



2021/22

# Pre-Trial Therapy Policy

Clean Slate Policies

**PRE-TRIAL THERAPY POLICY**

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## 1. PURPOSE

This policy outlines the basis that pre-trial therapy is provided to support service users. It is in accordance with the [Pre-Trial Therapy Guidance](#) developed by the Crown Prosecution Service, Police and Department of Health.

## 2. AUDIENCE

This policy is intended for:

- Counsellors and Therapists
- Independent Sexual Violence Advisers (ISVAs)
- Practitioners working in the criminal justice system
- Service users

## 3. RELATED DOCUMENTS

This policy should be read alongside:

- This Organisations Confidentiality Policy
- [The CPS Pre-Trial Therapy Guidance](#)

## 4. DEFINITIONS

For the purposes of this policy, the following definitions apply:

### 4.1 Service User

The individual who receives support from the organisation. This includes survivors and their family or friends. The terms 'person', 'client' and 'victim' are also included in this definition.

### 4.2 Protected Characteristics

This includes following characteristics:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;

- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

[Source: Equality Act 2010, [www.legislation.gov.uk](http://www.legislation.gov.uk)]

### 4.3 Therapy

The range of psychological and emotional counselling, therapeutic approaches and support provided for difficulties that are associated with and/or exacerbated by a criminal offence. For the purposes of this policy the term therapy/Therapist and counselling/Counsellor is used interchangeably.

### 4.4 The Organisation

For the purposes of this policy ‘the organisation’ refers to Clean Slate

## 5. BACKGROUND

The Crown Prosecution Service (CPS) first released guidance on pre-trial therapy in 2002 which has periodically been updated in response to reviews. The latest update in 2020 aims to emphasise the importance of avoiding any delay in accessing therapy in connection with a criminal investigation or prosecution, to encourage victims to get the help they need. [Source: <https://www.cps.gov.uk/cps/news/crown-prosecution-service-invites-public-comment-revised-pre-trial-therapy-guidance>].

All survivors of sexual offences may be regarded as vulnerable witnesses and are automatically eligible to apply for special measures to give their best evidence. It is up to the Judge to decide which, if any, of the special measures will be made available. See [the Youth Justice and Criminal Evidence Act, Part 2](#) for more information.

## 6. GUIDING PRINCIPLES

- The organisation is committed to empowering and supporting survivors to recover and take back control of their lives, regardless of whether they wish to report the offence/s against them to the authorities or not.
- The organisation is mindful of the impact that lengthy criminal justice investigations and court procedures may have upon service users.

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- All survivors have the right to be fully supported to give their best evidence. All survivors are entitled to access therapy to ensure that their emotional and psychological needs are met before, during and after the trial.
- The Criminal Justice System places great reliance on the oral evidence of witnesses. Any conversations which take place before a criminal trial between a witness and another person could be construed as contaminating witness evidence. Therapists, ISVAs, Forensic Investigators and the Survivor therefore have a mutual interest in keeping the integrity of the witness evidence intact.
- To ensure that pre-trial therapy and support are provided appropriately, the organisation adheres to the Home Office and CPS Guidelines relating to adult and child victims.

## 7. PRIOR TO THERAPY

### 7.1 Decision to Offer Pre-Trial Therapy

The decision whether to undergo therapy prior to a trial shall be made by the service user, in consultation with the Therapist. The Police and CPS have no role in the decision-making process.

The decision should be based on the needs and wishes of the service user in conjunction with the Clinical Supervisor conducting the assessment and other professionals working with the service user as appropriate.

Where appropriate, the wishes and feelings of those who are emotionally significant to the service user should also be considered. If the service user is a child or an adult with learning disabilities (where appropriate) then such decisions shall be made with their parents, guardians, or carers.

### 7.2 Information to Support the Service User

To ensure the service user can make an informed decision about pre-trial therapy, the organisation shall provide information explaining the nature of the pre-trial therapy. This information will be provided in a form that is accessible, taking account of any issues relating to language, disability, and any communication difficulties both in initial discussions about the proposed therapy and in the provision of the therapy itself. This information shall be sensitive to issues relating to [protected characteristics](#).

Information shall also include explanation of the implications of different types of therapy in terms of being involved in the criminal justice system, particularly in relation to potential disclosure of material created during therapy and will enable service users to make a choice of

whether to proceed with therapy or a particular type of therapy.

### **7.3 Concerns**

In individual cases where there is any concern regarding provision of pre-trial therapy, advice will be sought from the CPS on the likely impact. Consideration should be given to the impact of withholding therapy on the evidence. For more information see [The CPS Pre-Trial Therapy Guidance](#).

### **7.4 Consent**

Consent to engage in pre-trial therapy shall be recorded from the service user, with the agreed conditions, prior to starting any therapy in relation to both the therapy and any disclosure. If the service user is a child, young person, or adult with learning difficulties, consent to engage with therapy and the disclosure of notes will be considered in line with Fraser competency rules or the Mental Capacity Act.

The Therapist shall record consent from the service user and any agency who is deemed to have ownership of the records before the office can see the material.

### **7.5 Training of Therapists**

Therapists providing pre-trial therapy shall have appropriate training according to the level of the work to be undertaken. Therapists should be assessed to determine that they are able to demonstrate appropriate knowledge and understanding of the process of providing pre-trial therapy.

## **8. DURING THERAPY**

### **8.1 Confidentiality**

Counselling notes and therapy sessions shall be in accordance with the organisations confidentiality policy. The engagement in pre-trial therapy may be disclosed to the CPS.

### **8.2 Prejudice to Criminal Proceedings**

The provision of pre-trial therapy should not prejudice the criminal proceedings.

Any detailed recounting or re-enactment of the offending behaviour may be perceived as coaching and may affect the criminal case.

### **8.3 Expert and Professional Evidence**

A Therapist working with a service user cannot be an expert witness but can be called to give evidence as a professional witness, for example if clarification of notes is required or an opinion sought of the service users presentation in therapy.

## 8.4 Records

The Therapist should make notes and not ask investigative questions, but only document what the service user describes.

Records of pre-trial therapy and other contacts with the service user including videos and tapes shall be maintained appropriately so that they can be produced if required by the court. It is not expected that verbatim written records will or should be kept.

The Therapist should make an immediate factual, concise, and accurate record of the session at the end of each session. The record should contain the following details:

- (a) The date, time, and location of the session.
- (b) The name of the Therapist.
- (c) The names of anyone else present.
- (d) The content and themes of the session.

If the service user talks about his or her abusive experience for which the alleged abuser is awaiting trial, the Therapist should acknowledge what the service user has said and make appropriate, generalised comments but should not ask probing investigative questions.

Should a service user disclose further abusive experiences, the Therapist should support the service user to disclose to the police.

Any therapy sessions involving reprocessing of traumatic memories, or any discussion of the details of the offence need to be clearly documented.

**Note: Where a Therapist is working for an agency, any notes that they make belong to the agency rather than the Therapist, and consent will need to be obtained from the agency before they can be released into the Criminal Justice System.**

## 8.5 Disclosure of Records

Requests for disclosure of records may be made by the Police, CPS, the Prosecution or Defence.

Service users should be made aware that notes and records disclosed to the Prosecution are automatically also made available to the Defence.

The organisation will not release service user therapy records or notes without the written permission of the service user, unless legally required to do so.

## 8.6 Additional Support for Therapists

In cases where a court order is issued for disclosure of therapy notes and records, the organisation will provide additional support and supervision to the Therapist.

## 9. APPENDIX A: ADDITIONAL GUIDANCE [NON-MANDATORY]

### 9.1 ISVA Support

Pre-trial therapy and ISVA support are complementary services offering a wraparound approach to support for vulnerable or intimidated service users.

Where appropriate, the Therapist providing pre-trial therapy may seek the consent of the service user for the Therapist to refer to the ISVA issues raised in therapy sessions that may have an impact on criminal proceedings.

### 9.2 Membership of Professional Bodies

It is good practice for Therapists to be a member of a professional body or membership organisation. Examples include:

- The Survivors Trust
- British Association for Counselling and Psychotherapy
- UK Council for Psychotherapy
- National Citizen Service
- The British Psychological Society

### 9.3 Leading Questions

The general principal that any professional providing therapy should not use leading questions is paramount. Leading questions are those where a service user is provided with suggestions of what may or may not have happened and persuaded that this was likely. This is based on the premise that the Therapist is seeking to confirm a preconceived hypothesis they either have additional knowledge of or suspect to have happened. This is quantifiably different to the type of questions used to elicit thoughts and emotions that occurred during the events which have contributed to the subsequent psychological and emotional distress.

### 9.4 Responding to Witness Summons

If the police or CPS believe that material which could affect the outcome of the prosecution is being withheld, an application may be made to the court for a witness summons to obtain the material.

The Crown Prosecution Service disclosure duties require the Prosecution to disclose any material which might undermine the prosecution case or assist the defence case. For more information see <https://www.cps.gov.uk/about-cps/disclosure>.

The Defence will be informed by the Crown Prosecution Service that therapy has taken place. The Defence may, where appropriate, apply to the court for disclosure by way of a witness summons issued to the person holding the records.



It will be for the court to decide whether any part of the records of therapy should be disclosed but in the majority of cases public interest immunity would be applied for to prevent therapy records being disclosed. To protect the interests of the service user, a request can be made to the Judge to view the records and notes to assess relevance to the case.

### 9.5 Use of Jargon

Professionals should avoid the use of jargon and take care to use language that will not be perceived, if repeated by a witness, as evidence of the witness being instructed. The language content of the therapy and counselling sessions is guided by the service user but equally it must be recognised that service users do use different forms of language in differing situations and contexts.

### 9.6 Giving Evidence

It is important to ensure the service user is aware that the therapy they have received may be raised during a trial. As a result of the “Speaking to Witnesses in Court” initiative, Prosecution Counsel will speak to the service user in advance of giving evidence. The purpose of cross-examination will be explained to the service user to test the reliability, authenticity, and accuracy of the service user account, to weaken the case against the Defendant. The Prosecutor will intervene if inappropriate questions are asked but the Defence will be permitted to challenge the evidence of the service user and highlight any inconsistencies or other perceived ‘weaknesses’ in the case.

To prevent contamination of the evidence, witnesses (other than experts) are not permitted to sit in court before giving evidence (so they do not hear the accounts of other victims). They are not permitted to discuss their evidence until the case is concluded.

### 9.7 Expert and Professional Evidence

An expert witness is an independent professional considered to have sufficient clinical and academic knowledge of a particular area to provide expert opinions on the specific issues in question. They will be appointed by the Defence, CPS, or police and will be given specific instructions for the report. Usually where one party has called an expert the other is permitted to seek their own expert evidence.

### 9.8 Therapies That Could Present Difficulties

In working with vulnerable or intimidated service users, Therapists need to be mindful of practice guidance relating to the use of appropriate models of counselling and psychotherapy and techniques that may be used.

This does not mean that a service user should not undertake certain therapies, and it is reiterated that the service user’s health and well-being are the priority.

### **Group Therapy**

The defence are likely to argue that hearing the accounts of others or engaging with discussion of others' experiences may unduly influence the account of the service user.

### **Hypnotherapy**

If the only evidence of a particular event is obtained because of hypnotherapy, this may not be reliable evidence.

### **Imagery Re-scripting / Re-framing**

Imagery re-scripting/ re-framing is a technique more commonly used for historic traumatic events. The service user describes in detail the traumatic event which is either audio-recorded or documented in a detailed narrative. The service user is then asked to listen to or read the account and then identify alternative endings or bringing in other people to help facilitate a different ending. Although effective for treating PTSD, this approach is not recommended pre-trial.

## **10. VERSION HISTORY**

It is recommended that this document is reviewed at minimum every 3 years. However, legislation updates may need to be incorporated more frequently.

Version	Date	Approved by
1.0	02/02/2021	Nadia Brown – Project Manager