



Joint statement on the Ministry of Justice claims about rape survivors' therapy notes

On Tuesday, 16th May 2023, the government announced that an amendment to the Victims and Prisoners Bill will set out clearly in law that in rape cases, the police should only request third party materials such as survivors' counselling notes if they are absolutely necessary and proportionate.

However, in practice, this amendment to the Victims and Prisoners Bill does not change the law or bring about any new protections for victims and survivors of rape. It simply reinforces what already exists in law, but is not properly implemented, under the Data Protection Act 2018. While a positive step, what really matters is implementation on the ground and what police officers do in practice.

Reinforcing existing law in the Victims and Prisoners Bill differs significantly from [the model we are proposing](#), which is an actual change to the legal threshold for access to survivors' counselling records. The model we are proposing is endorsed by the British Association for Counselling and Psychotherapy (BACP), the United Kingdom Council for Psychotherapy (UKCP), the National Counselling Society and the British Psychological Society, and would give special protection for therapy records, over and above what exists for other types of materials such as GP records, social services records, education records etc. This is because disclosure of therapy records is preventing survivors from prioritising their recovery from the trauma of sexual violence.

Under the current law, including the new proposals in the Victims Bill, a rape survivor is still prevented from discussing with their therapist the details of what happened to them. This is because if therapy records contain any account of the offence at all, that in itself will make the notes disclosable. This restricts survivors' ability to open up to their therapist, in a way that can significantly prolong their trauma.

Due to their private and sensitive nature, therapy notes should be treated differently from other third party materials. This is why we're calling for a change in the law to afford therapy notes greater legal protection by raising the threshold for when a survivor's notes can be requested by the police and Crown Prosecution Service. Our proposals would also require decisions on disclosure to be made by a Judge, to ensure the victim's privacy rights are met.