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Police requests for Third Party Material

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

WWA have chosen not to respond to the policy proposals outlined in questions 24b-e, a number of reasons for which, alongside more general concerns, will be outlined below.

Much guidance and legislation already exists surrounding handling of third-party material and disclosure, for example, the Criminal Procedure and Investigations Act (1996) and the accompanying Code of Practice, the National Disclosure Standards, the Attorney General's Guidance on Disclosure, and the Joint Protocol between the Crown Prosecution Service (CPS) and the Police. A summary can be found in the Introductory chapter of the CPS disclosure manual¹.

Accordingly, the introduction of this consultation itself states the following regarding requests for information from third parties: "Where police make such a request, they must have a lawful basis to do so and ensure compliance with the wider legislative obligations (such as the Human Rights Act 1998, the Data Protection Act 2018 and UK GDPR)" and that adherence to such pieces of legislation is not consistent.

Further, the consultation period for the proposed Extraction of Information from Electronic Devices Code of Practice (in the Police, Crime, Sentencing and Courts Act 2022) has already achieved Royal Assent. This provides new statutory power to govern the practice of extracting information from electronic devices – third-party material – creating a statutory basis for police and other authorities to extract this information with agreement of the device user.

Given the above, we question whether further guidance, such as codes of conduct and statutory guidance, is necessary over and above pre-existing legislation, and whether the application of further guidance may convolute processes and exacerbate inconsistencies in the implementation of such guidance. This may lead to more cumbersome judicial processes, and further delays for survivors seeking justice.

The collection of unnecessary and/or excessive amounts of personal information from survivors of rape and sexual assault has been widely reported. Indeed, a 2019 review by HM Crown Prosecution Service Inspectorate themselves² found (relevant) unused material was supplied in 81.3% of relevant charged or NFA cases, and that "rape cases now have to be front-loaded, which is shorthand for ensuring that all the relevant information is discussed by the police and CPS, with the possible sources of evidence and unused material followed up before a charging decision is taken".

Pendragon House, Caxton Place | Pentwyn, Cardiff | CF23 8XE
Tel: 02920 541551

info@welshwomensaid.org.uk | www.welshwomensaid.org.uk

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Additionally, the Information Commissioner's Office³ wrote in May 2022 that victims are being told to consent to handing over 'extraordinary' amounts of information about their lives, and that 'victims are being treated as suspects'. They further state that excessive collection of victim's information is not in compliance with the key principles of UK General Data Protection Regulation or the Data Protection Act 2018 and can leave organisations open to regulatory action.

We remain concerned that such requests for unnecessary and extensive third-party materials has serious consequences for survivors of VAWDASV, such as re-traumatisation, mistrust, and delaying access to support services, a concern that the CPS themselves have acknowledged⁴. Further, a 2019 analysis of victim's reasons for withdrawing sexual offence complaints by the Victim's Commissioner⁵ found that one in five complaints were withdrawn due to disclosure or privacy concerns, further reaffirming our concern that requests for extensive and/or unnecessary evidence may prevent survivors from seeking justice.

We wish to raise further concern regarding this consultation's focus on action within the police without acknowledgement of the role of the CPS in requests for third-party material. The focus on guidance for police seems superficial when the CPS can, and do, regularly request further material. Indeed, a 2021 UK Government review⁶ into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales found that police-surveyed participants felt requests for third-party and digital evidence had become a standard CPS request for all rape cases, rather than specifically for cases where there was a direct link to the incident, with CPS lines of enquiry described as being 'too broad' and a 'fishing expedition'.

We suggest that consideration of the application of extant legislation to be more prudent than the introduction of new legislation. The CPS Disclosure Manual: Chapter 5 – Reasonable Lines of Enquiry and Third Parties⁷ already necessitates that any enquiry is 'proportionate, reasonable and necessary', yet this consultation seeks to introduce "a statutory duty on policing to seek third party material only when necessary and proportionate". We suggest that such a statutory duty already exists and is not being consistently applied, as outlined in the examples above, and that measures to ensure both the police and the CPS act in a manner in keeping with the current legislation would be a more useful, and more effective way of ensuring requests for third-party material are appropriate. Suggestions for such measures will be outlined in our response to Question 26 of this consultation.

As a final point, we want to use this opportunity to raise our concerns about the context and content of this consultation. The wording of the consultation itself relies heavily on previous knowledge and/or experience of the law, the police, the CPS, and their procedures. We are concerned that the inaccessibility of the consultation may prevent some key stakeholders identified in the introduction of this consultation from providing informed responses to the proposed actions, such as:

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- victims of crime who have had third party materials requested about them
- third party organisations that may be asked to supply material about victims
- individuals such as Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs).

Given the UK Government's end-to-end review of the Criminal Justice System Response to Rape: Report on findings and actions identified the "establishment of a lived experience panel including survivors who have proactively engaged with the project, facilitated by an ISVA service to ensure victims' experience is heard" as a key success of the project, we are disappointed in these clear barriers to meaningful survivor participation and engagement. We maintain that this is key to create meaningful, enduring change within the criminal justice system's response for survivors, and to re-establishing the trust between survivors and the criminal justice system.

1. <https://www.cps.gov.uk/legal-guidance/disclosure-manual-chapter-1-introduction>
2. <https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2019/12/Rape-inspection-2019-1.pdf>
<https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2019/12/Rape-inspection-2019-1.pdf>
3. <https://ico.org.uk/media/about-the-ico/documents/4020539/commissioners-opinion-whos-under-investigation-20220531.pdf>
4. <https://www.cps.gov.uk/cps/news/rape-victims-should-not-delay-seeking-therapy-says-updated-cps-guidance>
5. <https://victimscommissioner.org.uk/document/vc-analysis-of-victims-reasons-for-withdrawing-sexual-offence-complaints/>
6. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994817/rape-review-research-report.pdf
7. <https://www.cps.gov.uk/legal-guidance/disclosure-manual-chapter-5-reasonable-lines-enquiry-and-third-parties>

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?

This consultation identifies that legislation currently exists to prevent disproportionate and unnecessary requests for third-party material but is not being applied consistently.

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The 2019 review¹ by HM Crown Prosecution Service Inspectorate identified concern about the “impact on police standards of having inexperienced officers dealing with these specialist cases, and cited examples of lack of understanding of investigative roles and duties, such as those related to unused material” and “interviewees expressed concern that officers did not understand their duties or the concept of relevance in relation to unused material”.

Further, the 2021 UK Government review² into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales found that police rape and serious sexual offences (RASSO) leads indicated there “might be some element of misunderstanding within the CPS as to why they were requesting material, despite CPS commonly relying on such material for charging”.

Consequently, we believe this lack of understanding and lack of consistent application of legislation would be better remedied by enhanced training for police officers and CPS officials. Mandatory training, or a code of practice on how to request third-party materials and how to conduct investigations in a trauma-informed manner, would help standardize practice across forces and force areas when it comes to requesting third-party material. In turn, this may help improve communication with survivors, and help survivors feel supported rather than treating them as suspects. Informing survivors as to what information is being requested and why, the legal basis for requesting the information, and how information will be used would help instantiate trust with survivors and help them feel believed, which would minimize the potential of re-traumatization and withdrawal from the judicial process.

Feedback on Domestic Abuse Matters training delivered by Welsh Women’s Aid to police officers during 2022 found a 1,433% increase in the number of learners who rated their subject knowledge as excellent following the training and, more specifically, 71% of learners said the training increased their level of knowledge regarding evidence-led prosecutions involving survivors. As such, it is clear that providing robust training to police creates meaningful change and we would encourage mandatory training on the collection of third-party evidence in a survivor-led, trauma-informed manner to be implemented across police forces in England and Wales.

Finally, the aforementioned 2021 UK Government review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales also identified that over the last 5 years, the amount of digital and third-party evidence required for adult rape investigations has increased. Similarly, in recent years, it has been reported³ and ⁴ that rules regarding disclosure have not been followed, and this has led to the collapse of a significant number of criminal cases, predominantly involving rape or serious sexual offences. If the legislation states that any enquiry must be “proportionate, reasonable, and necessary”, are all victims of serious crime subject to the same level of scrutiny as survivors of violence against women, domestic abuse, and sexual violence?

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We suggest that analysis of the consistency when determining proportionality between victims of all crime types would help to ensure survivors of VAWDASV are treated as survivors, not as suspects.

1. <https://www.justiceinspectrates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2019/12/Rape-inspection-2019-1.pdf>
2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994817/rape-review-research-report.pdf
3. <https://www.theguardian.com/law/2018/jan/24/more-than-900-criminal-cases-collapse-undisclosed-evidence-cps-police>
4. <https://www.bbc.co.uk/news/uk-42841346>

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