

Should pre-charge bail be abolished?

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Home Office Recommendations

- ▶ A legislative presumption that release without charge should be unconditional
- ▶ A release on pre-charge bail should only be made if it is both 'necessary' and 'proportionate'
- ▶ Initial time limit of 28 days, extendable
 - up to 3 months by a police superintendent
 - beyond 3 months by a magistrates' court
- ▶ No absolute time-limit and no limit on the number of times bail can be renewed
- ▶ No proposed reforms regarding bail conditions

The current power to impose pre-charge bail

- ▶ At any time whilst an arrested person is in police detention, the police can release them on bail, with conditions, if they do not have sufficient evidence to charge, or do have sufficient evidence, but want to investigate further
- ▶ Suspect has no right to make representations
- ▶ Police can arrest for failure to surrender, and for breach or anticipated breach of conditions
- ▶ Breach of conditions is not an offence, but failure to surrender is an offence
- ▶ No time limit, and limited right to apply for conditions to be varied or removed

The current power to impose pre-charge bail

- ▶ The police can impose almost any condition provided it is for the purpose of ensuring the person –
 - turns up at the police station when required
 - does not commit any offences
 - does not interfere with witnesses/obstruct the investigation
- ▶ The police can at any time change the date for attending the police station, or simply notify them they are taking no further action

What do we know about the use, and impact, of police bail?

- ▶ Police bail can have considerable detrimental effects on those subjected to it
- ▶ No official statistics, little research evidence, and no rigorous evidence that it is essential for police investigations
- ▶ ‘The threshold for the existence of reasonable grounds for suspicion [for arrest] is low’, and necessity for arrest means only that it is the ‘practical and sensible’ option
- ▶ Police bail is almost immune from judicial scrutiny

Some personal accounts

- ▶ Woman arrested on suspicion of theft from the shop where she worked –
 - Re-bailed more than 6 times over 9 months
 - Suspended from work, no wages, and no benefits
 - Prescribed anti-anxiety medication and couldn't leave her house unaccompanied
 - 'An absolute nightmare, not just for myself but for my family too'
- ▶ Boy aged 16 arrested following a fight –
 - On conditional bail for 8 months
 - Could not go out and dropped out of college
 - Became depressed, leading to question regarding fitness to plead

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Statistics and research

- ▶ 78,679 people on pre-charge bail, 6,294 (8%) for more than 6 months
(Home Office estimates, based on BBC FoI figures)
- ▶ 400,000 placed on pre-charge bail, 26,000 (6%) for more than 6 months, in the 12 months to April 2013
(College of Policing figures from 12 forces scaled up to provide national figures)

How did we get here?

- ▶ Pre-charge bail was introduced in 1925 – as a measure to safeguard liberty and freedom!
- ▶ A limited power to attach conditions to pre-charge bail was introduced in 2003
- ▶ Full powers to impose conditions were introduced in 2006

And note

- ▶ Police arrest powers expanded to all offences in 2005 – and the necessity condition simply means the officer considers that arrest is the ‘practical and sensible option’

A summary of the present position

- ▶ The police can arrest a person on the basis of flimsy information
- ▶ bail them indefinitely
- ▶ decide what conditions to impose
- ▶ repeatedly re-bail the person without giving prior information or any reasons
- ▶ and all without having to seek approval from a prosecutor or a judge, and with almost no judicial scrutiny.

And what is the point?

- ▶ If a person breaches conditions, or fails to surrender, they can be arrested
- ▶ But what do the police then do? If not in a position to charge, they will have to release the person on bail again
- ▶ Could make breach of conditions an offence, but –
 - this risks criminalising people who may not be guilty of the offence for which they were originally arrested
 - even if it is made an offence, it couldn't justify a remand in custody or a custodial sentence

Abolish the power to attach conditions

- ▶ The police are acting as a judge in their own cause, whatever the rank of the officer making the decision
- ▶ It is difficult to conceive of guidance that would be effective
- ▶ Conditions cannot be effectively enforced
- ▶ Review by a court cannot work fairly

Introduce an absolute time-limit on pre-charge bail

Extension of any time limit should not be permissible because someone will have to make the decision –

- ▶ Police officers, of whatever rank, are not sufficiently independent and are not equipped to make quasi-judicial decisions
- ▶ Courts cannot be trusted to take such decisions

What should that time limit be?

- ▶ 6 months
- ▶ 28 days
- ▶ 14 days

Pre-charge bail – the central irony

- ▶ Since the alternative to pre-charge bail is unconditional release, it is difficult to enforce

Therefore

- ▶ It is more likely to adversely affect people who are essentially law-abiding than those who feel they have little to lose