

Therapeutic Support/Counselling for Victims of Sexual Offences

Victims of sexual offences will often seek therapeutic support or counselling following a sexual offence being perpetrated on them. A number of bodies including COPFS collaborated to provide guidelines for practitioners dealing with this issue. There were two codes of practice produced, one for adults and one for children which are outlined below.

Whether dealing with adults or children all practitioners involved in this area should be familiar with and adhere to the [COPFS Policy](#) on Obtaining and Disclosing Sensitive Personal Records in the Investigation and Prosecution of Sexual Offences which is published and publically available.

ADULT WITNESSES

The key message to take from this guidance is that therapeutic support for victims and witnesses, particularly but not exclusively within the remit of sexual crimes, both prior to and during court proceedings should be encouraged.

It is in the interests of justice that witnesses are able to give their 'best' evidence, that is the most accurate and truthful recollection of events that the witness can give from their own experience and recall. Witnesses may find the recall of traumatic events during court proceedings stressful and therapeutic intervention may assist in easing that stress.

[The Code of Practice to Facilitate the Provision of Therapeutic Support to Adult Witnesses in Court Proceedings](#) should be considered and adhered to when dealing with such matters. Failure to do so could result in cases being discontinued, unnecessary distress being caused to victims and witnesses and, potentially, miscarriages of justice occurring.

The Code makes it clear that therapeutic support can be beneficial in addressing a variety of issues with adult witnesses and that their welfare, interests and rights should be of paramount consideration.

It is recognised that all forms of therapeutic support have the potential to cause evidential difficulties, however that is no justification for witnesses being denied the emotional support and counselling assistance they otherwise need.

Such support and counselling will not inevitably contaminate evidence. It is important, as the Code details, that there should be raised awareness about the risks of contaminated evidence associated with certain therapeutic techniques and that service providers:

- ❖ Avoid any leading questions or practices which could be interpreted as 'coaching'
- ❖ Avoid discussing particular issues relating to the case because of their potential to be called into evidence

- ❖ Avoid any discussions surrounding the material facts of the event in question
- ❖ Be aware of the potential impact of prior statements on the case and the disclosure obligations on the police and the prosecutor

Maintaining trust is crucial in the provision of therapy and any aspects of the therapy which bear no relevance to the criminal proceedings will not fall within the disclosure obligations of the Crown. However, witnesses should be made aware that information which is relevant and material to the offence being investigated and potentially prosecuted may require to be disclosed to the police, the prosecutor and ultimately the defence.

CHILD WITNESS

Many adults find the experience of giving evidence stressful but child witnesses are considered to be particularly vulnerable and will often find the process very difficult.

Where a child has been traumatised as a result of a criminal act, the provision of some form of counselling may be extremely beneficial. In this situation, reference should be made to the [The Code of Practice to Facilitate the Provision of Therapeutic Support to Child Witnesses in Court Proceedings](#) which deals specifically with child witnesses and seeks to address, in practical terms, the conflict between concerns that evidence may be contaminated and what is considered to be in the best interests of the child. Children receiving the support they need, when they need it is of primary importance and the interests of the child must be the paramount consideration.

Uncertainty can arise between therapeutic support providers and legal practitioners over whether therapeutic support could or should proceed when a court case is pending.

Decisions on the provision of counselling are the responsibility of the child's carers.

The code states that Criminal Justice agencies should restrict their involvement to advising, where appropriate, on whether the proposed support is likely to have an adverse effect on any subsequent court proceedings. The Procurator Fiscal has no locus other than to advise whether the proposed counselling is likely to have an adverse effect on any subsequent criminal proceedings (by for example 'contaminating' the evidence) and to decide whether the counsellor should be cited as a witness. Procurators Fiscal being asked to provide such advice should advise that therapeutic support providers must adhere to the Code of Practice in order to minimise any adverse effect their service could have on future court proceedings.

In relation to counselling in particular, early discussion with Crown Counsel in NSCU is encouraged. If consideration is being given to citing a

counsellor and/or obtaining counselling records in any sexual case authorisation to do so must be obtained from NSCU in advance. Generally the Crown will not need to cite a counsellor or obtain counselling records, but the defence may wish to do so if they are suggesting that the evidence has been contaminated as a result of the counselling.