

Operational Guidance for Pre-Charge Bail and Released under Investigation – Updated January 2019

1. Introduction

This document has been produced by NPCC Bail portfolio to provide additional guidance to police forces following the changes to pre-charge bail through the Policing and Crime Act 2017. As the document describes, the impact of these changes was an unprecedented reduction in the use of bail, with suspects being released under investigation. The broader impacts of this fundamental change in our management of suspects are still being explored, but the following document is intended as an interim response to reinforce the message that in the right circumstances, the use of pre-charge bail is still a legitimate investigative and safeguarding tool.

2. Background

The Policing and Crime Act 2017 introduced a presumption in favour of release without bail unless bail is deemed both 'necessary and proportionate in all the circumstances.' The act also introduced statutory time limits and judicial oversight of extensions of bail beyond three months. Concerns have been raised that the new legislation presents a greater risk for vulnerable victims due to the unrestricted nature of being 'released under investigation. There is currently insufficient evidence to support or refute this fear, but irrespective of that, the consideration of whether or not to apply bail must take into account all the circumstances of the case, including the necessity to support and protect victims and witnesses (especially those who are identified as vulnerable and at risk of high harm), and ensure public safety.

This advice sets out to assist police officers and staff in making clear and effective risk based decisions in relation to suspects, victims and witnesses when using Pre-Charge Bail (PCB) or Released Under Investigation (RUI) during their investigations.

3. Pre-Charge bail

Pre-charge bail must not be used punitively and investigators should endeavour to complete enquires within the first period of detention. Bail managers must ensure that the necessity and proportionality for bail is met and that the decision process is transparent and open ensuring the need for bail is commensurate with the developing investigative plan.

Necessity

Authorisation may be considered necessary by the authorising officer, if it is:

- For preventing that person from failing to surrender to custody or committing further offences.
- Preventing that person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.
- For that person's own protection or, if he is a child or young person, for his own welfare or in his own interests.

Proportionality

Authorisation may be considered proportionate if the condition is not used unfairly and is limited to the minimum of what is required to achieve a legitimate policing purpose. Any restriction must be proportionate to the legitimate aim being pursued.

Applicable Bail Period (ABP)

The police can authorise three main applicable bail periods:

- Initial applicable bail period for 28 days authorised by an Inspector.
- Extension to the initial ABP to three calendar months from the bail start date authorised by a Superintendent.
- Further extension to the APB of three calendar months for cases designated as being exceptionally complex, authorised by an Assistant Chief Constable or Commander.



Operational Guidance for Pre-Charge Bail and Released under Investigation

All further extensions to the applicable bail period have to be authorised by a magistrates' court and when authorising bail, the suspect and/or legal representative must be allowed to make representations.

When making applications to a magistrate forces should use the most up to date forms (Dec. 2017) as poor quality submissions result in a third being returned to sources.

Officers should quality assure the forms paying particular attention to the below points:

- Correct regional court hub is selected.
- Accurate dates throughout the application (including bail start date, current applicable bail period end date, new bail period end date, senior officer extension date, section 37(7)(a) bail date and application service date).
- Ensure the applicable bail period as extended by the senior officer is accurate and not confused with the date the person has been scheduled to answer to their bail where, due to shifts patterns, the person is answering to their bail a few days before the end of the applicable bail period.
- All service details completed.
- That a full chronology of work done is provided including dates when matters outstanding are likely to conclude.

Officers should also note the requirement to provide instructions to the court where any application to withhold information from the defendant is refused as the substantive application to extend pre-charge bail must either be withdrawn by the applicant or determined by the court once the information has been served on the suspect.

Conditions to satisfy before extending an applicable bail period

The bail decision maker must consider the below requirements before authorising an extension to bail:

- Have reasonable grounds for suspecting the person is guilty of the relevant offence.
- Have reasonable grounds for believing that further time is needed to make a police charging decision or that further investigation is needed in connection with the relevant offence.
- Have reasonable grounds for believing that either the police charging decision or the police investigation is being conducted diligently and expeditiously.
- Have reasonable grounds for believing that bail is both necessary and proportionate. This decision should have particular regard to any conditions being imposed. The decision maker should record their rationale.

Setting different bail return dates

The bail return date will normally fall on the same date as the applicable bail period end date, but an earlier time and date can be set for the following reasons:

To align with another bail return date if the person is already on bail for another offence (PACE 47ZA (3)) or if a custody officer feels an earlier charging decision is likely (PACE 47ZA (4)).

Under section 47(4A) to (4D) PACE - the bail return date can be varied to an earlier date to accommodate any requests from the suspect or their legal representative or to accommodate any policing requirements such as demands on shift patterns or bail diaries. We can use short 'turnaround' bail (i.e. return the next day) to avoid young people being kept in custody overnight.

Whenever a new time or date is set for the suspect to answer bail the custody officer must provide the suspect with a **written notice** informing them of the use of section 47(4A) PACE to do this.

Bailing a suspect for a Crown Prosecution Service (CPS) charging decision

If the custody officer determines that they have sufficient evidence to charge, their only options under section 37(7)(a) PACE are to either release the arrested person on bail or keep them in police detention to enable a CPS charging decision. The presumption to release without bail does not apply. The custody officer should set a bail return date to reflect a realistic time to allow the CPS to make their decision.

If CPS request further work before they can make their charging decision, a 28-day applicable bail period will start the day the CPS make their request. Conditions should be proportionate, legitimate and necessary to manage the risks posed by the suspect. Whenever the Crown Prosecution Service (CPS) is considering a case, the ABP is suspended. The day the file is sent to CPS does not count as an ABP day.



Operational Guidance for Pre-Charge Bail and Released under Investigation

This would be in cases, for example, where a person was initially released on bail for further enquiries then, during the ABP, the case was sent to the CPS for a charging decision. Regardless of how much time remains of the ABP, the custody officer can set a new bail return date to reflect the time needed for the CPS to make a charging decision. This time could be beyond the existing ABP end date.

If the CPS request further work the ABP clock resumes. In these circumstances, as the original bail date for the suspect may be beyond the ABP end date, care needs to be taken to ensure that a revised ABP is calculated to ensure that an ABP does not lapse. The suspect will need to be notified in writing of a revised bail date using section 47(4A).

This date cannot be after the end of the ABP.

Revised ABP = ABP + Days with CPS (total number of days between day sent to CPS and the day before file returned).

If on the day the CPS request further work, there are less than seven days remaining of the revised ABP, the ABP will be suspended automatically to ensure a minimum of seven days ABP. During this time, police need to make decisions as to how best to progress the required work. If an ABP expires without being extended, the suspect automatically defaults to a position of being RUI. Similarly, where bail has been granted and where alternative safeguarding measures have been put in place, bail may be cancelled without the case being NFA'd. In these circumstances, the suspect will revert to RUI status.

Roles and Responsibilities

Investigating Officer

The investigating officer has responsibility to ensure that investigations are timely and within realistic timeframes. They will liaise with a Sergeant to determine whether they would impose bail.

They would then approach an Inspector to seek authority or request a Superintendent's extension to ABP in the case whereby a suspect has been released on bail.

Custody Officer

Custody officer and/or Supervisor will ensure that there is an effective risk management strategy for the suspect and assist the investigating officer in determining whether bail should be imposed.

They will also assist the Investigating Officer in risk assessing the suspect and ensure there is an investigation plan in place when the suspect is released from custody. For Bail cases - In the event of a Charge/NFA decision the Custody Sergeant will update and close the custody record.

Supervising Officer

They are responsible for the supervision of investigations and ensuring enquiries are completed expeditiously. Supervisors must ensure their officers inform custody of the case disposal.

4. Released Under Investigation (RUI)

Investigating Officers should aim to finalise investigations during the first period of detention wherever possible. However, it will often be necessary to release suspects without bail, whilst the investigation continues.

The RUI process, like that of pre-charge bail, must be capable of withstanding scrutiny, having due regard to proportionality and necessity in the circumstances. A key consideration, however, must always be the need to protect victims and witnesses, and ensure public safety.

Roles and Responsibilities

Investigating Officer

It is best practise for investigators to ensure all reasonable lines of enquiry have been completed prior to arresting the suspect as this reduces the need for RUI and allows a more expedient investigation.



Operational Guidance for Pre-Charge Bail and Released under Investigation

However, it is recognised that often this may not be practical due to the nature of the crimes we investigate and investigators will often find it is necessary to arrest the suspect at a much earlier stage in the investigation.

Following the in-custody investigation process, the investigating officer should liaise with the custody officer to determine the type of release (Bail or RUI). They will assist the custody officer to document a risk assessment and detail the action(s) to ensure vulnerable people linked to the case are protected. When a suspect is RUI'd it should be assessed in line with existing bail assessment processes to ensure the welfare of the suspect is considered and documented on the custody record. Onward suspect management and welfare assessment will be the responsibility of the Investigating Officer with oversight from their supervisor.

Once released the investigator will ensure that the suspect is issued with a 'Released Under Investigation' notice. If they are of No Fixed Abode (NFA), the investigator should endeavour to identify a relevant service address for the service of a PCR. For those individuals who are genuinely NFA, enquiries should be made into the availability of personal service on the individual. In exceptional circumstances, for example where the suspect lives out of force / genuine service address cannot be ascertained / limited knowledge of the suspect / intelligence is known that the person is a flight risk, the use of Pre-Charge Bail should be considered.

Domestic Abuse (DA) and high harm cases – if a suspect has been arrested in connection with an offence involving vulnerable people or domestic abuse, there should be documented decision-making why pre-charge bail has not been used and serious consideration given to the imposition of bail with conditions in order to safeguard the victim. It is advisable to consult a detective inspector before a DA or high harm offence suspect is 'Released Under Investigation'.

The investigator must update victims and witnesses in respect to a suspect being RUI'd. They must be provided with the necessary advice to remain safe and details of the processes to follow if they feel they are subject to criminal actions by or linked to the suspect.

Custody Officer

If the custody officer is not satisfied that Pre-Charge Bail is necessary and proportionate, they must release the suspect without bail (RUI).

Prior to the release of the suspect, a documented risk assessment must take place to manage the risk to victims, witnesses. It will be the responsibility of the Custody Sergeant to document the suspect's referral to appropriate in-custody or external support pathways.

All persons released from custody without bail will be deemed 'Released under Investigation', unless a NFA disposal has been documented. The RUI will be authorised by the custody officer.

The custody officer can request and record the observations of detective inspector in domestic assault and high harm cases. The rationale should be documented of the custody record and/or investigation log.

In some forces the investigating officer's supervisor may support the completion of these assessments.

The threat, risk or harm associated with the investigation must be proportionately managed, taking into consideration the safeguarding of all persons linked to the investigation.

In the event that the suspect is RUI they should be informed of the following:

- Any further interviews may be carried out on a voluntary basis. If they fail to return on request for a voluntary interview, or commit further offences whilst RUI'd, they risk being arrested again.
- They will not have a set date/time to return to custody or any conditions but the Investigating Officer will contact them to keep them updated on the investigation.
- They should inform the Police of any changes of address or contact methods.

Where the individual is of No Fixed Abode, the custody officer must ensure, with the assistance of the Investigating Officer, that a suitable postal address has been recorded.

Expected Finish Date

Investigations which suspects are on RUI must be conducted expeditiously to ensure all parties are not subject to long delays which can be stressful and lead to witnesses' issues at future court trials.



Operational Guidance for Pre-Charge Bail and Released under Investigation

A supervisor should endorse the investigation log with an initial Expected Finish Date (EFD). This date must take into consideration the investigation plan including forensic and digital evidence submissions which are deemed necessary.

A supervisor must ensure that investigating officers have an effective investigation plan in place and they should be fully engaged in discussions surrounding RUI and the impact on investigation timeliness:

- Custody officers should make it explicit to individuals RUI that they are reminded of the offences of witness intimidation, perverting the course of justice or harassment and that they will be liable to arrest should these offences be committed against the victims/witnesses in the case.
- In ALL cases where a youth is involved, the Custody Sergeant must liaise with the Youth Offending Service (YOS) prior to releasing on bail or RUI.

RUI Review – Suggested good practice

Once a suspect has been released, investigations must have a documented supervisory review at least every 30 days until the investigation has been completed and a disposal actioned. The supervisor will be responsible for reviewing and setting the post custody investigation EFD's. (High priority where safeguarding may be an issue - Sgt review every 10 days)

At each review the Investigating Officer must ensure the victim, suspect and their legal advisor where applicable is provided with an update on the progress of the investigation.

Subsequent reviews by an Inspector at 3 months and Superintendent at 6 months will ensure RUI suspects will be subject to appropriate review and management supervision.

Inspectors and Superintendents will need to satisfy themselves that RUI cases are being managed expeditiously and is further investigation is appropriate.

Disposal

At the end of an investigation, an appropriate disposal will be documented. The investigating officer must update the victim and suspect on the disposal, and ensure the investigation and PNC is updated with the outcome. (e.g., no further action, out of court disposal, postal charge requisition.)

5. Postal Charge and Requisitions (PCR)

The Criminal Justice Act 2003 created the Written Charge and Requisition (Postal Charge and Requisition – PCR). Following the introduction of the changes detailed in the Policing and Crime Act 2017, the number of suspects charged following Pre Charge bail has decreased. The changes resulted in increased numbers of suspects being investigated with RUI status or following a Voluntary Attendance (VA) interview.

Following an investigation involving an arrest or VA interview the outcome is either:

- A Postal Charge and Requisition instructing them to attend a specific court.
- An out of court disposal.
- No further action

The increased use of RUI and VA has led to an increased number of suspects being required to attend court following the issue of a PCR. As a result, HMCTS feedback has identified an increase in failure to appear rates and a reduction in early guilty pleas combined with suspects attending court without early legal advice. To ensure an expeditious court process, the following points should be noted:

- Summary only offences must have a postal charge raised within 6 months of the crime being committed due to the 6-month statute of limitations for summary only offences. Care should be taken in cases where one charge may be substituted for a lesser charge during proceedings, for example an ABH becoming a Common Assault. Failure to adhere to the statutory time limit would mean that the offence could not be prosecuted. The impact of out of time or failed prosecutions, on victims and witnesses, and the wider public confidence is significant.
- Investigators should recognise the importance of obtaining and confirming accurate and up-to-date address details for subjects to ensure the prompt service of PCR's.

It is a nationally identified concern that the issuing of PCR's to some individuals can be problematic when attempting to serve, often resulting in the person failing to appear at court. For those individuals who are genuinely of No Fixed Abode, officers should give consideration to the feasibility of personal service on the individual before contemplating the use of bail.



Operational Guidance for Pre-Charge Bail and Released under Investigation

In exceptional circumstances, e.g. suspect lives out of force / genuine PR service address cannot be ascertained / limited knowledge of the suspect / intelligence is known that the person is a flight risk, the use of pre-charge bail may be appropriate. (Each police force should review their own PCR processes to ensure that there are no inherent, unnecessary or avoidable delays within the Criminal Justice process.)

Once a PCR has been authorised officers can assist in ensuring the best outcome is achieved at court for victims and witnesses by:

- Updating Victims and witnesses when a PCR has been issued.
- Complete a quality file that complies with the National File Standards.
- Ensure the PCR provides clear information for the suspect, to ensure they understand matters they need to consider such as how to seek legal advice, the consequences of not attending court and how to obtain advice from the court if required.
- Ensure PCRs are processed and served in a timely manner.

In some forces, local initiatives are being piloted to improve the attendance of certain categories of defendants at Court including hand delivering PCR's relating to indictable offences and the use of text messaging / email's to remind suspects to attend court.

The impact of these pilots is unknown at present, however good practice would include the investigator taking reasonable steps to ensure suspects attend court.

