

# Third Party Material

Supplementary briefing and Q&A

## Summary

Victims of rape who choose to report to the police are subject to excessive examination of their personal life via information and personal records held by third parties.

The government has introduced new legislation via the Victims and Prisoners Bill to address this.

However, these new clauses do not introduce sufficient safeguards to protect victims from these intrusive requests.

Instead, the draft legislation restates the existing legal position, as outlined in legislation, case law and statutory guidance. These provisions are not adhered to.

The only way to change practice and to protect rape victims is to legislate.

With amendments to the Victims and Prisoners Bill, the Victims' Commissioner is pushing for legal constraints on the indiscriminate use of third-party materials in rape investigations.

[The full text of the amendments can be found online.](#)

## What is Third Party Material (TPM)?

TPM is a shorthand used by police and other criminal justice agencies to describe information about a complainant or victim, which is held by someone else.

These include materials like lifelong medical, school, and social services records.

## What is the problem?

Victims of rape and serious sexual assault frequently face unjustified demands by police and prosecutors for personal data held by third parties.

Campaigners say these materials are frequently sought from rape complainants and often appear to be more about scrutinising the victim's credibility as a witness than pursuing a 'reasonable line of inquiry'.

Cases are frequently dropped if victims do not sign over their information. The impact of these requests can be devastating – undermining victims' confidence and can be a direct factor in victims withdrawing support for the complaint.

A recent government review, analysing police rape investigation records in cases which progressed to court from 2021, revealed that most requests for information were neither necessary, proportionate, nor relevant to a reasonable line of inquiry in the investigation.

## What is the current legal position?

Police can access and process private information about victims of crime if they believe information is relevant to a reasonable line of inquiry, proportionate and necessary.

Some types of material, such as medical records, require 'sensitive' processing under data protection legislation. For these materials, police must be able to meet a higher test of strict necessity.

Victims are notified when information is being requested but their consent is not sought.

Prior to the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act), when government legislated to prevent it, victims were also asked to hand over their mobile phones for wholesale download in what became known as the 'digital strip search'.

## What is wrong with the government's proposals?

The government's clauses consolidate the existing position in law and do not create a new framework or police power. The amendment will not significantly alter the situation for victims and survivors nor create any additional safeguards to their right to a private life (Article 8 rights).

The clauses set out that police should only request third party materials if they are relevant to a reasonable line of inquiry, necessary and proportionate. If making a request, police must serve notice on a victim of their intention to do so.

It is difficult to see how the government's proposed changes will be sufficient to bring about the change required.

The government argues that the clause's accompanying statutory guidance will shift the dial. However, as the clauses simply reinforce existing provisions in law, do not introduce new safeguards, and these existing provisions in law are not currently properly adhered to, it is hard to see how this will happen.

Additionally, the government's clauses do not incorporate the Data Protection Act (DPA) investigative threshold of "strictly necessary and proportionate" for sensitive data, which would apply to much of the data sought in this context.

## What is the Victims' Commissioner proposing?

The Victims' Commissioner argues that government should amend the Victims and Prisoners Bill so that the clauses concerning TPM requests mirror those governing digital material in the PCSC Act.

In this Act, the government partially legislated on this issue and introduced safeguards for victims to protect them from intrusive requests for digital data from personal electronic devices.

In contrast, the clauses in the Victims and Prisoners Bill suggest personal data can be sought regardless of any challenge raised by the victim.

Legislation must be clearer that police and prosecutors should always be seeking the agreement of victims when obtaining their personal data.

## What are the Victims' Commissioner's amendments and what are they trying to achieve?

The amendments aim to:

- Strengthen victim safeguards by mirroring existing protections for digital data in the PCSC Act. This would require police to obtain a victim's voluntary agreement before requesting third-party material (TPM).
- Promote informed consent by emphasising that victims must be fully informed before consenting to police accessing TPM from a third party.

- Reduce coercion by prohibiting police from threatening to end investigations if victims do not consent to requests for TPM.
- Create consistency for law enforcement and victims by aligning the framework for TPM requests with the framework for digital data requests.
- Add additional protections for children and adults without capacity so that police are not allowed to 'serve notice' of their intention to seek material on a follow officer or colleague.

[The full text of the amendments can be found online.](#)

## Is statutory guidance sufficient to prevent this practice?

No. The only way to change practice on the ground and to protect rape victims is to legislate.

The government argues that the accompanying statutory guidance will be sufficient to change policing culture, achieving the shift in attitudes many believe is necessary.

The rationale behind this approach is questionable. As the amendment doesn't alter the legal landscape, the accompanying statutory guidance will simply reiterate existing legal principles. There is already a great deal of existing guidance, but this clearly is not being followed. In any event, guidance is not legally enforceable.

The government cites the PCSC Act as an example of effective statutory guidance. However, it is more likely that the legal framework created by the PCSC Act's clauses have driven the observed changes.

Anecdotal evidence from frontline victim advocates and from Operation Soteria suggests this framework, not the guidance, has directly impacted the number of data requests they are seeing.

## What about the defendant's right to a fair trial?

The right to a fair trial, like the right to privacy, is a human right enshrined in UK law under the Human Rights Act 1998 (HRA).

Under existing provisions, third-party data owners can frustrate police pursuing a reasonable line of inquiry by refusing them access to material they hold.

In these instances, police can still obtain the material in the event of the suspect being charged, whereby they can apply for a witness summons to compel the owners to produce the material. This would remain the case under the Victims' Commissioner's proposed amendments.

Under the Victims' Commissioner amendments, if during the investigation a victim does not agree to the police accessing third party material about them, the police are not prevented from pursuing a reasonable line of inquiry post-charge. Indeed, they are duty bound to do so up until the point of trial.

The proposed clauses ensure victim agreement cannot be obtained through threats that an investigation will end. However, these clauses do not impact a prosecutor's decision to press charges. Prosecutors use a legal standard, the Code Test, to evaluate cases. Part of this test considers the likelihood of a conviction based on the available evidence. If a victim withholds access to third-party material, the test can still be applied, but that potential evidence won't be considered.