

Annex G - Equality Impact Assessment Record

Name of new/ revised Policy:	Revised Sensitive Personal Records Policy
Purpose of Policy:	To create a consistent process which complies with appropriate legal requirements when COPFS and the defence seek to recover sensitive personal records of witnesses.
Lead EIA Officer:	Policy Staff
Team / Federation:	Policy Division, Crown Office
Email Address:	PolicyDivision@copfs.gov.uk
Others involved:	The revised policy has been discussed with a number of others during consultation including COPFS staff, police and key external stakeholders
Date Assessment Completed:	13 September 2019
Assessment Record Authorised by:	

This new / revised policy was fully assessed for any equality impact based on the General Equality Duty of the Equality Act (2010).

Background Details about new policy / process

The policy proposes new processes regarding the recovery of sensitive personal records, e.g. medical records, of witnesses. Medical records are often sought in cases of sexual offending which, statistically, involve more women victims than men.

The revised policy gives effect to the decision of the Court in *WF Petitioner* that witnesses whose sensitive personal records are to be recovered have the right to be informed of the intention to recover those records and the right to object to the recovery.

COPFS will seek informed, written consent from witnesses whose records require to be recovered. If the witness does not wish to consent COPFS will consider whether it is appropriate to obtain a court order to recover the records, failing which COPFS will assess the need to discontinue all or part of the proceedings.

In respect of defence applications to recover records, COPFS has agreed a process with SCTS (Scottish Courts and Tribunals Service) which ensures, in the High Court, that those applications are intimated to the witness. COPFS will also contact the witness to explain their rights. COPFS will, separately, consider each application and, where recovery does not meet the appropriate legal test, COPFS shall oppose recovery of those records. A similar process is being developed in the Sheriff Court.

Summary of research and consultation carried out:

COPFS has considered relevant case law (including *McLeod v HM Advocate*, *WF Petitioner*, *CJ(M) v HM Advocate* and *McLeod Petitioner*). Relevant statutory provisions have been assessed and taken into account also.

Existing internal COPFS guidance, in particular the Disclosure Manual, has been assessed to ensure that the updated policy remains consistent with core principles.

Operational COPFS staff have been involved and consulted during the course of creating the updated policy.

COPFS has also consulted with key stakeholders who represent those persons most likely to be affected by the revised policy including: Rape Crisis Scotland, Scottish Women's Aid, Children 1st, NHS, SCRA (Scottish Children's Reporter Administration), Police Scotland and Scottish Government.

All of those organisations have considered the policy and provided feedback to COPFS. Wherever deemed appropriate, COPFS has given effect to that feedback by amending the policy accordingly.

Equality Ambassadors contacted:

(if none, please give reasons why)

All COPFS Equality Ambassadors have been contacted and asked to comment on the content of the draft policy.

Key issues identified: -

(Note here if you conclude there are no equality issues relating to the new / revised policy)

Sex

The policy will relate to the recovery of the sensitive personal records of women to a greater extent than those of men. That scenario arises simply because women are statistically more likely to be victims in sexual offences cases. However, the policy applies equally to all witnesses whose records require to be recovered regardless of their sex.

Age

The policy will relate to witnesses of all ages. However, the issue of obtaining consent before recovering records is a key element of the policy. Where witnesses are children, this can present challenges due to the need to assess whether the child has the capacity to consent or, if consent requires to be obtained from a person with caring responsibility for the child. The views of organisations representing children have been sought and taken into account in drafting the policy.

Mental Health

In many cases, an indication that the witness has experienced mental health issues may be the reason why the records require to be recovered. It is acknowledged, therefore, that the policy impacts on people with mental health issues to a greater

extent than those who do not. The policy is designed to ensure that the rights of all persons whose records are sought are properly protected and balanced against the competing right of the accused to receive a fair trial.

Changes made to new / revised Policy

Consultation with Children 1st and the SCRA led to the policy being amended to give COPFS staff specific directions regarding the need to seek consent from child witnesses whose records are to be recovered rather than simply seeking consent from the parents/guardians of those child witnesses who were aged under 16, as was the original proposal.

Consultation with Scottish Women's Aid and Scottish Rape Crisis led to the introduction of written information leaflets for witnesses whose records require to be recovered. These leaflets set out a series of FAQs designed to provide the witness with information about the process and about their rights. The leaflets can be provided in alternative languages and formats, including Braille and a BSL version.

Review Process for Policy

The revised policy will be subject to ongoing review. In communicating the terms of the revised policy to COPFS staff and external stakeholders involved in the consultation process, it will be made clear that we will welcome any ongoing feedback provided after the revised policy is implemented, including in relation to any individual cases to which the revised policy is being applied, so we can ensure the policy is fit for purpose. The policy can be adapted to suit future changes in law and criminal process.

SEND THIS COMPLETED FORM TO DiversityTeam@copfs.gsi.gov.uk

For further information about this impact assessment,
please contact:
Equality Team, Policy Division,
Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA

Alternatively send an email to DiversityTeam@copfs.gsi.gov.uk.

Assessment records can be made available in alternative formats
or languages on request.