

Dame Vera Baird QC
Victims' Commissioner for England and Wales

Office of the Victims' Commissioner for England and Wales
5th Floor, 70 Petty France
London SW1H 9EX

e: victims.commissioner@victimscommissioner.org.uk

10 March 2020

Rt Hon Priti Patel MP
Home Secretary
The Home Office
2 Marsham Street
London SW1
Sent by email

Dear Home Secretary

Police Powers: Pre-charge Bail

I welcome the government consultation on police powers and pre-charge bail (bail). As Victims' Commissioner, I fully concur with your observation that: "...pre-charge bail is not always being used where appropriate to protect victims, investigations are taking longer to conclude...".

This review of bail offers an opportunity to identify real safeguards for victims, enhancing victim and witness engagement in the criminal justice system and improving public confidence. These are of critical importance, as evidenced by a range of data, published in recent weeks, showing a sharp drop in public confidence in the criminal justice system.

We have seen the proportion of investigations being closed as a result of victims deciding not to support police investigations growing from 8.7 per cent in the year to March 2015 to 22.9 per cent in the year to September 2019 (for all offences in England and Wales). This comes against falling charging rates, down from 15.5 per cent to 7.3 per cent in the same period.

Only last month, HMICFRS inspectors expressed concern the public had given up on the police solving crimes and the failure of the police to investigate high-volume crimes like car thefts, minor assaults and burglaries was having a "corrosive" effect on the public's trust in the police.

Therefore, this timely review of bail needs to be seen in a wider context than simply reforming an internal police process. We must not lose sight of the purpose of bail, its ability to curb other criminal behaviour and the reassurance it provides to victims and witnesses.

In the absence of bail and the reassurance of bail conditions, complainants in many types of case have been left feeling exposed to risk by virtue of the fact they have reported a crime. The success of your bail reforms must be judged by the impact on public confidence and whether more victims are willing to support prosecution through to trial.

Criteria for pre-trial bail

Since the current police bail arrangements, as set out in the Police and Crime Act 2017, have come into force, the number of suspects being kept on police bail has fallen sharply. I am concerned when I hear of suspects of sexual and violent offences, including domestic abuse, being released under investigation (RUI) and without any restriction on where they go and who they can contact.

I am aware of cases where alleged perpetrators of domestic abuse have been RUI'd from police stations and back on the doorstep of the victim within minutes. These stories make victims of domestic abuse all the more reluctant to report, fearing they will be left unprotected.

We must remember fear is particularly potent in domestic abuse cases. A victim of coercive control will put themselves in greater danger by taking any step towards change, such as calling the police. This is because the perpetrator, sensing that their grip is being loosened, will forcefully tighten it, often by increasing the level of violence in play. In 2017, 55% of the women killed by an ex-partner were killed within a month of separation and 87% in the first year. Clearly the aftermath of making a report to police will be a dangerous time and officers should surely be using bail with conditions to help manage the risk.

Equally, I am informed that many young victims of criminal exploitation, both sexual and exploitation for criminal activities, live in constant fear of their abusers and are reluctant to cooperate with the police especially so when they are not given any protection

Concerns about the fall in use of bail have been raised across all parts of the country. It is generally thought that, at least for a time, police behaved as though "bail has been abolished" save in the most exceptional circumstances. Of course, I am aware this was never the case, but it raises real issues of concern about how the 2017 provisions were explained to police officers and the wider public. It is imperative that the changes likely to flow from this consultation are fully explained to all the relevant agencies and to the public

If we are to tackle this misconception, it is essential the presumption against pre-charge bail is removed from the statute book. This, more than anything,

has resulted in police officers applying a much more rigorous threshold than the one intended.

I do not advocate a return of the use of bail in all cases. I agree the consideration of bail should be based upon the actual, potential or intended impact of the offence and the need to safeguard victims and witnesses, taking into account their vulnerability. However, it is so important we send a clear message to victims of the worst sexual and violent crimes that it is safe for them to come forward and report.

I am therefore calling for a presumption in favour of bail in all cases where the suspect is being accused of serious sexual or violent offences and all allegations of domestic abuse, where the relationship between the parties and our understanding of how coercive control survives separation raises both the likelihood and the consequences of risk.

In all other cases, I believe bail should be considered on a case by case basis and based upon the risk factors set out above.

Timescales for pre-charge bail

I do not want to comment on the precisely appropriate timescales and level of sign-off for bail, as those more closely involved in day to day operational policing will be better qualified to know what is practical.

However, I recognise bail can provide a framework for investigations, providing deadlines for officers.

It was misconceived to reduce the use of bail on the grounds that it was an undue restraint on freedom to keep someone on bail for a long time. I agree it was poor practice to do so, but it seems to have been the case that officers were using bail return dates as a case management tool, not necessarily advancing an investigation until pressed to do so by the imminence of a return date.

Following the advent of the presumption against bail, there is no return date to operate as a time check on the progress of a case and what we are seeing is people being kept longer under suspicion for want of a case management tool. I suspect there is little practical or emotional difference for the individual concerned between being kept on bail for a long time and being kept under investigation for an equally long time or longer.

In short, the presumption against bail seems likely to have extended the period of being in limbo for suspects and not reduced it as (somehow) the 2017 changes were expected to do.

The steady increase in the length of police investigations is particularly noticeable in sexual assault cases. I believe the delays in conducting investigations, couple with poor communication between police and victims, have contributed to the increase in victims withdrawing their support for prosecutions. Leaving victims of sexual assault in limbo for long periods of time can potentially re-traumatise them by making them feel the system and

society does not care about what has happened to them. Victims who feel abandoned by the justice system are less likely to participate in it in any capacity in the future.

Ideally, cases should move on at a good rate without needing to misuse bail as a case management tool. However, I accept that a benefit of increasing the number of cases subject to bail is that the framework of police having to update and review maintains a pressure to keep the investigation moving.

This must be a positive development for all interested parties.

Non-bail investigations

For the reasons set out above, I welcome the suggestion of a new framework for the supervision of RUI cases and that this framework should mirror that in place for bail cases.

Effectiveness of bail conditions

We need to review the effectiveness of bail conditions. At present, I do not believe they afford the protection that victims and witnesses deserve and this fundamental weakness needs to be addressed.

I must reiterate that many victims feel they are potentially exposing themselves to further physical or psychological harm by reporting a crime. This is particularly so when the suspect is known to them.

When victims are contacted by the suspect or see them within an exclusion zone, in breach of bail conditions, and there is no police response, it undermines their sense of safety. It also has a wider and detrimental impact in public confidence in the criminal justice system, as it makes the police look powerless to act.

At present, those on bail know that breaching a no contact condition will not incur a sanction. The only breach of conditions that can result in a criminal prosecution is failure to report to a police station.

The time has come to make breaching a no-contact condition or exclusion zone a criminal offence, that can result in a remand into custody, attract a custodial sentence and be marked by a criminal record. This single measure is imperative if we are to send a clear message to victims that the criminal justice system is there to protect them. It will make clear to alleged perpetrators that they cannot intimidate and undermine the justice process with impunity.

It is also important that such a sanction is not in name only, but real. I want the police and the CPS to be encouraged or required to prosecute those who breach these conditions, in the interests of safeguarding the public and public confidence and so as to send a clear message to others.

Communications

I must reiterate that any new provisions must be communicated clearly and effectively to those on the frontline so that there can be no misconceptions. All police forces must take responsibility for effective delivery of changes and monitoring outcomes.

Conclusion

The criminal justice system cannot afford a “flight” by victims and this may be what we are beginning to see. The increase in the number of victims who decline to support a prosecution is of great concern, especially in rape and domestic abuse cases but also burglary and weapons offences. The confusion that has surrounded bail together with a sense that bail conditions are a toothless tiger and compliance optional must end. I urge you to act.

In line with my usual practice, a copy of this letter will be placed on my website on 11 March.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V Baird', with a stylized flourish at the end.

Dame Vera Baird QC
Victims' Commissioner for England and Wales