



Domestic Abuse Bill – pre-charge bail

About Centre for Women's Justice

Centre for Women's Justice (CWJ) is a lawyer-led charity focused on challenging failings and discrimination against women in the criminal justice system. We have prepared a detailed police super-complaint¹ on pre-charge bail, which is currently being investigated by HM Inspectorate of Constabulary, Fire & Rescue Services. We propose a number of amendments to the Domestic Abuse Bill to address the serious shortfalls that currently exist around pre-charge bail.

Summary

Changes to the law on pre-charge bail which came into force in April 2017² have had a devastating effect on protection for women who report domestic abuse, stalking, harassment and sexual offences. Since April 2017 suspects are very frequently released under investigation without any bail conditions in place prohibiting contact with the victim. In the first three months of the new law the use of bail conditions in domestic abuse cases dropped by 65%.³

Frontline women's services across the country report that women feel unprotected, fearful and vulnerable. Some have suffered harassment and assault when there have been no bail conditions. In Sunderland a woman was murdered after her husband was released without bail conditions and given the keys to her home.⁴ In some cases suspects are contacting victims and applying emotional pressure, leading victims to drop their support for a prosecution. There is evidence that attrition rates in domestic abuse are rising.⁵ Women's services also report that bail is a well-established indicator of a criminal investigation, so that housing, education services, and even families, sometimes believe that the allegation is not valid because the suspect is not on bail.

What about the Home Office bail review?

Three years have now passed since the change in the law in 2017, and the precipitous drop in use of bail in domestic abuse cases has been recorded since June 2017. CWJ's super-complaint was lodged in March 2019, documenting long-standing problems for victims, and its completion is still some way off. The Domestic Abuse Bill was first formally announced by Theresa May in 2017 and has been delayed twice due to general elections. Almost a year has passed since the Joint Parliamentary Committee on the Bill made strong recommendations on bail in June 2019. Addressing this issue has been characterised by delay at every step. Whilst we support the majority of the proposals in the Home Office bail review consultation, given the current political uncertainties and fresh priorities created by coronavirus, we cannot have any confidence in whether and when any new measures will be introduced. The Domestic Abuse Bill presents a real opportunity to reverse the serious errors in the 2017 Act, and to integrate the bail and DAPO regimes. It can ensure that protections are in place for vulnerable victims of abuse and if, at a later date, changes are extended to others, fresh legislation can streamline the two sets of provisions. If amendments in the Domestic Abuse Bill reflect the proposals in the Home Office consultation this should be relatively straight-forward.

Our proposals

In this briefing we will provide a short summary of what we see as the main problems and the potential solutions. Most of these solutions were proposed by the Joint Parliamentary Committee on the Domestic Abuse Bill in June 2019.⁶

Threshold for use of bail

The 2017 Act is weighed too heavily towards the rights of suspects, and introduced a presumption against the use of bail, unless it is “necessary and proportionate”. We propose reversing that presumption in all domestic abuse flagged cases and sexual offences, and clarifying what is “necessary and proportionate” through a risk-based approach focused on victims’ needs. Clear guidance should ensure that bail conditions are routinely used in all cases involving violence against women and girls, including ‘low risk’ cases, unless bail conditions are clearly not necessary and proportionate in the particular case.

Increasing initial bail and extension periods

The 2017 Act allows bail conditions for 28 days approved by an Inspector, after which a 2-month extension must be approved by a Superintendent, and later extensions can only be granted by a court. We believe that the bureaucracy around this has made the use of bail so onerous for the police that in practice officers are avoiding it and using “release under investigation” (RUI) or “voluntary attendance” (VA) instead. We support increasing the length of initial and extension bail periods and reducing the seniority of officer required at each stage, to create a manageable system that will avoid bottlenecks and function effectively in practice. We support Model C proposed in the Home Office bail review⁷, so long as the numbers of cases in the system and the numbers of Inspectors and Superintendents available make this a workable system.

A duty to consult with victims

The 2017 Act contains a duty to consult with suspects when police consider whether to extend bail,⁸ but there is no corresponding duty to consult with victims. A parallel duty should be added here, and also when the initial bail decision is made. It is not possible to carry out a proper risk assessment without consulting with the victim and obtaining all relevant facts. This duty should be in the legislation, not merely in guidance, to balance the duty towards suspects and ensure it is adhered to.

A duty to update victims

Often victims are not told the position on bail, and changes to bail, for example they report a breach only to be told that bail conditions were lifted some time ago. Victims and their support workers also constantly struggle to get any updates from the police on the progress of investigations, and have to chase repeatedly for even limited information. A duty to update at each review of bail, and in RUI and VA reviews (which are proposed in the Home Office bail review), would be of enormous benefit to victims and help reduce the attrition rate.

Voluntary attendance should not be used in violence against women cases

Suspects who are interviewed following VA are not under arrest and therefore bail conditions cannot be used. The use of VA has risen significantly since 2017 and we believe this may be due to officers avoiding the onerous bail regime. Section 24 PACE and/or PACE Code G⁹ should be amended to clarify that even when a suspect is willing to attend voluntarily, police have power to arrest him to enable the use of bail, where bail conditions are required in order to protect a victim.

Breach of bail enforcement should have teeth

Breach of bail is not an offence and if the suspect is not charged, the only power police have is to arrest him and release him again on bail. Support workers around the country report that police frequently fail to take action when breaches are reported, that victims stop reporting breaches, and suspects seem to act with impunity. We propose that where grounds exist for a DAPO following a breach of bail there should be a duty on the police to apply for one. If the DAPO is then breached this will be a criminal offence. This would create a 'two strikes and you're out' regime specifically for domestic abuse cases. This would act as a deterrent which should reduce the number of bail breaches, while providing enforcement when suspects continue to breach orders.

Extensions of bail where police have delayed the investigation

The 2017 Act contains a provision that after the first 28 days on bail, if the police have not progressed the investigation diligently and expeditiously bail cannot be extended.¹⁰ This is a windfall for suspects and leaves victims dangerously exposed. Bail conditions are not an option even where there is clearly a very high risk. Whilst we understand that this provision is helpful in providing an incentive to the police to progress investigations speedily, protection must be available for victims. We propose a duty on the police to apply for a DAPO in every case where bail is not extended as a result of this condition, if grounds for a DAPO exist.

The DAPO pilot

We understand that DAPOs are to be piloted, possibly for two years. We propose an interim provision whereby where bail is not extended due to police delays in the investigation, if a DAPO is not an available option, police must apply for a Domestic Violence Protection Order (DVPO). This will at least provide a further 28 days of protection.

Conclusion

We welcome the Domestic Abuse Bill and its aim of providing protection to victims, but this cannot be achieved so long as the current pre-charge bail regime remains in place.

¹<https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5c91f55c9b747a252efe260c/1553069406371/Super-complaint+report.FINAL.pdf>

² Policing and Crime Act 2017

³ HMICFRS Progress Report on Domestic Abuse of February 2019

⁴ Kay Martin, killed on 20 September 2018 <https://www.bbc.co.uk/news/uk-england-tyne-49437513>

⁵ In January 2019 *The Independent* newspaper reported Home Office figures for the year ending September 2018 showing a sharp rise in the proportion of cases recorded as "victim does not support action", increasing to 42% for violence, 35% of rapes and 29% of sexual offences. In the West Midlands this proportion for domestic abuse cases rose from 30% in 2014/15 to 58% in 2019 <https://www.birminghammail.co.uk/news/midlands-news/revealed-huge-number-violent-domestic-17701014>

⁶ See pages 32-35 <https://publications.parliament.uk/pa/jt201719/jtselect/jtddab/2075/2075.pdf>

⁷ See page 12

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879759/20191127_ConDoc_PCB_May.pdf

⁸ Policing and Crime Act 2017 section 63 inserts into the Police and Criminal Evidence Act subsection 47ZD (3) and (4) <http://www.legislation.gov.uk/ukpga/2017/3/section/63/enacted>

⁹ Section 24 (5) and/or Code G paragraph 2.9 should be expanded to include a need for bail conditions as one of the potential criteria under Section 24(5)(d) and (e).

¹⁰ Policing and Crime Act 2017 section 63 inserts into the Police and Criminal Evidence Act subsection 47ZC (4) regarding Condition C <http://www.legislation.gov.uk/ukpga/2017/3/section/63/enacted>