



**domestic
abuse
commissioner**

College of Policing Consultation on Pre-charge bail: Written submission from the Domestic Abuse Commissioner for England and Wales

Role of the Domestic Abuse Commissioner

The Domestic Abuse Act establishes in law the Office of the Domestic Abuse Commissioner for the purpose of providing public leadership on domestic abuse issues and to play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales. The role of the Commissioner is to encourage good practice in preventing domestic abuse; identifying adult and child victims and survivors, as well as perpetrators of domestic abuse; and improving the protection and provision of support to people affected by domestic abuse from agencies and government. As the Domestic Abuse Commissioner for England and Wales, I welcome the opportunity to feedback on the College of Policing Pre-charge Bail Statutory Guidance Consultation. I would be pleased to discuss the contents of this response further, if requested to do so.

Scope of response

My response to this consultation is limited to the aspects of the Statutory Guidance which I believe to be the most relevant to my office's work and would have the biggest impact on victims and survivors of domestic abuse.

General Comments

- **Legislation** – The Guidance refers to several different pieces of legislation throughout the document. For reference purposes, it would be helpful if the document included an appendix which set out the relevant sections of legislation referred to in the Guidance to improve the accessibility of the document to readers who may be unfamiliar with the statutory frameworks.
- **Definitions and acronyms** – Whilst it is understood that the Guidance is targeted at police officers, it is likely that it will be used and accessed by other individuals working across the criminal justice system, including victim support services and could also be accessed by victims, survivors and defendants for the purposes of better understanding bail frameworks. With this in mind, it is recommended that a section with key definitions be added to the document to improve the accessibility of the Guidance to lay readers. It would also be

helpful to list all the acronyms across the document in one place for ease of reference.

- **Worked examples** – The guidance would benefit from having worked examples or case studies which can be referred to by police officers and victim support practitioners to understand the practical applications of the rules around bail and breaches. Whilst the guidance sets out the scope of the legislation clearly, the way in which this may be exercised is set out in vague terms across the document and could in turn be interpreted subjectively. Having worked examples or case studies can help readers understand how such technical guidance should be applied, particularly where some of the nuances may be unclear to an unfamiliar reader.

Section 4 – An Introduction to Pre-charge Bail

Paragraph [4.2] states that bail can result in disadvantages for the suspect. This is not contested, however this paragraph should also note that the granting of bail to a suspect can be deeply concerning to victims and survivors of domestic abuse who may be worried about their safety after they report an incident to the police. The impact of granting bail on the victim and survivor should be explicitly noted and the importance of consulting with victims and survivors as part of the bail process should be noted in this paragraph.

Sub-section on necessity and proportionality

I support the submission made by the Centre for Women's Justice with regard to this section of the Guidance.

The section on necessity and proportionality needs to be strengthened, as it currently does not set out the scope of the necessity and proportionality test, nor does it stipulate how this test should be applied. As this is a legal test which must be followed by police officers, it is important that the Guidance is clearer as to the necessity frameworks and how proportionality is balanced – particularly with regard to bail with conditions and the types of conditions which should be imposed in relation to domestic abuse-related offences. The Guidance would benefit from worked examples or case studies which police officers and practitioners can rely on in order to better understand the practical applications of the test.

In determining necessity and proportionality with regard to domestic abuse-related, offences, officers should consider the history of a suspect's behaviour with the current or previous victims. This should include considering whether they have a previous history of domestic abuse or other violent offences, whether they have previously been the subject of police call-outs and whether the victim is known to multi-agency safeguarding processes (such as MARACs). It will also be crucial for officers to consider whether the suspect has previously had any Non-Molestation Orders or Stalking Protection Orders (SPOs) issued against them, as well as whether these have ever been breached. This should help set a much clearer picture

as to whether bail is appropriate in domestic abuse cases and the types of conditions which should be imposed if bail is to be granted.

However, we know that many people may not have had contact with the criminal justice system in the past, and just because someone is not known to MARAC or does not have previous orders, does not mean that there isn't a history of abuse, nor that there wouldn't be cause for concern when granting bail. It is therefore important to ensure join up into domestic abuse services which can support the picture around bail decision making.

The guidance should further state that police officers should work with victim support services, such as advocates from specialist domestic abuse services and in particular those who have Independent Domestic Violence Advocates ("IDVAs") roles or other specialist community-based roles, to establish whether bail should be granted in a domestic abuse-related case.

Paragraph [4.7] should set out the types of protective measures which must be considered for use in conjunction with bail for cases involving domestic abuse. This should include signposting victims to support services, as well as providing information as to the civil protection orders which the police can apply for in order to support victims and survivors, such as Domestic Violence Protection Orders (DVPOs), SPOs and Domestic Abuse Protection Orders (DAPOs) upon their national rollout.

With regard to paragraph [4.8], it should be added that police officers should also recorded the views of victims and survivors following consultation with them regarding whether the suspect should be granted bail. Where a victim or survivor submits that a suspect should not be granted bail but it is granted, police officers should note why they did not deem bail to be necessary or proportionate and record the actions which they will take to allay the victim's concerns as to their safety.

Sub-section on pre-charge bail powers

The section on pre-charge bail powers should note that street bail will rarely be appropriate in cases involving domestic abuse, on the basis that this framework does not allow for sufficient risk-assessment and safeguarding measures to be carried out and implemented.

Sub-section on seeking the views of victims

I support the submission made by the Centre for Women's Justice with regard to this section of the Guidance and reiterate the same.

There would be value in recognising children as victims in this guidance, in particular how children are a victim of domestic abuse in their own right under the Domestic Abuse Act 2021. This section should reflect this and provide appropriate guidance around the handling and support to children who are victims.

This section could be further strengthened by highlighting the role of advocates, victim support workers and IDVAs in helping victims and survivors understand the bail process, the implications of any conditions which are imposed on the suspect and the action which can be taken in the event of a breach. This section should also highlight the importance of police officers speaking to IDVAs and multi-agency safeguarding structures in assessing the risk to the victim and how this is communicated to them.

Paragraph [4.36] notes that some victims may underestimate the risk which they are in or diminish the crime perpetrated against them. Victims and survivors of domestic abuse may display this behaviour and the Guidance should make explicit reference to domestic abuse as part of this. Where the police may be considering an 'evidence-led' or 'victimless' prosecution, (for example, where a victim or survivor does not support a prosecution). Where this is the case, the risk posed to the victim and survivor should be very carefully assessed and not rely solely on a victim or survivor's estimates. It should also be added that police officers should use their professional curiosity when assessing an incident to which they have been called out. Whilst the incident may seem minor or trivial in isolation, police officers should assess whether the incident forms a pattern of behaviour which could be regarded as coercive and controlling when considering whether or not to grant bail.

Paragraph [4.40] should add that officers should note where the views of the victim have not been upheld and the reasons behind this. Further, where bail has been granted, police officers should note the safeguarding measures offered to victims and survivors of domestic abuse to ensure their safety and how this has been communicated to the victim.

Paragraph [4.43] should highlight the importance of working with domestic abuse and sexual abuse support workers and advocates in ensuring that victims are offered a trauma-informed approach throughout this process.

Sub-section on bail with conditions

This section should explicitly note that where a police officer is considering granting a suspect bail in a case involving allegations of domestic abuse, bail with conditions should always be considered in the first instance for the purposes of safeguarding witnesses.

Paragraph [4.49] should add that investigators must explain the scope of any bail conditions which are imposed to victims and survivors, as well as informing them of how they can report any known breaches and the actions which will be taken upon such breach being reported.

I am extremely concerned about the wording of paragraph [4.53], which stipulates that it is futile to impose bail conditions where it is likely that they will be breached. Many victims and survivors of domestic abuse who contact my office complain of their perpetrators breaching their bail conditions. This problem is not resolved through not imposing bail conditions altogether. Rather, it demonstrates the

importance of ensuring that policing can enforce breaches more effectively in order to keep victims and survivors safe.

Sub-section on identifying and managing risk

Paragraph [4.94] should explicitly consider circumstances where the individual who has been arrested is known to be vulnerable and a victim of domestic of domestic abuse and could have committed an offence under coercion by a perpetrator. In such cases, whilst it would be desirable to grant a victim or survivor bail, investigators should consider whether the imposition of certain conditions in such instances may place the individual at greater risk of harm. Where this is a risk, police officers should work closely with multi-agency safeguarding structures to find an effective solution to keep the suspect safe from further coercion or exploitation whilst they are on bail.

As highlighted above, paragraph [4.95] should mention the civil protection orders which police officers can apply for as part of the tools which can be used to manage risk in cases involving domestic abuse.

Section 5 – Released under investigation

Section [5.9] should explicitly state that cases involving domestic abuse will rarely be suitable for RUI, due to the risk to the victim and survivor of further harm. It should further be added that where a suspect who has been arrested for a domestic abuse-related offence is RUI, a clear risk management plan should be devised for the victim and a record of the same should be kept and shared with relevant safeguarding partners.

Sub-section on breach of bail

Paragraph [5.15] which states that a breach of bail conditions may indicate an increased risk to the victim should note that this is particularly concerning in cases involving domestic abuse and stalking, whereby breach of bail should be regarded as an escalation in the levels of harmful behaviour being perpetrated by a suspect.

Paragraph [5.19] should note that suspects in domestic abuse and stalking cases may not always technically breach their bail conditions but may get close to doing so for the purpose of antagonising the victim and survivor. Many victims and survivors who write to my office report occasions where perpetrators stand at the end of their road where the bail conditions place a small exclusion zone around their house, or will similarly go near enough to their children's school or their place of work so that they can be seen, but not near enough to be in breach of their bail. Whilst the perpetrator may not technically be in breach of their bail conditions, police officers should regard this course of conduct within the context of the wider offending which they have been charged with and consider whether this can be regarded as coercive and controlling behaviour, harassment, or stalking. Such behaviour should be

regarded as an escalation in the levels of risk and harm being displayed by a perpetrator and should be managed as such.

Bullet point two of paragraph [5.19] which notes that childcare is a potential mitigation to breach of bail should be caveated to state that this only applies where agreed child contact arrangements are in place. Further, even where agreed child contact arrangements are in place, I note that victims and survivors have contacted my office to note that perpetrators have deliberately frustrated agreed child contact arrangements and coerced the victim and survivor to be involved in handover arrangements which they know to be in breach of the perpetrator's bail. This is because in doing so, perpetrators know that it becomes harder for the victim and survivor to report such breaches as on one hand the victims and survivor will worry about compliance with family court orders and on the other worry about the police's judgement for allowing, or participating in, what appears to be a breach. With this in mind, it would be beneficial if this section could include worked examples or case studies as to instances in which breaches of bail should be escalated.

Sub-section on postal requisition

The sub-section on postal requisition should note that such measures are not appropriate in cases involving domestic abuse, as the lack of monitoring of a suspect or bail condition could present a substantial risk to the victim and survivor and any witnesses involved in the case.

Sub-section on protective orders

The sub-section on protective orders should be moved up to be next to the section on identifying and managing risk in order to ensure that police officers who are using the guidance regard such orders to form part of their risk management strategy for keeping victims and survivors safe. As noted above, where such orders are or have been in place for a suspect and there have previously been reported breaches of the same, the suitability for the suspect to be granted bail with conditions or unconditional bail should be called into question on the basis that they are unlikely to adhere to such conditions.

This section should note that police officers should work with IDVAs and other victim support advocates to consider whether the use of a protective order would constitute an effective aspect of the risk management plan for victims and facilitate use of the same where this is deemed to be the case. I reiterate that breaches or near breaches of protective orders should be deemed as an escalation in risk to the victim and should be treated with utmost seriousness by police officers when they are reported by victims and survivors.