

# PRE-TRIAL THERAPY: AVOIDING THE PITFALLS

PETER JENKINS, JOANNE MUCCIO, AND  
NICKY PARIS CONSIDER THE ISSUES  
INVOLVED IN PROVIDING COUNSELLING  
AND PSYCHOTHERAPY FOR VULNERABLE  
WITNESSES

Pre-trial therapy (PTT) for adult and child witnesses has been very much in the media spotlight since the tragic death of Frances Andrade in 2013. Frances was a key prosecution witness in the criminal trial, and later conviction, of her former music teacher, Michael Brewer, and his wife, Kay Brewer, for abuse dating back to her teenage years. After undergoing a gruelling cross-examination, which claimed that her allegations of abuse were mere fantasies, Frances subsequently took a fatal overdose. Media coverage at the time focused on an apparent lack of pre-trial support and counselling, and the subsequent *Serious Case Review*<sup>1</sup> concurs with this view. This now seems symptomatic of a possibly widespread reluctance to provide PTT for vulnerable witnesses on the grounds that it might undermine prosecution evidence via the twin evils of ‘coaching’ and ‘contamination’.<sup>2</sup>

In her concluding remarks in the *Serious Case Review* of the death of Frances Andrade,<sup>1</sup> Professor Hilary Brown recommended that criminal justice agencies

‘improve their practice in supporting survivors of sexual abuse... the police should *promote* (not merely dissuade) victims from seeking timely counseling’. She added that ‘steps should be taken to ensure that mental ill-health is not seen as a barrier to participating in and/or receiving, justice including following Crown Prosecution Service (CPS) guidelines on pre-trial counselling’. In addition, ‘NHS commissioners should ensure that there are adequate specialist services within their catchment areas to meet the needs of people who are survivors of childhood trauma and abuse’.

## PRACTICE GUIDANCE

In fact, the legitimate concerns of the legal system about the potential impact of PTT on the trial process seem somewhat misplaced. Practice guidance issued by the CPS<sup>3,4</sup> makes it clear that both child and vulnerable witnesses can receive PTT before and during a criminal trial of their alleged abusers. However, there are recommendations for good practice:

- 1 the CPS should be informed of any PTT taking place
- 2 PTT should begin after the client has given their statement of evidence to the police
- 3 detailed factual records of therapy should be kept and made available to the CPS as required
- 4 PTT should focus on the client's current responses and coping, rather than on the original abuse
- 5 certain types of therapy are preferred as supporting this kind of 'current' focus
- 6 the CPS needs to focus on the welfare of the client, rather than simply on the pending court case.

## RESEARCH SURVEY INTO PRE-TRIAL THERAPY

Given this context, the results of a recent survey of practitioners providing PTT for clients makes for interesting reading. This possibly unique survey was carried out by counsellors at St Mary's Sexual Assault Referral Centre (SARC) in Manchester, following their successful conference in July 2014. There is a lack of research into this key topic, so this survey was an attempt to learn more about the experiences and views of practitioners. Research into the parallel experiences of clients is also now being planned.

This was a small survey (n=35) of practitioners attending the conference, who had at least some awareness and interest in the complex issues surrounding PTT for children and adult vulnerable witnesses facing a criminal trial. The survey was carried out as a service evaluation under NHS trust policies. This convenience sample was composed of 25 counsellors, four service managers, five respondents who were Independent Sexual Violence Advisors (ISVAs) or who were carrying out similar roles, and one barrister.

## EXPERIENCED PRACTITIONERS

The demographic characteristics are interesting: almost 90 per cent of practitioners were female, with an average age of 60 years. Two-thirds were members of BACP, with several also holding membership of UKCP, and others being members of other professional organisations such as HCPC (Health and Care Professions Council) and BPS (British Psychological Society). There was a wide spread of employment and practice patterns, including working in SARCs or other specialist agencies. Over half of the sample (60%) had between four and six years', or more than seven years', post-qualifying experience. The data suggest an older, relatively experienced set of counselling practitioners working in the field of PTT, perhaps pointing to an emerging specialism within the field of sexual trauma.<sup>5</sup> However the survey is not necessarily representative of the wider range of practitioners involved in providing PTT, as there will presumably have been an element of self-selection in choosing to attend the conference and then respond to the survey questionnaire.

The sample showed a relatively assured and competent grasp of many of the main issues relating to PTT. For example, responding to the question, 'After reporting a crime to the police, can a client access counselling?', over 90 per cent responded 'Yes,' while 10 per cent were 'Unsure.' In the main, respondents were clear about the appropriate forms of counselling that can be provided for clients, according to the CPS good practice guidance.<sup>3,4</sup> They could identify sources of advice and were aware of the potential limits to counselling imposed by the legal system. However differences and uncertainties were more evident regarding access to client notes for legal purposes by other agencies such as the police, CPS, and the courts. These issues will be explored in more detail below.

## PRACTICE ISSUES IN PROVIDING PRE-TRIAL THERAPY

Working with clients receiving PTT can raise complex legal, ethical and therapeutic dilemmas for practitioners, such as:

- 1 informing the client of the potential for access to records of therapy by prosecution and defence solicitors
- 2 keeping the client's best interests in mind throughout the therapy and throughout any ensuing court proceedings
- 3 balancing client autonomy and wellbeing, therapy and justice
- 4 separating out the roles of advocate and therapist – for example, by the use of ISVAs and therapists working in distinct, but complementary roles
- 5 working to CPS PTT guidance and avoiding forms of therapy likely to compromise evidence in the criminal trial.

## SOURCES OF ADVICE

Given this complexity, the survey sought to identify the main sources of advice used by practitioners. BACP was the most frequently cited source, with 15 mentions, followed by managers/employers at nine mentions and supervisors, also with nine mentions. The CPS was referred to by six respondents. Perhaps surprisingly, professional indemnity insurance providers received only three mentions, as did employers' and NHS trust legal departments. Lawyers were also mentioned relatively infrequently, with four mentions. This suggests a heavy reliance on BACP for advice, although this would necessarily be of an ethical and professional nature, rather than constituting legal advice as such.

## FORMS OF PRE-TRIAL THERAPY

CPS good practice guidance<sup>3,4</sup> identifies certain forms of therapy which are seen to be potentially problematic in relation to a client's evidence in a criminal trial. This list is, admittedly, based on expert opinion, rather than on evidence-based practice. Practitioners were mainly

well aware that therapy deemed to be appropriate for PTT should be generic and non-directive and can include forms of therapy such as person-centred counselling and CBT. One respondent stated that PTT could include *'any form of counselling that avoids anything that can be construed as coaching, rehearsing or influencing the client'*. Another responded that it could include *'any form of counselling which explores feelings about the incident or concerns around attending court'*.

There was less certainty about forms of therapy that are contraindicated for PTT. Respondents referred to therapies perceived as being problematic as including intensive psychotherapy and psychodynamic therapy, with one referring to using *'CBT with some caution'*. Four respondents specifically identified hypnotherapy as being seen to be problematic, with others referring variously to group therapy, psychoanalysis and dramatherapy in these terms.

### LIMITATIONS ON COUNSELLING AVAILABLE

Of those responding, the overwhelming majority signalled a high level of awareness of the limitations applying to pre-trial counselling. One specified the limits in the following way: *'Avoid discussing evidence. Avoid any leading questions. Avoid anything that could be considered as coaching or rehearsing.'* Another simply described the focus for PTT as being *'recovery and coping'*. Overall, this seemed to demonstrate an accurate level of understanding of the limits imposed on PTT by the CPS guidance.

### ROLE OF SARCS

Respondents were also asked if PTT should be provided by a specialist agency such as a SARC. Views were mixed about this, with less than a third responding positively. One response indicated that *'SARC-endorsed counsellors may be in the best position to offer counselling pre-trial'*. Another respondent disagreed, stating that *'not all clients go through SARCs though, so other avenues need to be available'*. Other respondents referred to the role of other agencies in providing PTT, such as Mind and CAMHS. Others saw this issue very much in terms of client choice and preference, rather than primarily in terms of whether it should be a specialism for SARCs: *'It should be more about what the client feels comfortable with.'* Another respondent saw the issue in terms of potential client demand overloading SARCs: *'As long as all therapists are aware of how working with clients going through the legal process can be done, this should not be limited to SARCs. With the increasing numbers coming through SARCs (specifically historic), this would put pressure on service.'*

### ACCESS TO COUNSELLING NOTES BY OTHER AGENCIES

There seemed to be less clarity and agreement among respondents about access to client counselling records by other agencies such as the police and the CPS. Briefly, the client can consent to the release of their

notes to other agencies, such as the police and the CPS, or the courts can require their release via a court order.

Asked, *'As a counsellor, what are your obligations if you receive a request for counselling notes from the police, CPS or another agency?'*, six respondents were unsure of how to respond, with one commenting: *'I believe official notes must be handed over but own anonymised process notes need not be but I'm not sure.'*

Ten respondents highlighted a perceived need to obtain client consent prior to releasing counselling notes to the police or CPS. One commented: *'Meet with client to allow sight of content – client to sign consent to disclose form – notes copied – originals forwarded as requested.'*

A further 10 respondents emphasised that disclosure of client counselling notes should only be on the basis of a court order, rather than via simply seeking client consent. One of these respondents said: *'As a counsellor I would not acknowledge a request for notes from the above [police or CPS]. It would need a judge to state my notes were required. I would then discuss this with my client and gain their written consent for release of confidential information.'*

A smaller group of respondents saw the issue primarily in terms of responding to agencies such as the police or CPS, but without clear reference to obtaining prior client consent, or responding to a court order. These responses suggest a degree of different practice, or even confusion among some practitioners about their legal and procedural responsibilities for sharing client information within the context of PTT.

### OTHER ISSUES ARISING WITHIN PRE-TRIAL THERAPY

A number of other significant professional and therapeutic issues were identified by respondents. Issues relating to work with children were noted by one: *'Children find it difficult not to be able to talk about the incident.'* Another stated: *'Feeling client pressurised into giving consent for access to notes. "Why wouldn't she, we're on her side." Prof indemnity insurer telling me 14-year-old couldn't give consent for access. "She has no legal status".'*

Another responded in terms of the problem inherent in anticipating whether therapy would entail a shift into PTT and its very specific boundaries: *'...often there is an element of the unknown in so far as, until therapy starts, there is often no clear indication of where a client is going and the depth. Some clients are reluctant to disclose... want to avoid the legal side of abuse.'*

Other counsellors emphasised the very real human cost of abuse, as a precursor to PTT: *'Presenting can impede their recovery as limited work can be done with them pre trial.'* Another provided a more detailed critique: *'Clients are often traumatised and struggling with panic, PTSD symptoms etc prior to court case which can take place a long time after the incident or be delayed. They are asking for help and it can feel frustrating (and cruel) not to be able offer treatment until court case has ended.'*

## CONCLUSION

This small survey of practitioners working in the field of PTT suggests that there is a core of older, often relatively experienced counsellors providing therapy for clients. In the main, they are confident about understanding the limits to counselling required by the CPS practice guidance and the potential impact on the choice of therapy appropriate for this form of work. However, there seems to be less agreement about the processes for disclosing client records to agencies such as the police or CPS. Counsellor opinion seems to be divided between the need to obtain prior client consent and the option of avoiding disclosure unless legally required to do so by a court order, and then seeking client consent.

One respondent perhaps summed up the need for a dramatic shift overall in counsellors' orientation towards the criminal justice system, from deference to a more assertive stance: *'Professionals have to be prepared to "own" their work and advocate on behalf of vulnerable client groups – keep the child as the person central to our concern.'*

The issue of PTT, meanwhile, continues to steadily gain prominence within the media. Ann Coffey MP has called for society to tackle attitudes and a prevailing culture that allows child sexual exploitation to take place.<sup>6</sup> The Labour Party has proposed a new victims' law, co-written by former Director of Public Prosecutions Sir Keir Starmer with Lady Doreen Lawrence, that would enable judges to protect vulnerable witnesses from excessive cross-examination.<sup>7</sup> Professor Brown has asked NHS commissioners to ensure adequate access to specialist services for victims of childhood sexual abuse.<sup>1</sup> The Ministry of Justice, in turn, has announced a doubling of funding, from £12 to £24 million, to Citizens Advice, for improving support services to witnesses in court.<sup>8</sup> This research suggests there is now a cohort of experienced practitioners already grappling with the complexities of providing pre-trial therapy, while the system itself is clearly under growing pressure to change. ■

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## READER RESPONSE

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