

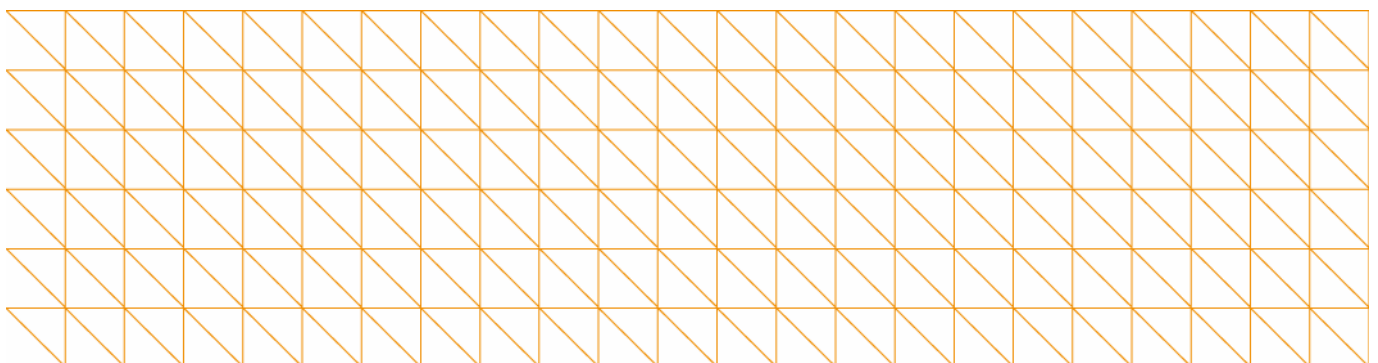


BAIL AND MURDER

Response to Consultation

CP(R) 11/08

2 February 2009



BAIL AND MURDER

Response to consultation carried out by Office for Criminal Justice Reform, part of the Ministry of Justice. This information is also available on the Ministry of Justice website: www.justice.gov.uk



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Bail and Murder Summary of responses

Introduction and contact details

This document is the post-consultation report for the consultation paper *Bail and Murder*.

It covers:

- the background to the consultation paper
- a summary of the responses to the 14 questions in the paper
- the Government's response to the consultation.

Thirty written responses were received from a range of organisations and individuals. Individual responses have not been published with this document, although respondents are identified at some points of the summaries. If you wish to obtain copies of individual responses, application should be made to:

Ms Gemma Alcorn

Tel: 020 7035 8489

Email: gemma.alcorn@cjs.gsi.gov.uk

Alternative format versions of this publication can be requested from Ms Alcorn.

The consultation paper is available on the Ministry's website:
www.justice.gov.uk.

Background

The decision whether a defendant should be released on bail or remanded in custody is made by the courts in accordance with the relevant legislation, primarily the Bail Act 1976.

The Bail Act creates a general presumption to bail for defendants in criminal proceedings, with certain exceptions. The court may withhold bail if it is satisfied that there are substantial grounds for believing that if released on bail the defendant would abscond, commit an offence, interfere with witnesses or otherwise obstruct the course of justice. In making its decision the court must consider the nature and seriousness of the alleged offence and the weight of the evidence against the defendant, the defendant's character, antecedents, associations, community ties and past record of complying with bail, as well as any other factors which appear relevant to the court. The court may decide to grant bail subject to certain conditions, in which case the defendant would be liable to immediate arrest should those conditions be broken.

The court has to make a risk assessment, balancing any risk which releasing the defendant on bail may pose to the public or the administration of justice against the consideration that it is a serious step to remand in custody. This is not an easy balance to achieve, because it involves not only assessing defendants' past behaviour but also predicting how they might behave. Such predictions cannot always be right and there will inevitably be cases where defendants who are bailed commit further offences.

It is right that individual remand decisions should be made by the courts, as it is the courts that are best placed to weigh up all the relevant factors. However, it is for Parliament to ensure that the framework within which those decisions are made strikes the right balance between the rights of the defendant and the need to protect the public.

Last year, following several cases in which bailed defendants went on to commit murder, we published a consultation paper that discussed and sought views on the following issues:

- The presumption to bail and its application to those charged with murder
- Post-conviction grant of bail: the legal position and the role of the CPS
- Bail conditions: confirmation of appropriateness and enforcement of bail conditions
- Feedback to the relevant court on the outcome of bail decisions.

The consultation paper was published on 17 June 2008 and the consultation period ended on 12 September 2008.

A list of respondents is at Annex A.

Summary of responses to specific questions

1 Is any change to the law governing bail necessary?

There were 23 responses to question 1. Eleven respondents favoured some sort of change to the Bail Act, not necessarily one limited to bail in murder cases; ten considered that the Bail Act strikes the correct balance and should not be amended; and two respondents did not express a view for or against.

2 Should the statutory test (for bail in murder cases) be amended along similar lines to Section 25 of the 1994 Act?

There were 24 responses to question 2. Six respondents were in favour of such an amendment. Eighteen opposed it, some querying its effectiveness if the courts were likely to read down such a provision as they have done with section 25. Most of those who supported amending the statutory test believed that it would emphasise the importance of public protection and increase confidence in the criminal justice system. The Police Federation suggested that bail should not be granted in any case where a person is charged with murder and is a drug addict or alcoholic.

3 Should courts be required to have regard to the fact that the defendant is accused of murder?

3.1 There were 26 responses to this question. Eight respondents were in favour of such a requirement, but the majority considered it unnecessary as the courts would naturally take account of the charge: the current legislation already requires a court to have regard to the nature and the seriousness of an offence and it is not necessary to highlight the seriousness of the offence of murder any further.

4 Should courts be required to have regard specifically to whether further offending is likely to cause physical or mental injury?

4.1 There were 26 responses to this question. Opinion was divided, with 9 respondents in favour of the idea, 11 against, and 6 not expressing a view for or against. The Bar Council thought that it might tend to "...diminish the significance of the risk of a defendant committing non-violent offences while on bail, rather than to heighten the significance of their committing an offence of violence." Liberty commented that the suggestion would be consistent with the changes made in the Criminal Justice and Immigration Act 2008 to the

exceptions to bail for defendants charged with imprisonable summary-only offences.

5 Should the considerations listed in paragraph 9 of Schedule 1 to the Bail Act also apply to decisions to remand defendants in custody for their own protection?

5.1 There were 24 responses to this question, 12 of which were in favour of making such provision and 9 opposed (including the senior judiciary and the Magistrates' Association).

6 Should there be any limitation on the right of the Crown Prosecution Service (CPS) to make representations against the grant of bail after a defendant has been convicted?

6.1 There were 24 responses to this question, which were unanimous in taking the view that such a limitation should not be imposed. Two respondents welcomed the Crown Prosecution Service's review of its guidance on this matter following the Joint Inspectorate Report on the Peart/Joseph case, which resulted in the issue of revised guidance that makes clear that prosecutors may make representations against the grant of bail post conviction.

7 Should the CPS be encouraged to make greater use of their right of appeal against bail post-conviction?

7.1 There were 21 responses to this question. Ten respondents believed that the CPS should be encouraged to make greater use of the right of appeal against bail granted after conviction; 8 considered that the current guidance was sufficient. Some respondents commented that any challenge to a bail decision should be appropriate and reasonable in all the circumstances of the case. Liberty and Justice supported in principle the use of the right of appeal against bail post-conviction, but did not consider it appropriate for the Government to encourage the CPS to use the power.

8 Are there any circumstances in which it would be appropriate for the CPS to seek a custodial remand post-conviction where it is clear that the offender will not be sentenced to imprisonment?

8.1 There were 21 responses to this question. Thirteen respondents thought that there were circumstances in which it would be appropriate for the CPS to oppose bail post conviction even though it was clear that a non-custodial sentence would be given. The senior judiciary commented that it

should only be done in exceptional circumstances, and Justice that it would rarely be appropriate or necessary.

9 Should bail hearings following arrest for breach of bail in respect of all defendants charged with murder be heard in the Crown Court, if possible by the same judge?

9.1 Of the 23 who responded to this question, 15 believed that breach of bail in a murder case should be heard in the Crown Court, and some thought it should be heard by the same judge. Some opposed the idea on the grounds that it would be impracticable.

10 Alternatively, should such hearings take place in the Crown Court where the judge making the original grant of bail so directs?

10.1 There were 19 responses to this question. Opinion was divided between those who favoured a flexible approach, and those who preferred the certainty of the proposal in Question 9. The Legal Committee of the District Bench pointed to the difficulty of establishing where such a reservation had been made. Liberty commented that where a judge did choose to deal with any breach, it would be necessary to ensure that arrangements were made for the case to be dealt with within 24 hours of arrest.

11 Should such arrangements extend to manslaughter or other grave offences such as rape?

11.1 There were 23 responses to this question, over half of which favoured extending any changes to manslaughter or even to all indictable-only offences. Other respondents, however, drew attention to the burden that such arrangements would impose on the Crown Court.

12 Should courts be made aware of local police practices regarding monitoring of bail conditions, so that these can be taken into account in determining the adequacy of bail conditions?

12.1 There were 26 responses to this suggestion, 13 of which were supportive. Victim Support suggested that the arrangement should be on an interim basis while the issue of differing standards of monitoring was tackled. Both the positive and negative responses were united in the view that there should be no “post-code lottery” effect, some respondents rejecting the proposal for this very reason.

13 Do you think it is appropriate for courts to impose conditions that must be met by the police (or others) before the defendant is released on bail?

13.1 There were 25 responses to this question. Thirteen respondents rejected the idea, some on the basis that it was inappropriate to pass judicial decisions to non-judicial bodies, others that it might adversely affect police resources. Judicial opinion was divided.

14 Do you think that feedback would be of any use, and is so how could it be achieved?

14.1 There were 21 responses to this question, the majority of which were in favour. Some suggested that it would be useful if the court that made the decision to grant bail could be notified of any subsequent bail breaches that were heard by another court.

14.2 Opponents argued that as the courts have to make decisions on a case-by-case basis the relevance of feedback about individual cases was doubtful. The Justices' Clerks' Society thought that such a scheme would be likely to be 'costly, cumbersome and arguably redundant'.

Conclusion

The Government is grateful to all the organisations and individuals that contributed to this consultation.

Widely differing opinions were expressed in the responses to the consultation questions, sometimes from those representing the same areas of the criminal justice system.

The law governing bail evolved over a long period at common law before being put into statutory form in the Bail Act 1976, and it has undergone further changes since then. As the Justice Secretary made clear in announcing the consultation, the Government did not take it for granted that it would be necessary to for the legislation to be amended. But after much consideration the Government has concluded that, although the law generally strikes the right balance between on the one hand protecting the rights of defendants, and on the other hand maintaining public safety and promoting the efficient administration of justice, there are a few areas that would benefit from clarification.

The changes that the Government considers necessary require primary legislation to bring them about, and appropriate provisions have therefore been included in the Coroners and Justice Bill which was introduced on 14 January 2009.

These provisions are as follows -

- Clause 97(2) provides that bail may not be granted to defendants in murder cases unless the court is of the opinion that there is no significant risk that the defendant would commit an offence that would cause injury. Unlike section 25 of the Criminal Justice and Public Order Act 1994, which was not favoured as a model by the majority of respondents, this provision has been drafted in a way that makes it plain that it is not for the defendant to show that there is no significant risk, but for the Crown to show that there is such a risk.
- Clause 97(3) requires courts, when considering bail for any indictable offence, to have regard to whether further offending is likely to cause injury.
- Clause 98 provides that a defendant charged with murder can be granted bail only by a judge of the Crown Court. An amendment in Schedule 19 to section 7 of the Bail Act that means that, where bail is granted to a defendant charged with murder, any breach proceedings must be heard by a Crown Court judge.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 3334 4496), or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
7th Floor
102 Petty France
London SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Lord Judge, now Lord Chief Justice of England and Wales

The Criminal Sub-committee of the Council of HM Circuit Judges

The General Council of the Bar, Law Reform Committee } *joint*

The Criminal Bar Association }

The Magistrates' Association, Judicial Policy and Practice Committee

The Law Society of England and Wales

District Judge Arnold, Legal Committee of the District Bench (Magistrates' Courts)

Sid Brighton, Executive Director, Justices' Clerks' Society

ILEX

Polly Rossetti, Victim Support

Victims' Advisory Panel

Justice

Liberty

Sir Norman Bettison, Chief Constable, West Yorkshire Police

Paul McKeever, Chairman, Police Federation

Gary Adams, Office of Rail Regulation

The British Psychological Society

Nesta Lloyd-Jones, Welsh Women's Aid

Jennifer Holly, Women's Aid

Neil Corre } *joint*

David Wolchover }

Ray Wise, Head of CID, Gwent Police

Sarah Chaloner, Criminal Justice Division, Dorset Police

Jane Dean, Head of Criminal Justice, Nottinghamshire Police

Inspector Russell Hall, Northumbria Police

Inspector John Clucas, Lancashire Police

Stephen Naylor, Merseyside Police

Nicholas Moss J P

Mangala Murali

John Stewart J P

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