

Bail and Release from Custody (Scotland) Bill – Engagement with people with lived experience

Wednesday, 30 November 2022

Session 1

Introduction

On 30 November, Audrey Nicoll MSP, Jamie Greene MSP and Katy Clark MSP met informally with two women who are survivors of domestic abuse, violence and grooming to hear about their experiences of the criminal justice system. The witnesses were supported in the meeting by Scottish Women's Aid.

The following note summarises the key themes to emerge from the discussion and the views expressed by the participants.

Key issues emerging

Understanding and being involved in the court process

- Members heard that the rights and needs of the accused are given a higher priority than those of victims throughout the bail process. The Bill needs to address this. The safety of victims needs to be prioritised, so they can feel safe if the accused is given bail.
- The women did not feel heard during the court process. It was not explained to them. They did not know what to expect when first appearing in court. They should have access to legal representation and be able to meet with the person beforehand. The legal representative should have a role to prepare them for what to expect from the court process and to defend them in court from aggressive or inappropriate questioning.
- In both cases, the police officers provided information which should have been provided by the Crown Office or the court service. This included managing the expectations and keeping in contact with the women. One of the women indicated that there was no contact with the procurator fiscal ahead of the first bail hearing.
- Sheriffs should take into consideration the risk posed to the victims, and their families, to inform bail decisions. Victims should be able to make a victim impact statement at the earliest opportunity which the sheriff should take into consideration to inform their initial decision to grant bail. Impact statements could also be given by other people who may be at risk or in fear if the accused is given bail, for example their children. Sheriffs would then be in a better position to consider whether contact between the accused and their children is safe and appropriate.

- Domestic abuse is a violent crime. The abuser is a risk to the victim, potentially their extended family, as well as other women. If the accused has threatened to kill the victim or her children, they should not be granted bail.
- The women described the communication from the courts as “very poor”, or as “no communication at all”.
- In one instance the accused was given bail and released, with the woman only finding out from one of her relatives who had been contacted by the accused. The court service had not informed her. In another instance, the woman was informed of the decision in a letter from the court two weeks later. In a third example, the woman turned up to court after travelling a long distance, to be told the case had been postponed.
- The communication before, during, and after court hearings and trials from the court service and Crown Office needs to improve. It should be consistent and timely. Victims should be provided with an allocated named contact person that they can call and/or meet.
- The ‘unknown’ is one of the biggest sources of re-traumatisation for victims. They must be kept informed about what is happening, even if they do not like the decisions taken, if they know what to expect then they can try to prepare themselves.
- The women told of inappropriate language and phrases used by the procurator fiscals which demonstrated a lack of understanding of the gravity and impact of the offences. There should be mandatory training, so that an appropriate and trauma-informed service is provided by the Crown Office staff to victims.
- Both of the women submitted complaints to the Crown Office about their experiences, one some time ago, but neither has received a response.

The impact on the victim when the accused is granted bail

- One of the women described the impact on her of the accused being released on bail as “all consuming”. She told Members that “life just stopped”. She had no idea what to expect. Both women describe being hyper vigilant, living in fear, having to take precautions such as not going out alone and having to be proactive in managing their own safety. The women felt responsible for reporting the men when they breached their bail conditions, for example, appearing near their home. Both women have been diagnosed with PTSD.
- The women were given the address of where the accused would be staying, but as the accused was not on an electronic tag or monitored in any way, this did not provide any reassurance to them, as they could be anywhere.
- Both women said that the accused being managed by the criminal justice system – by electronic tag, tracking and monitoring, and with serious consequences implemented for breach of bail conditions – would help to provide them with the reassurance they need about their personal safety and that of their children. It is not the victim’s responsibility to manage the whereabouts of the accused. This needs to change. The accused should be held accountable for their actions.

- It is essential for their safety and protection that when the women call to seek updates from the police or court services that they have access to all the information, and that there are not internal processes in place which restrict that access.

Were your voices heard?

- Members heard from one woman that “at no time” during the criminal investigation process was her voice heard, and from another that her voice was “absolutely not heard, ever”. The women felt strongly that they should have been able to tell the sheriff what had happened to them at the initial bail hearing.
- An issue for both women was that they did not feel that the full evidence they provided to the police service was reflected by the procurator fiscals during the court cases. The evidence presented in one of the cases minimised what had happened to the woman and the impact on her life.
- In one instance, the woman provided a victim impact statement to the police at the time the accused was arrested. However, the procurator fiscal did not use it at the trial. She felt the impact on her, as well as her children and wider family, was not heard in court or fully taken into consideration.
- In another example, three hours of evidence was condensed into two minor instances, which gave the sheriff the false impression that the case was about little more than arguments.
- One of the women told Members that decisions were made between legal representatives without her being consulted. She was informed afterwards. One of the decisions taken had a negative impact on the safety of her wider family.
- The women explained that the voices of their children had not been heard during criminal proceedings, particularly when bail is first considered. One issue is that children under 12 years of age do not have any legal rights to be heard.
- Children should be able to say what the impact on them would be if their father was to be released on bail. Members heard an example of a child not attending school, through fear of their father turning up at the school. The parental rights of the accused should not be prioritised over the rights of their children. Children should be asked if they would like to provide a written statement at the earliest opportunity.
- Victims should be able to attend the initial bail hearing, they should be informed about the legal process beforehand and be given the opportunity to request certain bail conditions be applied. The accused is made aware of what he can and cannot do, but victims are not given this information at the same time.
- The women were clear that the failures in the bail and release system had adversely affected them and these failures continue to have a negative impact over a number of subsequent years.

Gaps in bail conditions

- The bail conditions set in both cases, meant that the accused men were able to stalk the women. Sheriffs set conditions for ‘no direct contact’ in both cases, but

this was too narrow a condition, as it enabled the accused men to engage in behaviours which made the women feel unsafe and unprotected. Examples of this behaviour included parking in the street or close by to where the women lived, driving past their homes, using their children to make contact, and turning up where they knew the women would be.

- This could have been avoided by the sheriffs setting bail conditions of “no direct or indirect contact” and by setting conditions of no contact between the accused and their children. The women felt that if the sheriffs had received impact statements from them and their children to inform the bail decisions, this would have helped to ensure that bail conditions were in place that would protect them and their families.
- There should be mandatory domestic abuse training for sheriffs to enable them to understand the seriousness of this crime and to help them make informed decisions on bail that will protect women and children from violent offenders.
- One of the women was issued with a personal alarm, whilst the accused was on bail. It was linked to the police service and tracked. However, it was removed after 30 days, as the accused had not done anything. A personal alarm should be provided for as long as the person needs it / the period the accused is out on bail.
- Members heard of an instance where the wrong address had been included for a non-harassment order, which meant the accused could not be arrested for turning up at the woman’s home.
- Members also heard that the conditions set in a non-harassment order (NHO) are not as robust as bail conditions. For example, one woman was granted a NHO, which allowed the accused to apply to enter her home. The civil and criminal parts of the court system must communicate better to ensure consistency, as women expressed that in their experience this is not happening and causes further distress.

Confidence in breaches of bail being dealt with effectively

- The women indicated that, given their experiences, they did not have confidence that appropriate action would be taken to ensure their safety when bail conditions were breached by the accused.
- One of the women told Members that the accused had breached his bail conditions on six separate occasions. He had turned up near her home, harassed and followed her. It was her responsibility to provide proof of these breaches. For almost all of the breaches the accused was arrested, given a small fine and released the next day. On one occasion stricter conditions were applied.
- A small fine is not a deterrent. That is wrong and should be addressed by the Bill. There needs to be a suitable deterrent for breaching bail conditions.
- One of the women explained that it seemed that the court system was more concerned about the accused making a mockery of the system, than the impact of their behaviour on the victim. The impact on the victim of breaches of bail

conditions should be taken into consideration by the sheriff when considering releasing the person on bail again, once bail conditions have been breached.

Understanding the reasons for bail being granted

- One of the women explained that the first time the accused was given bail, she received an explanation. The reason was that the nature of the offence was viewed as “a family argument”. For subsequent bail decisions, she was not provided any information.

Criminal and civil cases

- In one instance Members heard that the criminal case was not taken into consideration during the civil case, despite the person being accused of domestic violence. There needs to be better co-ordination and sharing of evidence between the courts. Victim impact statements could inform the decisions in civil cases where the accused wishes access to their children. This would avoid “separation abuse”, which one woman continues to experience.
- The civil courts need to take into consideration the safety of women who have been victims of domestic violence. One of the women told Members she had to ask for a screen to be provided every time she was to appear in court. Sheriffs should also consider how virtual trials impact on the privacy of victims. For example, the accused is able to see into their victim’s home, when they are providing online evidence from their home.

Factors to consider before release

- Sheriffs should consider the very real risks to the victims and their children and take the time to impose measures that will ensure their safety. For example, a NHO with powers of arrest attached.
- The victim should be given a single point of contact at the police service to ensure a quick response if the accused is to be/has been released, not to have to rely on calling 101 or 999.
- Police markers should be attached to the victim’s property and for the mobile phones of all those who live at the property.
- Victims should have a single point of contact in Victim Support Scotland.
- Victims should be given clear information and advice at the point the person is to be released, so they know what to expect.
- There should be mandatory domestic abuse courses for those found guilty of abuse. In particular, if they do not receive a prison service. If they do not attend, they should be arrested. This would reassure the victims that there has been an attempt to rehabilitate the person to change their behaviour. Rehabilitation is vital.
- Victims should be contacted whilst a NHO is in place to ensure they have not been subject to any threats. In particular, when a NHO is due to expire. This

would inform the sheriff's decision as to whether the NHO should be allowed to expire or be extended.

Session 2

Introduction

On 30 November, Pauline McNeill MSP, Rona Mackay MSP and Fulton MacGregor MSP met with members of two separate families who have recently suffered the murder of an immediate family member. Criminal proceedings are ongoing in both cases. The family members were supported in the meeting by staff from Victim Support Scotland.

The following note summarises the key themes to emerge from the discussion and the views expressed by the participants.

Key issues emerging

- The arrangements for granting bail to defendants in murder trials in Scotland need to be overhauled as they are not fit for purpose. Especially where a defendant has a previous history of violent offending, and/or it is believed by the procurator fiscal and police that there was premeditation involved in the crime in question.
- The assessment of the risk posed by defendants charged with murder and/or violent crime, when sheriffs consider bail applications, needs to be revamped. Presently, there is no consistency by sheriffs in terms of their assessment of the risk posed by defendants to witnesses who are not the victim or their immediate family in these types of cases. Or a risk assessment for a community, such as the defendant posing a risk while out on bail to individuals not connected to the case. For example, a defendant with a history of domestic abuse/violence against women, who gets bail, might then form new relationships with women totally unfamiliar with the defendant or the case.
- Victims/witnesses are being left in distress, fear and limbo for years owing to the large backlog of serious court cases, especially post-COVID. Backlogs now mean cases can take 2 to 2½ years to come to trial. Murder defendants on bail can return to their 'normal' life during these periods while victims/ witnesses/ families are trapped in a prolonged period of fear, anxiety, and grief. This is both morally wrong and cruel and takes a huge personal toll on the lives of victims.
- Electronic tagging of defendants who are granted bail in murder cases, especially where there is premeditation or a history of violent behaviour, should be the default in bail conditions, perhaps with judicial discretion to vary this. At present if a sheriff wished to ensure a defendant does not interfere with witnesses/victims, those victims must provide their home (and/or work) addresses so that the defendant can be excluded from those physical areas. However, this can alert the defendant as to where to find the homes and places of work etc. of the witnesses. E-tagging would switch the balance of this dynamic allowing the movements of the defendant to be monitored.

- Currently bail condition for murder suspects in Scotland would seem to be weaker than those bail conditions currently existing for some forms of non-violent crime, such as fraud or financial crimes. This imbalance needs to be addressed. At present bail conditions are no deterrent for defendants on bail. Dangerous individuals can act with near impunity, safe in the knowledge it will be impossible to prove they have violated bail conditions and should be brought back into custody.
- Apart from mandatory e-tagging, other mandatory bail conditions which could be included for a sheriff to consider in murder cases are defendant curfews, surrendering of the defendant's passports / travel bans, requirements for defendants to sign in daily (or on another regular time period), in person at a designated police station, while out on bail.
- Police Scotland and their Family Liaison Officers (FLOs) cannot credibly gather 'intelligence' on whether a defendant in a murder trial who is out on bail poses a risk to victims/witnesses if there is no data collected on the defendant's behaviour while out on bail (and whether they have violated their conditions). E-tagging and other conditions would help to address this.
- FLOs need better coordination and information with courts and prosecutors on what information can be provided to victims and their families, when it can be provided and in what form. There is a lack of consistency between FLOs on this. This leads to victims/witnesses getting shocks when they receive information at short notice, or, when it is revealed to them in a piecemeal manner.
- The COPFS Victim Information and Advice (VIA) service is overstretched, understaffed and under resourced. It is failing victims and families. There is a huge inconsistency in the level of service, both within sheriffdoms and across the wider country. Families often feel abandoned and must actively chase VIA for information on the progress of a case, as opposed to VIA contacting victims/families at least once every six weeks with updates.
- There is no coordination or common statutory guidance in place to ensure continuity of quality of the VIA service across Scotland. This means that-
 - Distressing and difficult information on the death of loved ones being provided to families in an insensitive or inappropriate way.
 - A lack of clear information to victims/families on the prosecution process, the role of forensic services, the post-mortem process, accessibility or not to family homes/personal possessions of victims if the family home happens to be the scene of the crime; and when families can expect to receive information, where and in what form.
- There is a clear lack of proactive coordinated liaison between Police Scotland/FLOs, COPFS, VIA and key groups like Victim Support Scotland. The Committee should consider whether it can look at this issue during Stage 1 with

a view to getting key players to engage more proactively on issues like quality-of-service delivery, management of information flows, and consistency of services to victims/families.

Session 3

Introduction

On 30 November, Russell Findlay MSP and Collette Stevenson MSP met with two women who had been the victims of serious crimes. The MSPs met with the women individually. The women were supported in the meeting by staff from Victim Support Scotland.

The following note summarises the key themes to emerge from the discussion and the views expressed by the participants.

First discussion

- A major theme was the inadequacy of the information provided by the relevant authorities about the bail and release of the perpetrator of the serious crime.
- There was always a need to chase up information and seek out further information by telephone as written correspondence did not contain the required information, especially around bail conditions. Some of the information provided was confusing, and inaccurate. There was not a proactive approach to the release of information about developments; there was always a requirement to chase for information which should have been provided as a matter of course. The correspondence was impersonal and non-empathetic and made her feel like she was the person on trial.
- An initial call from the Victim Notification Scheme (VNS) only indicated that an individual had been “liberated”, with no indication of what that meant in practice. The person on the call was not knowledgeable about the case, which caused anxiety, panic and stress. The initial call should have been from someone informed about the case.
- The Victim Information and Advice (VIA) service run by the COPFS did not provide her with details of the full bail conditions, only those that affected her. The stated reason for withholding information was due to the ‘prisoner’s rights’. The frequent references to prisoner’s rights was unwelcome and insensitive. The lack of information about the full bail conditions created anxiety, for example it wasn’t clear where in the UK the individual who had been released could go. There was a feeling that the conditions of bail were not sufficient to keep her safe.
- The VIA service had the advantage of a named contact; however, this was not the case in respect of the VNS. The experience of the VNS was so poor that she almost decided to opt out of the service. There was no named worker, just general advice offered by the same person who answered all the calls and had no knowledge of her case.
- It was often the case that correspondence from the VNS contained information which was not relevant to her, probably due to the use of template letters.

Letters also sometimes came out of the blue at times when she was not anticipating them, for example, information about a parole hearing was sent six months in advance. On other occasions, certain key details were not made clear to her, for example that the individual who was being considered for parole would be able to read representations she had made. Finally, she had asked VNS to send her information by letter rather than by telephone, in order that she felt more in control of when she received potentially difficult news, however they emailed her the information to her which meant she received the information at her place of work at a time she would not have chosen.

- The protracted nature of the criminal justice process, which can stretch over several years including appeals, meant that the stress and emotional upset does not abate. There was at least one significant development which 'drew her back' into the case each year and caused her to suffer trauma for a number of years. The impact of her experiences of the criminal justice system can be almost as traumatic as the events relating to the criminal case.
- The stress of the process has a mental health impact. However, the emotional support and NHS therapy offered was not adequate and sometimes the only option is to seek private therapy.

Second discussion

- A major issue is how a woman who has had a child as a result of criminal activity is treated in the criminal justice system. In this case, the woman who spoke to Members felt that she was not treated with any human regard and her human rights were not respected. She felt there was victim shaming, stigmatisation, silencing and discrediting of character, and that the repeated references to the human rights of prisoners was upsetting.
- The individual who committed the criminal activity was well regarded in the community and personally friendly to local police officers and she felt that she was not believed when she attempted to report the crime initially or treated appropriately by the authorities. They ignored her requests for safeguarding. Instead, she became the target of the attention of social work and child protection. It is only at the point of sentencing that victims are believed. She highlighted that small community contexts with devolved powers are dangerous for women and children when men hold all the authority.
- The fact that a child was involved made it more likely that bail conditions would be more lenient and, as a result, made contact with the individual who committed the criminal activity harder to avoid. For example, due to the arrangements for the payment of child maintenance and in respect of access to her home while the perpetrator was on bail. The bail conditions were not adequate. It appeared that police meant to be checking the perpetrator was not abusing people on bail were more concerned about the perpetrator gaining child visitation rights. She felt her child was in danger as a result, and that the existence of her child had been used to manipulate the system. The person's job meant that he could continue to keep working and go into people's houses,

including properties where women and children were residing, with the associated risk that this entailed. She felt silenced, turned away and called mentally ill when she reported abuse of children from the perpetrator while on bail. The perpetrator's word was believed over hers.

- It was stated that the main overriding issue that needs to be taken more seriously in all handling of perpetrators of sexual abuse of women and girls is making it a police priority. The context of crime against women and children needs a changed culture before bail or parole will be safe for victims.
- Another issue was that she chose not to become part of the prosecution of the individual concerned (other victims did so). She expressed that she couldn't access the justice process as it was harmful to the health of her and her child, and endangered them pointlessly with little hope of conviction. Anonymity was the safest option to ensure her young child was free from emotional and psychological harm and real endangerment in justice process by becoming formally associated with the perpetrator and their crimes. She described the later approach from CID while she was pregnant and then caring for an infant as something that was traumatic, harmful to the health of her and her child, and endangering to her from the perpetrator who had threatened her previously. Police used protection of the victim as a coercive tool to push the victim to come forward and actively endangered her and the child to help the case rather than showing any understanding of the points she was raising.
- It was also highlighted that the justice process is impossible to access as a sole parent with no child care, and also that newborns need to be with their sole parent constantly.
- As a result of not being part of the case/trial, she did not get access to information about the case, for example details of bail conditions and when he would be released. She described a 'constant fear' that the individual would be released and try to find her and her child.
- She expressed the view that a prison sentence was not the answer to deal with individuals who had committed the type of offences in her case. They would come out of prison angrier and more likely to reoffend. There needed to be community sentencing options which had integrity and accountability, rather than always relying on imprisonment.