



Home Office

**Draft Code of Practice under
Chapter 3A of the Police, Crime,
Sentencing and Courts Act 2022**
Government response

Published on: 1 December 2025

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This report is also available at

<https://www.gov.uk/government/consultations/victim-information-requests-code-of-practice>

Alternative format versions of this publication can be requested from tpmconsultation@homeoffice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Executive Summary

This document sets out the government's response to the public consultation on the draft Code of Practice relating to the handling of third-party material (TPM) requests, particularly counselling records, under Chapter 3A of the Police, Crime, Sentencing and Courts Act 2022.

This consultation invited views on a draft Requests for Victim Information Code of Practice which, once in force, will accompany new duties relating to third party material requests. These duties create a framework to ensure that authorised persons, including the police, only make requests for a victim's third-party material when it is necessary, proportionate and sensitive to the privacy of victims. The consultation sought views on the clarity, practicality, and adequacy of the proposed guidance, especially in relation to safeguarding victims' privacy and ensuring proportionality in investigative practices. This consultation also sought views on a definition of counselling services in the context of these duties.

The consultation was open to the public and was available via the gov.uk website. This consultation ran from the 8 April until the 1 July 2025.

The consultation received 81 responses from a range of stakeholders, including victim support organisations, therapists, legal professionals, police representatives, and individual survivors. Completely empty submissions were excluded from this count.

The majority of responses expressed strong support for the principle of protecting counselling records, while also raising concerns about the clarity and enforceability of the Code.

Overview of Responses

A total of 81 completed or partially completed responses (64 completed survey responses (including 14 partial entries), 17 email responses) to the consultation were received, (47 blank entries were submitted). A variety of organisations and individuals responded to this consultation, of these, many responses were received from organisations, in particular those who support victims of crimes which disproportionately impact women and girls. To aid analysis we broke the respondent groups into the following categories:

- Victim advocacy groups
- Counsellors and psychotherapists
- Police and legal professionals
- Other (includes individual members of public and undefined organisations)

All responses have been analysed and considered in preparing the final statutory guidance. We are grateful to everyone who took the time to respond, particularly those with lived experience who shared their perspectives.

Type of organisation that responded

Category	Response total	Response percentage
Victim advocacy groups	30	37%
Counsellors and psychotherapists	13	16%
Police and legal professionals	7	9%
Other (includes survivors, public, undefined orgs)	31	38%
Total responses	81	100%

While the number of responses was relatively low, the consultation revealed key themes which are explored in this report. The remainder of the document provides a summary of the consultation responses received. It does not attempt to capture every point made, nor does it cover comments on aspects of policy that fall outside the scope of the consultation. This document sets out the changes the government has made to the statutory guidance, following careful consideration of the points raised in response to the consultation. Where the government has not made changes, despite these being suggested by some of those who responded to the consultation, the reasons are explained.

Key themes and issues

All answers to each question were reviewed and categorised under key themes for thematic analysis. We have categorised into the following four main themes:

1. Clarity of the Code
2. Counselling Records
3. Vulnerable Groups
4. Legal Accuracy and Completeness

Responses have been segmented by stakeholder type where relevant.

1. Clarity of the Code

Consultation Questions Addressed:

- Q2: Clarity of duties in Part 2
- Q7: Guidance on informing victims
- Q8: Guidance on third-party requests
- Q9: Guidance on CPS engagement

Summary of Feedback

Many respondents welcomed the Code's intent but raised concerns about its accessibility and clarity. Responses from victim advocacy groups and therapists expressed that they found the language overly legalistic and difficult for non-specialists to navigate. Police responses were mixed, with some officers finding the structure clear and others noting that key definitions were not clearly signposted or inconsistently applied.

There was support for the inclusion of a glossary and clearer signposting to critical sections, particularly those outlining legal thresholds.

Some respondents expressed concern with paragraph 103 which set out that authorised persons should give the written notice, either in hard copy or electronic format, to the victim on or before the date on which the TPM request is made. They argued that this would not provide sufficient time for the victim to give their views and have those views recorded. There was appetite in the consultation responses for a mandatory timeframe to be set for notifying victims of TPM requests.

Government Response

The Government acknowledges the concerns raised regarding the clarity and accessibility of the Code. In response to the consultation feedback, the following changes have been made to improve usability:

- The final Code includes an expanded *Key Terms and Definitions* section to support understanding across all user groups, improving clarity and accessibility in response to consultation feedback.

- Footnotes were added throughout the Code to aid navigation, particularly to sections outlining legal thresholds and procedural safeguards, as well as to definitions.
- The Code now clarifies the scope of duties, including applicability to service police operating overseas, and will explicitly reference relevant bodies such as the Service Prosecuting Authority (SPA).
- The Code has been amended to strengthen expectations around timely notification. However, to allow for operational flexibility and case-by-case discretion, a fixed number of days has not been prescribed. Instead, the Code recommends that victims be given sufficient time to consider and reflect on the notice.

2. Counselling information

Consultation Questions Addressed:

- Q4: Assessing necessity and proportionality
- Q5b: Steps for rebutting the presumption
- Q5c: Strength of safeguards for counselling records
- Q5a: Clarity of guidance on counselling records
- Q6a–d: Clarity and scope of counselling services definition
- Q6e: Additional factors for defining counselling services

Summary of Feedback

There was consensus across stakeholder groups that counselling records should be protected from unnecessarily intrusive requests. Therapist respondents emphasised that such notes are therapeutic tools, not factual records, and that requests often lack a clear legal basis and undermine trust. Responses from victim support organisations warned that the potential for speculative requests could deter victims from seeking therapy and risk re-traumatisation.

The draft Code set out a series of factors which are not sufficient on their own to establish whether the information within the counselling records is likely to have “substantial probative value”. Many respondents, particularly from victims’ groups called for the Code to explicitly state that the mere presence of a factual account in counselling notes is not sufficient to meet the test.

While there was broad consensus across stakeholder groups on the need for a comprehensive definition of counselling services, some variation in views were noted between cohorts. For example, victim-survivor respondents tended to emphasise the importance of including informal and peer-led support, whereas policing stakeholders were more likely to focus on qualifications and record-keeping standards.

There was also broad support for a definition to cover NHS, voluntary sector agencies and private practice, as well as support for a definition to include individual, family and / or group services.

Government Response

The Government recognises the sensitivity of counselling records and the need for robust safeguards. Accordingly:

- The series of factors which are not sufficient on their own to establish whether the information within the counselling records is likely to have “substantial probative value” have been revised and now include “that the records merely: relate to the incident under investigation, and / or contain an account of the facts of the offence by the victim”
- After careful consideration the government accepts the case for a wide definition of counselling services. As such, for the purposes of these duties a counselling service means a service, whether remunerated or voluntary, offering psychological, therapeutic or emotional support aimed at improving the service user’s emotional, psychological and mental health. Under such a definition a broad-spectrum of victim information will be afforded higher safeguards against intrusive requests. This approach reflects the views expressed throughout the consultation process.

3. Vulnerable Groups

Consultation Questions Addressed:

- Q10a: Guidance for vulnerable adults
- Q10b: Guidance for child victims
- Q10c: Guidance for adults without capacity

Summary of Feedback

Respondents consistently raised concerns that the draft Code did not go far enough to ensure vulnerable victims were safeguarded from intrusive requests, particularly children and adults without capacity. Responses from victim support organisations, therapists, and commissioners called for clearer expectations around trauma-informed engagement, notification practices, and the provision of qualified support.

There was support for clearer definitions of “vulnerable adult” and “Gillick competence,” and for ensuring that interpreters and advisors are appropriately qualified. Several stakeholders also emphasised the need for reassurance that objecting to a TPM request would not result in a case being dropped.

Government Response

The Government recognises the importance of ensuring that vulnerable victims are treated with dignity and care throughout the investigative process. In response to the consultation, the following changes have been made to the Code:

- The Code now includes clearer definitions of “vulnerable adult” and “Gillick competence,” with guidance on assessing capacity and tailoring communication accordingly.
- Part 8 of the Code has been expanded to provide guidance on working with vulnerable victims, including those experiencing trauma, distress, or cognitive barriers. Authorised persons are advised to consider the

impact of trauma on comprehension and communication, and to adjust their approach accordingly.

- The Code clarifies responsibility of the authorised person to ensure an interpreter be made available.
- The Code includes detailed guidance on how to engage with children and adults lacking capacity, including who should be notified on their behalf and how their views should be sought and recorded. It also sets out safeguards to ensure that decisions are made in the best interests of the individual.

4. Legal Accuracy and Completeness

Consultation Questions Addressed:

- Q1: Overview of duties in Part 1
- Q3: Compliance with legal frameworks
- Q11: Gaps in the guidance
- Q12: Inclusion of relevant materials and links

Summary of Feedback

Some responses, including from victims' groups and legal professions, expressed concern that there was an insufficient, or unclear explanation of some legal definitions. For instance, many stated the appropriate threshold is "strictly necessary and proportionate", rather than simply 'necessary and proportionate' where third party material contains sensitive data.

Respondents also noted that paragraph 62 states that "pre-trial therapy records should only be requested when necessary and proportionate, in line with a reasonable line of enquiry". It was argued that pre-trial therapy should be considered and as such should be subject to the elevated tests.

Consultation feedback indicated that requests for TPM are often too broad and lack specificity, breaching data minimisation principles.

There was confusion among third-party organisations about their obligations when receiving TPM requests. Many mistakenly believed they were required to comply, even in the absence of a court order. Respondents called for clearer guidance on third-party responsibilities and stronger signposting to relevant legislation.

Paragraph 144, which outlines CPS engagement, was seen as vague and potentially misleading. Stakeholders called for clearer expectations around early advice, particularly in cases involving sensitive data.

Government Response

The Government acknowledges the need for greater legal clarity and consistency. In response:

- We have noted the desire to extend mentioning, where there is reference to necessary and proportionate, the "strictly necessary and proportionate" test. References to "necessary and proportionate" reflect the test in the Victims and Prisoners Act 2024 in relation to requests for

information relating to victims. The duties set out in section 44A(3)(c) are clear that the authorised person must be satisfied that the request is necessary and proportionate to achieve the purpose of preventing, detecting, investigating, or prosecuting crime. As such we have decided not to incorporate the desired change, to ensure the Code clearly reflects the obligations on authorised persons set out in section 44A. We have however included a link to the Information Commissioner's opinion on the processing of victims' personal data in rape and serious sexual offence investigations to provide greater clarity.

- The Code has been altered to clarify that victims should be clearly informed that objecting to a TPM request will not result in their case being automatically discontinued.
- The Code has been edited to clarify that pre-trial therapy is considered a counselling service for the purpose the duties under this Act and therefore are subject to the enhanced relevance test of 'substantial probative value'.
- The Code also clarifies the role of the Service Prosecuting Authority (SPA) for service police, ensuring parity in guidance.
- The Code clarifies that the duties apply to service police operating overseas.
- Footnotes have been added to key legal materials, including the Data Protection Act 2018, the Human Rights Act 1998, and the Attorney General's Guidelines on Disclosure.
- The Code will be reviewed to ensure alignment with existing legal frameworks and to close identified gaps in guidance.

Conclusion and next steps

The Government is grateful to all stakeholders who responded to the consultation and acknowledges the valuable insights provided. The feedback has directly informed revisions to the Code of Practice ensuring that the final version is clearer, more accessible, and better aligned with legal and operational realities.

The Government will continue to monitor the impact of the Code and consider further refinements as necessary to ensure it meets its objectives of safeguarding victim privacy, supporting fair investigations, and maintaining public confidence in policing.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf