



WESTERN CIRCUIT RESPONSE TO THE 'POLICE POWERS: PRE-CHARGE BAIL' GOVERNMENT CONSULTATION.

1. This is the response of the Western Circuit to the Home Office consultation entitled "Police Powers: Pre-charge Bail." (5th February 2020 – 29th April 2020)
2. The Western Circuit represents the interests of barristers in the South and South West of England and is one of the six geographical circuits that make up the Bar of England and Wales.

Criteria for pre-charge bail

Q1. To what extent do you agree/disagree that the general presumption against pre-charge bail should be removed? Strongly agree.

Q2. To what extent do you agree/disagree that the application of pre-charge bail should have due regard to specific risk-factors? Strongly agree.

Q3. To what extent do you agree/disagree that the application of pre-charge bail should consider the following risk factors:

- a. **The severity of the actual, potential or intended impact of the offence;** Strongly agree.
- b. **The need to safeguard victims and witnesses, taking into account their vulnerability;** Strongly agree.
- c. **The need to prevent further offending;** Strongly agree.
- d. **The need to manage risks of a suspect absconding;** Strongly agree, or

- e. **The need to manage risks to the public;** Strongly agree.

Q4. Do you have any other comments? For example, are there any other risk-factors we should consider? Or any comments on the discounted approaches identified on page 7?
(250 words)

3. All suspects should have the expectation that they will be treated as innocent until proven guilty. Any conditions of pre-charge bail will have restrictions upon the liberty of that suspect.
4. In addition to the factors in the preceding questions, the application of pre-charge bail should take account of the suspect's known personal characteristics including family and working life. Further, the health and well-being of the suspect should be taken into account when considering any pre-charge bail conditions to be imposed upon them.

Timescales for pre-charge bail

Q5: Please rank the options below in order of preference (1st, 2nd, 3rd and 4th)

Current Model	1
Model A	2
Model B	3
Model C	4

Q6. Do you have any other comments? For example, do you have any different proposal or are there any other circumstances in which the proposed timescales would not be appropriate? (250 words)

5. We oppose creating any further delays into the system. The consultation talks of concerns of “*disincentivising the timely progression of investigations*”; Models A-C would contribute to that by delaying the point at which the Magistrates’ Court becomes involved.
6. The greatest issue causing delays before court proceedings begin is the lack of resources available to the police and the CPS. Extreme delays are regularly encountered in investigations involving fingerprints and DNA analysis, examination of electronic devices and collision investigations to name but a few.
7. Counsel are often called upon to explain to judges why a case has taken so long to be prosecuted. It is not normally because of the complexity of the case; it is almost invariably the lack of resources available to the police and the CPS that creates the delays.
8. The system can work very well. For example, it is not unusual in murder cases for suspects to be arrested and charged within a week of a death. At that stage the police will have undertaken forensics and mobile telephone analysis. In cases of similar complexity but which do not result in a death, it can be a year or more before the defendant is charged. This is purely down to the lack of resources at almost every stage.
9. The Western Circuit is concerned that Models A-C would simply legitimise further unacceptable delay, that can easily be remedied by the provision to the police and the CPS of greater funding.

Non-bail investigations

Q7. To what extent do you agree/disagree that there should be timescales in codes of practice around the supervision of ‘released under investigation’ and voluntary attendance cases? Strongly agree.

Q8. Do you have any other comments? For example, if you disagree, do you have alternative proposals for the supervision of ‘released under investigation’ and voluntary attendance cases?

10. Whilst we have answered Q7 as above, there seems little need for a two-tier system of pre-charge bail and those “*released under investigation*”. In all cases where further investigation is required, the suspect should be released on bail. The next issue is whether conditions should be attached to that bail.

11. But if there is to remain a two-tier system, then those “*released under investigation*” and voluntary attendance cases should mirror the timescales already in place for pre-charge bail.

12. There needs to be an incentive to progress the investigation efficiently and expeditiously.

Effectiveness of bail conditions

Q9. To what extent do you agree/disagree that pre-charge bail conditions could be made more effective:

- a. **To prevent someone interfering with victims and witnesses?** Neither agree nor disagree.
- b. **To prevent someone committing an offence while on bail?** Neither agree nor disagree.
- c. **To prevent someone failing to surrender to custody?** Neither agree nor disagree.

Q10. What could be done to make bail conditions more effective? (250 words)

13. In the absence of robust data to underpin any concerns regarding the effectiveness of pre-charge bail conditions the questions contained at Q9 are impossible to answer.
14. If it is being suggested that breaching conditions imposed on pre-charge bail becomes a criminal offence, then it is submitted that such conditions must only be made by the Magistrates' Court. It would not be appropriate for the police to be able to impose such conditions.
15. A suspect must be entitled to be legally represented by the Duty Solicitor or under the Legal Aid Scheme to enable them to properly make submissions before such conditions are attached. Such conditions must be subject to frequent review by the Magistrates' Court.

Other issues

Q11. Are there any other issues or proposals you would like to raise with us in relation to the use of pre-charge bail or released under investigation? (250 words)

16. The Western Circuit welcomes the review of the current pre-charge bail and release under investigation regime. The changes made to the pre-charge bail regime by the Policing and Crime Act 2017 were principally brought about to decrease the amount of time individuals would spend awaiting a decision as to whether they were to be prosecuted with the introduction of a 28 day time limit.
17. The limited resources available to the police / CPS caused by chronic underfunding within the criminal justice system has meant that such 28-day turnarounds were unachievable in most investigations. This has led, as the consultation recognises, to a huge surge in individuals being released under investigation; a position without any time constraints which has led to greater uncertainty for individuals being investigated as well as complainants and witnesses. The delays caused pre-charge are exacerbated by delays

caused at the court stage, due to a reduction in court sitting days. The Western Circuit sees first-hand the effect of delays in the criminal justice system, which includes witnesses withdrawing support from prosecution : see the Western Circuit report [This Doesn't Look Like Justice](#) which charts the effect of delays on all participants in the criminal justice system.

18. The Western Circuit acknowledges that the various proposals set out within this consultation seek to try and redress the balance of competing interests within the pre-charge environment. Unfortunately they are akin to trying to use a sticking plaster on a broken limb. Substantial and significant investment is required within the justice system in all areas. Until the criminal justice system is adequately funded, delays in investigations to the detriment of complainants and suspects will continue. Investment will enable the police to investigate effectively and efficiently and offer the best protection for all involved. The answers contained within this consultation response must be read against this over-arching concern: until there is proper funding of our criminal justice system, there will not be proper justice.

The Western Circuit
April 2020