attrition.

Questionnaire

The survey directs certain questions to certain groups of respondents. We will be responding to any questions we can answer on behalf of victims and will effectively ignore this demarcation, we urge you to do the same.

This survey is divided into three sections. Section 1 is for law enforcement, prosecutors and defence lawyers, section 2 is for third parties, victim groups and victims and section 3 is for all respondents. It is noted at the beginning of each section who the questions are aimed at.

*Section 1: Questions for law enforcement, prosecutors and defence lawyers
In this section, we'd like to establish some basic information about third party material:*

⁸ R v Alibhai and others [2004] EWCA Crim 681

what it is and why and how often it is requested.

1. What kind of material do you think constitutes third party material? Check all that apply.

- a. Medical records*
- b. Mental health records*
- c. Counselling/therapy notes*
- d. Independent sexual violence/domestic violence advisor notes*
- e. Employment records*
- f. Local authority records*
- g. Education records*
- h. Prison records*
- i. Closed Circuit Television recordings ('CCTV')*
- j. Other, please specify*

We believe that all of the above is currently treated as third-party material, but we hear anecdotally that whilst the personal records of people reporting sexual violence are regularly sought, police less frequently secure CCTV in cases where it may be relevant, for example from a night club where a drug facilitated rape is alleged. The trend appears to be that police seek information which 'relates' to how the credibility of the victim may be perceived rather than evidence that may actively support a prosecution.

We are told by Independent Sexual Violence Advisers (ISVAs) the highly skilled advocates who, day to day, support rape complainants in the police station that it is not only client's private material held by GPs, therapists, social services etc. which is sought in large volumes, but requests are also made for their notes.

The ISVA Code of Practice⁹ outlines the strict boundaries ISVAs must have around their relationships with clients (see page 10) including the rule that they must not discuss on-going cases. Where is the reasonable line of enquiry in these requests let alone a suspicion that there is something disclosable contained in the notes as per Alibhai? Unless police are effectively suspicious that these ISVAs are breaking their code of conduct and that their clients are giving them a different version of events, this is simply more evidence that requests for third-party material and routine and are rarely a reasonable line of enquiry. What this in fact shows is that these 'credibility checks' on victims have gone too far and need to be addressed. We annexed a series of case studies to our briefing on demands for third party material¹⁰ which detail this issue.

2. About whom is third party material typically requested? Check all that apply.

- a. Victim*
- b. Witness*
- c. Suspect*

Stakeholders tell us this material is typically and routinely requested about victims who have reported sexual violence.

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/647112/The_Role_of_the_Independent_Sexual_Violence_Adviser_-_Essential_Elements_September_2017_Final.pdf

¹⁰<https://victimscommissioner.org.uk/document/briefing-on-intrusive-demands-for-third-party-material-in-rape-cases-and-the-police-crime-sentencing-and-courts-bill/>

3. In what types of investigations do you request third party material? Check all that apply.

a. Rape and Sexual Offences (RASO)

b. Domestic Abuse

c. Child Sexual Exploitation

d. Assault or Violent Crimes

e. Homicide

f. Economic Crime

g. Drug trafficking

h. Acquisitive crime

i. Modern slavery

j. Other (please specify)

The Office of the Victims' Commissioner does not request material as a representative for victims. However, we understand this to be overwhelmingly an issue in RASO cases. This includes cases where children are the victim, we do not see why CSE is listed separately as this is a sexual violence allegation/ frequently rape, it seems an unnecessary distinction. Indeed, it is our understanding that the issues around third-party material being sought and used in this type of case are similar to 'other' RASO cases.

This is well illustrated and discussed by senior family and criminal law barrister David Spicer in his 2018 Serious Case Review Concerning Sexual Exploitation of Children and Adults with Needs for Care and Support in Newcastle-upon-Tyne¹¹ albeit where the material was disclosed and used in cross examination. He recommended a government review of these practices. Referring to the spectacle he witnessed of vulnerable victims being cross examined about their social services, school and medical records, he writes:

'The disclosure process is costly. Records are not kept expecting they might be disclosed. Victims are unlikely to be aware of much of the content and are not informed in advance of appearing as a witness for fear of allegations that they have been coached and prepared. The consequence of this is that damaged and vulnerable individuals are knowingly exposed to distressing material without notice and to an experience calculated to confuse, intimidate and cause them further damage and distress. There is a strong argument that this is inhuman and degrading treatment prohibited by the European Convention on Human Rights and Fundamental Freedoms and does not lead to fair administration of justice.'

He later quotes a victim:

"I had good support for the criminal court. Good preparation. But it made me angry. I was made out to be a liar and it made me feel low. That came as a surprise – it was dreadful. I wasn't expecting it. Afterwards I was very upset and couldn't control myself. I started having dreams and flash backs. I was asked about things in my records that I knew nothing about – my past and I didn't know why."

It is questionable whether had the proper tests been applied in these cases, this material would have even ended up in the hands of the defence. Indeed, arguably even greater safeguards should be put in place for children and young people who disclose they have been victims of sexual violence, they should not be an 'easier' target.

4. We understand that requests for third party material can be a particular issue in Rape and Sexual Offence (RASO) investigations. In your experience, in roughly what proportion of RASO investigations is third party material requested?

¹¹ <https://newcastle.gov.uk/sites/default/files/Final%20JSCR%20Report%20160218%20PW.PDF>

Select one response.

- a. <25%
- b. 26 – 50%
- c. 51 – 75%
- d. 76 – 100%

We leave it to practitioners on the ground to put a number to this, but we hear from stakeholders that this is routine and ubiquitous, with some regional variation and small pockets of good practice. We are told of people reporting historic sexual offences from the '70s and '80s being asked to hand over their current mobile phones; victims raped in their thirties being required to consent to childhood social services records to be trawled. In cases where the rape is a stranger rape, with no previous contact at all between the victim and perpetrator, similar demands are frequently made. ISVAs would say that these searches are demanded as standard. They can have no relevance to the facts of the case and do not meet the test in the Criminal Procedure and Investigations Act 1996 (CPIA) Code of Practice¹² that material is sought only where it is a reasonable line of enquiry¹³.

5. Why is third party material requested? Select one response and include additional information if needed.

- a. To support or refute a reasonable line of enquiry
 - b. It is a routine request/internal policy to do so in certain types of investigation
 - c. Asked to do so by a supervisor or colleague
 - d. Asked to do so by the CPS or other external party
 - e. Other/additional information
6. How do you decide what and how much material to request from third parties? Select one response and include additional information if needed.
- a. All potentially useful material is requested in case it is needed
 - b. Lines of enquiry are considered, and specific material is requested to support or refute them
 - c. Other/additional information

In our opinion, having consulted widely with stakeholders, these requests are made by the Crown Prosecution Service (CPS) via the police and largely serve as a means of the CPS assessing how credible a victim may seem before a jury. We hear that material is being used as a reason to discontinue a case. Indeed, police in the Northumbria evaluation¹⁴ talked about this pressure:

"I could talk all day about third-party material, and it is the real bone of contention. It's one of the things that has given me sleepless nights over the years, you know. It has... And I had a rape team investigator say to me on one occasion, or a former rape team investigator, say to me, 'I had to like leave the rape team because of what I was being asked to do, in relation to victims, I couldn't do it'. And I think, you know, that, for me just spoke volumes. And lots of people were expressing their concerns, including me, but when that officer said that to me, I kind of thought, d'you know what, there's something sadly wrong here." (Police Manager 1)

"...The CPS routinely ask us to obtain peoples 3rd party, medical, counselling and phone records regardless of whether a legitimate line of enquiry exists or not. Further to that they insist that we

¹² <https://www.legislation.gov.uk/ukpga/1996/25/section/3>

¹³ <https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice>

¹⁴ Ibid. 4

check the voluminous data in its entirety. This is usually PRE-CHARGE.” (Police Officer Case 27, Case Files, emphasis in original)”

7. In your view, what are unnecessary and disproportionate requests for third party material driven by? Check all that apply.

- a. Police lack the necessary training and expertise*
- b. Police predict that the CPS will require a lot of third party material and therefore request an unnecessary/disproportionate amount*
- c. The CPS ask for an unnecessary/disproportionate amount of third party material via the police*
- d. Defence lawyers ask for an unnecessary/disproportionate of third party material via the police*
- e. Requests take a long time to be fulfilled and so all possible material is requested in case it is needed*
- f. Requests are always necessary and proportionate*
- g. Other/additional information*

As above, we believe this is driven by the CPS.

We know that it can sometimes take a long time for requests for third party material to be returned. In this section, we would like to understand more about this, including why material can take a long time to be returned and what kinds of solutions could be appropriate to mitigate this

8. On average, how long does it take to issue a request for third party material?

We hear from stakeholders that the process of obtaining both digital and third-party material takes a long time and is highly time consuming for the police. Requests of third parties once received take many third parties a very long time to process. This causes overall delays to the investigation with recent statistics showing that investigations in RASO cases take years rather than months. Indeed, in their joint thematic inspection of the police and CPS’s response to rape, HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and HM Crown Prosecution Service Inspectorate (HMCPSI)¹⁵ found as part of their case file review that the average time from report until a case was closed with ‘no further action’ was 456 days. This could well be in part because of these onerous time intensive enquiries that police currently make.

This could be addressed by two actions:

1. Reduce the volume of material sought by making clear through legislation that these spurious, routine enquiries are unacceptable.
2. Ensuring that third parties are able to respond appropriately to requests by providing them with details of what is being sought specifically and why so they can appropriately discharge their duties as data controller under the data protection legislation. This was outlined in greater detail in the recent Information Commissioner’s (IC’s) opinion¹⁶.

9. Does this differ by type of investigation? Select one.

a. Yes

¹⁵ <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/joint-thematic-inspection-of-police-and-cps-response-to-rape-phase-one.pdf>

¹⁶ Ibid. 3

b. No

We understand this to be a particular feature of RASO cases.

10. If YES, please specify average time spent on issuing a request for third party material for:

- a. Rape and Sexual Offenses (RASO).....
- b. Domestic Abuse.....
- c. Child Sexual Exploitation.....
- d. Assault or Violent Crimes.....
- e. Homicide.....
- f. Economic Crime.....
- g. Drug trafficking.....
- h. Acquisitive crime.....
- i. Modern slavery.....
- j. Other/Additional information

We cannot quantify this and leave this to practitioners on the ground but reiterate the comments to question 8 we are aware these requests cause significant delay.

11. In your experience, do third parties from whom you have requested information generally:
[Select one response and include additional information if needed.]

- a. Fail to provide the requested material
- b. Provide only what is requested
- c. Provide more than what was requested
- d. Ask you to attend premises to search for relevant material
- e. Other/additional information

We are unable to answer this question

12. In your experience, does the quantity of third party material requested affect the amount of time taken for the material to be returned? Select one response and include additional information if needed.

- a. Yes, if more material is requested it will take longer to receive it
- b. No, the amount of material requested is not related to the amount of time it might take to receive it
- c. Other/additional information

Our understanding as outlined above is that data controllers have to make decisions about what to share in order to avoid being in breach of the law. It is obvious that if they are asked for all records since birth this is likely to take longer to consider and process than a smaller specified amount of material.

13. In your experience, do third parties generally return requests for material within a satisfactory timeframe (i.e., to ensure timely progression of the investigation)? Select one response and include additional information if needed.

a. Yes

- b. No*
- c. Other/additional information*

See previous answers about speed and specificity, minimising material sought.

14. Why do you think it can take a long time for some third parties to respond to requests for third party material? Check all that apply.

- a. It is not a priority for them to do so*
- b. They are unfamiliar with these types of requests and do not know how to handle them*
- c. They do not have a dedicated member of staff or team to handle these requests*
- d. The requests from police are not clear, and do not provide specific information needed to process the request*
- e. Other/Additional information*

We think it is likely that all the above a-d have a role in delaying processing of requests.

15. How far do you agree with the following statements:

a. Delays in returns for third party material is a significant single factor in slowing down an investigation. Select one.

- Strongly agree*
- Agree*
- Neither agree nor disagree*
- Disagree*
- Strongly disagree*

See comments above – this is an issue both of the voluminous nature of requests, coupled with third parties struggling to process requests. Both are causes of delay.

b. When third party material is requested early in an investigation, it is less likely to cause a delay. Select one.

- Strongly agree*
- Agree*
- Neither agree nor disagree*
- Disagree*
- Strongly disagree*

This question is problematic because it is less likely that an officer is able to have identified a reasonable line of inquiry at a very early stage in an investigation. It is more likely that a request of the type that has become routine is made at an early stage. i.e. more wholesale requests, which we would argue are more likely to cause delay than more specific requests.

16. Aside from ensuring that requests for third party material are necessary and proportionate, is there any other action – legislative or non-legislative – you would like to see to improve the timeliness of returns for third party material? Thank you for completing this section. Please progress to Section 3.

As well as ensuring requests are necessary and proportionate, they should also be in pursuit of a reasonable line of inquiry and the officer should suspect that the material sought is capable of being disclosed i.e. that it undermines the prosecution or assists the defence in line with Alibhai. It is also vital that the information provided to data controllers is specific and gives some details of how the request meets a reasonable line of inquiry.

Section 2: Questions for providers of third party material, victim groups and victims

17. In your experience, how much third-party material is typically requested about a victim? Select one response and include additional information if needed.

- a. None*
- b. Requests seem to be specifically tailored to reasonable lines of enquiry for the investigation*
- c. A lot of material is requested that doesn't seem to relate specifically to the alleged offence*
- d. Other/additional information*

We hear anecdotally that it is c. Additionally, we would signpost to the findings of numerous reviews, investigations and inspections outlined in the preamble to this response.

18. On average, how long does it take to process and answer a request for third party material?

We will leave this to practitioners on the ground to answer but we do know that requests cause significant delays in investigations in RASO cases.

19. Does this differ by type of investigation? Select one.

- a. Yes*
- b. No*

We are unaware of other offences where this is a significant issue.

20. If YES, please specify average time spent on processing and answering a request for third party material for:

- a. Rape and Sexual Offences (RASO).....*
- b. Domestic Abuse.....*
- c. Child Sexual Exploitation.....*
- d. Assault or Violent Crimes.....*
- e. Homicide.....*
- f. Economic Crime.....*
- g. Drug trafficking.....*
- h. Acquisitive crime.....*
- i. Modern slavery.....*
- j. Other/Additional information*

Please see earlier comments about listing CSE distinctly here, it should be included within RASO for the purposes of this consultation as the same issues arise.

21. Thinking about those cases which are quick to respond to, how long do they take from your experience?

We are unable to answer this question.

22. Thinking about those cases that take the most time to respond to, how long do they take from your experience?

We are unable to answer this question – see earlier comments on delays.

23. In your experience, what prevents the timely return of third party material?
Check all that apply.

- a. There is no-one trained to handle such requests
- b. The requests are unclear and need to be clarified before they can be completed
- c. The requests are for a large quantity of documents and therefore take a long time to fulfil
- d. Other/additional information

Please see our answer to Q 14

Thank you for completing this section. Please progress to Section 3.

Section 3: Questions for all respondents

Police should only be requesting third party material when necessary and proportionate, in line with a reasonable line of enquiry. This is clearly laid out in the Criminal Procedure and Investigations Act (1996) and the Attorney General's Disclosure Guidelines. However, we are aware that this approach is not consistently followed. We want to avoid disproportionate requests for information about victims that constitute 'fishing expeditions' where the purpose is to explore whether or not the victim is credible.

Please consider whether you think the proposals below would help to address these issues. If there are any other solutions you would like considered, you can outline these in the final question of this section.

24. Please state how much you agree or disagree with the following:

a. Engaging in Early Advice with the Crown Prosecution Service in rape cases helps to ensure requests for third party material are necessary and proportionate, in pursuit of a reasonable line of enquiry.

Select one.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

We hold the view that this issue is being driven in part by the CPS and so are not sure that Early Advice will help here.

b. There should be a statutory duty on policing to only request third party material that is necessary and proportionate, in pursuit of a reasonable line of enquiry for an investigation.

Select one.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

We are in favour of a clear framework in legislation with an accompanying code of practice.

c. There should be a statutory duty on policing to provide full information to the person about whom the third party material is being requested. This could include details about the information being sought, the reason why and how the material will be used, and the legal basis for the request.

Select one.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

We strongly agree that there should be this duty and that victims should be given the opportunity to give informed non-coerced consent.

d. There should be a statutory duty on policing, in their requests for information to third parties, to be clear about the information being sought, the reason why, how the material will be used and the legal basis for the request.

Select one.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

As outlined elsewhere this will enable the data controller (the third party) to make a better decision about whether they can disclose the information and should help speed the process up.

e. There should be a code of practice to accompany the duties outlined in points b - d to add clarity on the expectations on policing and promote consistency in practice.

Select one.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

A comprehensive code of practice is imperative to make clear to officers the expectation of government in this area and to reassure victims and victims' representatives.

25. Please provide further details for your answers and responses to the policy proposals outlined in questions 15 b-e.

We have been clear that there needs to be significant change in the culture on the ground in respect of RASO cases. This cannot be achieved through training and guidance alone. We believe that new legislation which outlines a clear framework for requests from police for information about victims

in the hands of third parties (TPM) is necessary to make clear the intention of government which is that these routine speculative credibility checks must end.

We are greatly concerned that the Attorney General and the CPS have both recently dismissed the important precedent of *Alibhai* which we assert should be incorporated into any legislative model. It would clearly reduce the opportunity for speculative requests as not only would the officer need to suspect material to be relevant to a reasonable line of inquiry, he or she would also need to suspect that material would be capable of passing the disclosure test- this is a narrow test. The framework could look similar to the recently passed clauses in the Police Crime Sentencing and Courts Act 2022 (PCSC Act) with this important addition.

The legislation should as in the PCSC Act clauses provide extra safeguards for children, vulnerable people and people without capacity.

We would urge that the Secretary of State be bound to consult victims' representatives in creating the code of practice.

The code of practice should give further detail and cover how the officer will demonstrate necessity, proportionality and their reasoning in deciding to pursue this line of inquiry. It should be specific about the consequences of not following the legislation both for the individual officer and the wider legal context. It should contain detailed safeguards for vulnerable adults, children and people without capacity. The code should also contain specific detail on what should be contained in any processing notice/ consent form and mandate that information be provided in 'easy read' and easier to read formats. It should detail support available to victims at the police station.

We would be happy to work with officials working on any proposed legislation.

26. Are there any other actions – legislative or non-legislative – you would like to see to reduce the number of disproportionate and unnecessary requests for third party material?

As outlined in the preamble we would also like to see free legal advice and representation by a qualified lawyer for victims when their Article 8 rights are in play.

We would also recommend that therapeutic notes are made subject to privilege so that victims are able to seek therapy to help with the trauma of the offence without fear that notes of that therapy may be given to the defendant via disclosure.

We would also like to see clear and accessible processing notices, including easy read versions which outline to victims exactly what their rights are in this situation.