

# **Pre-Charge Bail and Release Under Investigation**

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## **Procedure**

**Greater Manchester Police**

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## 1. Introduction and Background

Greater Manchester Police (GMP) seeks to ensure that a rigorous and transparent process exists which aligns bail management to any investigative plan.

The aims of the bail process are as follows:

- To seek to finalise investigations during the first period of detention where possible.
- To have an investigation and management plan to monitor the suspect on bail.
- Any bail period set must be proportionate to the investigation and to manage any risks posed by the suspect.

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## 2. Scope

This document is intended for use by all police officers and staff involved in the investigation and management of detainees, following their release on police bail or under investigation.

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## 3. Roles & Responsibilities

### **Officer in the Case:**

- You are responsible for the investigation and monitoring the conditions on which any suspect is granted police bail.

### **Custody Officer:**

- You are responsible for ensuring that the use of police bail or release under investigation is necessary and proportionate.

### **Bail Manager:**

- You are responsible for assisting the officer in the case (OIC) and custody officers in all aspects of the administration and implementation of pre-charge police bail, and release under investigation.

### **Inspector:**

- It is your responsibility to decide whether a detainee should be released on police bail, the associated conditions and bail period, authorisation of an Applicable Bail Period (ABP) when this action is necessary and proportionate.
- It is also your responsibility to maintain an oversight of the ongoing investigation and suspect management during the period up to the expected finish date (EFD) of any police bail period.

**Superintendent:**

- You are responsible for the decision of whether to authorise an additional bail period of up to three months.

**District/Branch Commanders:**

- You are responsible for the governance of investigations where a suspect has been released under investigation or on police bail.
- You are similarly responsible for ensuring systems are in place to monitor the conditions upon which suspects are released on police bail.

**Criminal Justice and Custody Branch:**

- It is your responsibility to maintain forcewide oversight of the bail and under investigation processes.

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## 4. Terms and Definitions

**Applicable Bail Period (ABP)**

The period of time for which the police bail authorisation has been given.

**Expected Finish Date (EFD)**

The date when the investigation is expected to finish.

**Postally Requisitioned (PR)**

A summons which tells the suspect when they are required to attend court.

ABP	Applicable Bail Period
CPS	Crown Prosecution Service
CPT	Crime progression teams
HMCTS	Her Majesty's Courts and Tribunals Service
OIC	Officer in the case
PACE	Police and Criminal Evidence Act 1984
SLT	Senior leadership team
SPOC	Single point of contact
UI	Under investigation

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## 5. Procedure

### 5.1 Legislative Requirements

On 3 April 2017 the Policing and Crime Act 2017 made changes to the Police and Criminal Evidence Act (PACE) 1984 and the Bail Act 1976, which mean that there is now a presumption that suspects who are released without charge from police detention will not be released on bail. This follows an increasing recognition of the

effect on suspects of sometimes lengthy periods on police bail and the associated disadvantages, particularly where no further action is taken. In cases where police bail is considered necessary and proportionate, the authority levels, criteria and strict timescales have been drafted to ensure the fair treatment of suspects. In the majority of cases police bail will only be lawful if conditions need to be imposed upon a suspect in accordance with PACE 1984, Section 30A, subsection 3B:

Subject to subsection (3A), where a constable releases a person on bail under subsection (1) the constable may impose, as conditions of the bail, such requirements as appear to the constable to be necessary:

- (a) to secure that the person surrenders to custody,
- (b) to secure that the person does not commit an offence while on bail,
- (c) to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person, or
- (d) for the person's own protection or, if the person is under the age of 18, for the person's own welfare or in the person's own interests.
- (e) Where a person is released on bail under subsection (1), a requirement may be imposed on the person as a condition of bail only under the preceding provisions of this section.

The duration of pre-charge bail and the associated conditions should be tailored to the specific circumstances for which bail is being granted.

The bail timescales and authority levels, from 3rd April 2017, are as follows:

- **Pre-charge bail up to 28 days** - The custody officer is satisfied that releasing the person on bail is necessary and proportionate in all the circumstances (having regard in particular to any conditions of bail that would be imposed); AND an officers of the rank of inspector or above authorises the release on bail (having considered any representations made by the person or their legal representative);
- **The exception to the above is for serious fraud offences** - where pre-charge bail to a maximum of three months can be authorised;
- **Extension to pre-charge bail up to three months** - in standard cases can be authorised by a senior officer of superintendent rank or above;
- **Extension of an applicable bail period (ABP) beyond three months** - requires a Magistrates Court Hearing which the court must approve;
- **For an extension of the ABP from three months to six months without going to a magistrate** - a case MUST be designated as a complex case and an Assistant Chief Constable's (ACC) authority must be sought;
- **If further extensions are required** - reapplication to the Magistrates Court must be made prior to the end of the ABP which was granted at the initial magistrate's court hearing;
- The ABP is frozen when a case is sent to the crown prosecution service (CPS) for a charging decision, and restarts should any further investigation be required.

A suspect will be released under investigation unless the criteria for the imposition of police bail and associated conditions are met.

## **Under Investigation**

Suspects released under investigation will be subject to an Expected Finish Date (EFD) proportionate to the outstanding actions required to complete the investigation.

### **5.2 Officer in the Case**

In circumstances where the investigation cannot be resolved whilst the suspect is in police detention, the OIC should record an effective investigation and suspect management plan on the crime report consistent with release of the subject under investigation or on police bail.

## **Release Under Investigation**

The OIC is responsible for carrying out a diligent and expeditious investigation into the relevant offence(s) and ensuring at its conclusion the crime report and case record are aligned.

## **Application for Police Bail**

The investigation and suspect management plans should form the basis of an application for release on police bail, be clearly documented by the OIC and endorsed by the authorising inspector. If the authorising officer is not readily available and records the authority elsewhere, such as the inspector's daybook, the OIC must endorse the form 1185 with the details of where the authority has been recorded. The completed forms should be attached to the case file under unused material. If a paper copy is utilised the paper copy should be filed with the case file documents.

## **Bailing a Suspect for a Crown Prosecution Service Charging Decision**

### Scenario 1 – Suspect released on bail for CPS advice

When releasing a suspect from custody for a CPS charging decision, the presumption to release without bail and the preconditions to bail do not apply. If the custody officer determines that they have sufficient evidence to charge, their only options under Section 37(7)(a) are to either release the arrested person on bail or keep them in police detention to enable a CPS charging decision. The custody officer can grant bail, setting a return date to realistically reflect the time needed for the CPS to make its charging decision (Section 37(7)(a) PACE). There is no requirement in this circumstance to have an applicable bail period (ABP) authorised by an inspector.

If the CPS return the case for further work then the ABP will start on the day the case is returned and an inspector's authority must be sought.

### Scenario 2 – Suspect is bailed and CPS authorise charge

If the CPS authorise the charge then an ABP ceases to be needed and the suspect can be charged on their return on bail. If circumstances dictate that it is necessary, then the suspect can be rebailed earlier or later so long as the notice is properly served. During this time the suspect will remain on bail with any conditions that were authorised.

Scenario 3 – Suspect released on bail and the case is sent to the CPS and returned within the authorised ABP.

When the ABP has been authorised by an inspector or superintendent, and the case is taken to the CPS and returned for further work prior to the end of the ABP, then the ABP is not adjusted or lengthened. The time with the CPS does count towards the total length of the ABP.

Scenario 4 - Suspect released on bail and case is sent to the CPS and returned with less than seven days of the ABP remaining.

When the ABP has been authorised by an inspector or superintendent and the case is taken to the CPS and returned for further work with less than seven days remaining on the ABP, the ABP is lengthened. The OIC then has this time to complete the work requested and return the case to the CPS or to seek the appropriate extension.

If a further extension is requested then the extra time granted will include the extra time already used as part of the extension to seven days.

Scenario 5 - Suspect released on bail and case is sent to the CPS and returned after the end of the ABP.

If the case remains at the CPS when the ABP expires then the suspect can be rebailed with conditions to such a time as it is expected the case would have been returned with a decision. During this time the suspect's bail and conditions are valid despite the ABP end date passing.

If the case is returned for further work then the ABP will be extended for a further seven days from the day the case is returned. This is to allow the OIC to complete the work requested and return the case to the CPS or to seek a further extension.

If a further extension is requested then the extra time granted will include the time that the ABP has been extended by the case being with the CPS. It is possible therefore, if the case is taken to the CPS while under an inspector authorised ABP, that the case will be with the CPS for so long that the superintendents three month ABP has expired without authorisation ever being requested. In these circumstances a superintendent must endorse the bail forms and the case taken straight to the magistrate for further extension.

In no circumstances can an authority be requested or granted at any level while a case is with the CPS.

Scenario 6 – Bail has been extended by a magistrate when the case is taken to the CPS and then returned.

If a case is taken to the CPS after the first Magistrates Court extension and then returned for further work, the amount of time that the case is with the CPS can be

added to the ABP without further authorisation. This is sometimes referred to as 'stopping the bail clock'.

This only applies to time at the CPS after the Magistrates authority has taken effect and not time spent with the CPS before this point.

Please note that the above has changed since the original Policy was published with the start of this process in April 2017. It has changed as a result of Her Majesty's Courts and Tribunals Service (HMCTS) taking a different view of how the legislation should be interpreted.

### **Conversion to release under investigation**

At the end of the applicable bail period, the investigation must not simply revert to UI without the OIC providing a sufficient rationale to explain why bail is no longer necessary or proportionate, i.e. what has changed since bail was granted.

The OIC must contact an inspector to approve the rationale for conversion and transfer to UI. The rationale needs to be recorded on the crime report and case record together with the name of the authorising inspector.

### **Superintendents Review**

In circumstances where the OIC recognises the necessary enquiries will not be completed before the end of the ABP, the OIC should complete and submit a revised form 1185 to their superintendent. This allows time for review and any necessary remedial investigative activity.

The OIC must seek representations from the suspect, their legal representative and include any representations on the form 1185.

When seeking a superintendents review, the OIC should send the suspect or their legal representative Force Form 1187 to invite those representations at least five days prior to the ABP expiry date.

If an additional period on bail is granted the OIC must notify the bail manager and ensure the suspect's return date is amended.

### **Application for a Magistrates Extension**

Magistrate applications must be sent at least five days before the ABP is due to expire. Simultaneously, representations should be requested by sending Force Form 1188 to the suspect's last known address or to their legal representative. This form allows them to note any representations and send them directly to the Magistrate. If the application is made less than five days prior to the end of the ABP, justification for the lateness must be supplied; if the Magistrate deems there to have been insufficient reason, the application will be denied.

If there is any sensitive information for the Magistrate to consider for the ABP extension, Force Form 1186 should be completed and forwarded to the Magistrate via the email address provided. This is in addition to the form 1188 and needs to include reasons why information won't be disclosed to the defence.

Bail managers, at the request of the OIC, will assist in this process but it remains the responsibility of the OIC to ensure completion.

If an ABP is extended by the relevant authority, the OIC must inform the bail manager to enable the custody record to be endorsed accordingly.

At the conclusion of the investigation, the custody record must be updated with the appropriate disposal and the suspect informed of the outcome in writing.

### **5.3 Custody Officer (Sergeant)**

When the required evidence is available, the suspect should remain in custody to enable the investigation to be finalised without the use of bail. Where bail is required to enable further investigation, the custody officer must review the investigation and suspect management plan, and ensure the requirement for bail is necessary and proportionate. Once satisfied, they should refer the OIC to an inspector for authorisation of an ABP.

The custody officer has the ability to vary the bail time and date to anytime within the ABP, if any of the following criteria apply:

- If the suspect is already on bail for another offence enabling the dates to be aligned;
- Where the custody officer believes that a charging decision could be made before the end of the ABP;
- At the custody sergeants' discretion.

The custody officer is allowed to vary bail as many times as required within an authorised ABP without seeking further authorisation.

Custody officers should make themselves aware of the current service level agreement matrix, guidance notes for forensic issues, and should direct OICs to obtain the required ABP authority timescale in line with this.

At the start of the investigation if it is apparent that 28 days bail is insufficient, authorisation to extend the ABP can be sought.

ABP authorisations cannot be passed over; seeking a three month ABP cannot be done without first getting authority for a 28 day ABP.

### **5.4 Bail Officer**

You will be responsible for assisting the OIC and custody officers in all aspects of the administration and implementation of this Pre-charge Bail and Under Investigation Procedure. This should include:

- The use and maintenance of a bail and UI tracker.

- 14 day and 21 day reminders to the OIC and their inspector on current live bail cases.
- Ensuring the ethical transfer of cases from bail to UI, and escalating any investigations that are not being progressed to the relevant inspector.
- Arranging 21 day reviews with the district superintendent where an extension to the bail period is required.
- Supporting the OIC in an application for a magistrates court ABP.
- Hold regular meetings with the senior leadership team (SLT) criminal justice lead for your district or branch.
- Support district or branch performance meetings by providing relevant performance information around police bail and UI.

## **5.5 Inspector**

### **Authorising Inspector**

The inspector is responsible for ensuring the OIC has completed an investigation, suspect management plan and that the content is consistent with the application for the release of the suspect under police bail.

The inspector should then assess the necessity and proportionality of any release on police bail, and specifically the justification for any conditions the OIC proposes. Where the rationale documented on the form 1185 justified police bail, the inspector should endorse the form with their considerations and signature. If the inspector is not available to access the form the location of where the authority has been recorded the inspector should make a separate written record and notify the OIC of The location of the authorisation for inclusion on the form 1185.

### **Reviewing inspector**

Inspectors should oversee all open investigations carried out by their officers and ensure that they are given sufficient time to progress investigations in line with the EFD or ABP. This is particularly important for cases which require extensions to bail. Any application to the superintendent must be able to demonstrate that the investigation has been conducted diligently and expeditiously.

## **5.6 Superintendent**

When granting the ABP you must consider the following criteria:

- a) Do you have reasonable grounds for suspecting the person on bail to be guilty of the offence?
- b) Is the investigation being conducted diligently and expeditiously?
- c) Is further investigation needed in any matter concerning the offence under investigation?
- d) Do you have reasonable grounds for believing that further bail is necessary and proportionate in all the circumstances (with particular regard to any bail conditions)?

## **5.7 District/Branch Commander**

You have responsibility for ensuring there is rigorous governance in place to manage all persons on bail or UI. Best practice is highlighted at 5.9.

## **5.8 Criminal Justice and Custody Branch**

The branch has forcewide oversight of district and branch processes to manage persons on police bail or UI. This will include:

- Regular meetings with the SLT leads for criminal justice.
- Providing performance information.
- Carrying out district and branch visits to identify best practice and areas for improvement.
- Briefing the chief officer team as required.

## **5.9 Governance and Best Practice**

The following is expected to be adopted as governance within local districts and branches:

- Bail managers to adopt the use of a bail tracker (provided by the Criminal Justice and Custody Branch).
- Bail managers to send reminders via email to the OIC, their sergeant at the 14 day point for live bail investigations, and arrange a 21 day superintendents' review of cases where an additional APB is likely to be required.
- Bail managers to send a further reminder at 21 days and escalate to the inspector.
- Superintendents to complete a 21 day review for those cases where an additional ABP is required.
- Live bail cases, that either have inherent risk or are approaching 21 days, should be highlighted by the bail managers to SLT at the daily management meeting.
- Regular meetings between the bail manager, criminal justice single point of contact (SPOC) and the SLT lead for criminal justice.
- Bail and UI performance to be included in crime governance meetings and district performance meetings.
- Process is in place between the crime progression teams (CPT) and the bail managers to ensure the case bail or UI record is closed after a crime investigation is finalised.
- Circulation files to be quality assured by a SPOC to ensure evidential points are covered to prevent unnecessary UI's.

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## **6. Associated Documents**

- Detention and Custody Authorised Professional Practice.

- Police and Criminal Evidence Act (PACE).
  - Bail Act 1976.
  - Policing and Crime Act 2017.
  - [NPCC Operational Guidance](#).
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## **7. Statutory Compliance & Consultation**

### **7.1 Statutory Compliance**

#### **7.1.1 Equality Act (2010)**

This document has been considered in the context of the General Equality Duty.

In the application of this procedure, GMP will not discriminate against any person on any grounds, including the nine protected characteristics as defined in the Equality Duty, Section 149, and in addition politics, opinion, property, or any other status, defined in the Human Rights Act 1998, Article 14.

#### **7.1.2 The General Data Protection Regulation (GDPR) and Data Protection Act (2018)**

Greater Manchester Police has a duty to ensure, so far as is possible, that all staff comply with the provisions of the GDPR and the Data Protection Act 2018.

This procedure has been assessed for compliance issues by the Information Compliance and Records Management Unit (ICRMU), and is considered to be compliant with the legislation as there is a clear lawful basis for the processing of personal data and special category data. It should be read in conjunction with GMP's Data Protection Policy and guidance issued on the Data Protection Intranet pages.

#### **7.1.3 Freedom of Information Act (2000)**

This procedure is deemed suitable for disclosure under the Freedom of Information Act (2000).

However, any requests for its disclosure should be directed through the Information Compliance and Records Management Unit via the Freedom of Information mailbox.