

ANNEX B - OBTAINING AND DISCLOSING PRE-TRIAL THERAPY NOTES

FLOWCHART

The investigator should **ask the victim whether they have received therapy** since the incident occurred? If so, the investigator should enquire what therapy was obtained and whether the incident was discussed. The investigator should make and retain an accurate record of this conversation.

Yes



Is it a **reasonable line of inquiry** to review the therapy notes? If the case is pre-charge, the investigator should consider obtaining Early Advice to discuss the position with a prosecutor. Access to therapy notes can only be requested in an individual case when it is a **reasonable line of inquiry** that may reveal material relevant to the investigation or the likely issues at trial. There must be a properly identifiable foundation for the inquiry, not mere conjecture or speculation.

No



The investigator must confirm the position in the Information Management Document (IMD) or equivalent document and must communicate this to the prosecutor. The prosecutor must confirm this in the Disclosure Management Document and serve this on the defence prior to the Plea and Trial Preparation Hearing. The police should make it clear to victims that their wellbeing is paramount and that they are free to obtain therapy at any time if they wish to do so and therefore this position may change and should be kept under review.

Yes



If it is determined that obtaining therapy notes represents a reasonable line of inquiry, then the police should **speak to the victim prior to approaching the therapist**. The police should seek the **agreement of the victim** and inform them of their right to object at any time to the processing of their data. The conversation should be evidenced and communicated to the prosecutor.

Agreement not provided



Explain clearly to the victim why the therapy notes need to be obtained and the potential implications if the notes aren't reviewed. If agreement is still refused, consider the principles in the AG's Guidelines and consider whether the evidential test within the Code for Crown Prosecutors can be met. The key question is whether the defendant can have a fair trial?

Agreement provided



Investigators should **talk to the therapist** to enquire what was discussed during therapy. As part of this discussion investigators should provide clear and specific reasons why it is a reasonable line of inquiry to review the therapy notes. This discussion may impact on whether it is still a reasonable line of inquiry to review the notes.

The investigator should make and retain an accurate record of this conversation.

No longer a reasonable line of inquiry



The investigator must confirm the position in the Information Management Document (IMD) or equivalent document and must communicate this to the prosecutor. The prosecutor must confirm this in the Disclosure Management Document and serve this on the defence prior to the Plea and Trial Preparation Hearing. If therapy is ongoing this position should be kept under review as information may come to light that means it is a reasonable line of inquiry to obtain the notes.



Continues to be reasonable line of inquiry

Investigators must make a clear and reasoned request to the therapy provider for the specific material they require. Investigators are not required to provide extensive details about the investigation to a therapist, but the officer must be able to demonstrate to the therapist the relevance of their specific enquiries to their investigation. It is important that any request for information is specific (i.e. spanning a specific time period and related to a particular issue).

The investigator should pursue the reasonable line of inquiry in the least intrusive method possible as required by paragraph 13(d) of the AG Guidelines.

Request refused




Ensure the therapy provider understands the request and that agreement from the victim has been obtained. Explain the potential implications if the request continues to be refused. For example, this could impact on the progression of the investigation and application of the Full Code Test or if post charge a witness summons application may be made requiring the therapist to attend Court. If the request continues to be refused, consider if there are any alternative methods to obtain the notes. If this is not possible, consider whether the evidential test within the Code for Crown Prosecutors can be met. The key question is whether the defendant can have a fair trial?

Request accepted



Consider the notes and identify any material that **meets the disclosure test**. The notes should be appropriately listed and described on the unused material schedule. Copies of any material that meets the disclosure test should be suitably redacted, if required, and provided to the prosecutor.

Nothing to disclose 

The prosecutor should consider the position and if in agreement that there is nothing to disclose then the disclosure management document should be drafted/updated to confirm the position. This should be served on the defence.

Material that meets the disclosure test



The prosecutor should first review the case and consider whether the material impacts upon the decision to charge or, if the case has already been charged, whether the material impacts on the application of the Full Code Test. If the Full Code Test is still met the prosecutor should give close scrutiny to the material and only disclose it to the defence where absolutely necessary. The investigator should be informed what material has been disclosed to the defence. The investigator should then explain to the victim that therapy notes have been disclosed whilst ensuring that the contents is not discussed and avoiding any form of witness 'coaching'. The investigator should make and retain an accurate record of this conversation.