

# Post-arrest management of suspect and casefile

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## Custody plan

Detention of suspects arrested for domestic abuse-related offences requires some specific considerations as part of a custody plan. General custody issues are covered in full in APP on [detention and custody](#).

### Checklist: Custody plan

When detaining a domestic abuse suspect, custody staff should:

- ensure the presence of an appropriate adult as required by [the Police and Criminal Evidence Act 1984 \(PACE\) Code C](#)
- consider the suspect's right to a telephone call and assess the potential to harass and intimidate the victim, children, family members and potential witnesses – the phone call can be denied or delayed in connection with an indictable offence if an inspector (or above) is of the view that its exercise may result in interference with or physical harm to other people, but the restriction should be proportionate and last no longer than necessary (Code C, paragraph 5.6 and Annex B, paragraphs 1 and 2)
- ensure any telephone calls are supervised – they can be terminated if being abused (Code C, paragraph 5.7)
- request that telephone calls are made in English so that they can be adequately monitored – if the suspect does not speak English, consider whether it may be appropriate to require the attendance of an interpreter to assist with supervising the call, for example where HBV is suspected and the victim may be at risk from other family or community members

- record if a suspect threatens to commit suicide, and include this both in the custody risk assessment process for the care of the suspect and pre-release
- consider suicide threats by the suspect as a risk factor for further harm being caused to the victim and children – include in any decision-making process for police bail and ensure those responsible for victim risk assessment are made aware
- record significant statements on the custody record and invite the suspect to sign and verify them
- record injuries to the suspect and any explanation offered
- arrange for an appropriate healthcare professional to examine the suspect if injury is complained of or observed and record any findings on the custody record – this should also be done if the suspect raises self-defence in interview
- document on the custody record any intimidating, aggressive or threatening behaviour exhibited by the suspect
- ensure that custody CCTV is reviewed and retained if it is likely to be of evidential value, for example if it captures relevant conduct and demeanour of the suspect on arrival in custody or any comments made by them within the custody area
- consider placing suspects arrested for breach of the peace before the next available court

Arresting officers should ensure that:

- photographs of the suspect are obtained, including any clothing or jewellery that might have inflicted a specific injury to the victim.
- evidence is seized appropriately (particularly in circumstances where the suspect or their associates have access to the scene) and, where possible, taken to the custody suite and recorded on the custody record – care should be taken to avoid evidence contamination
- photographic evidence of injuries and/or the scene is available in the custody suite and used in the interviewing and investigation processes

## Including information relating to the suspect in the risk assessment process

The IO and custody officer should ensure that all relevant information about the suspect is made available to those responsible for victim risk assessment.

**Risk identification and assessments** often rely exclusively on information provided by the victim, which can result in an incomplete assessment of the circumstances. Information about any

comments or behaviour observed during the period of custody, including during police interview, should form part of the risk assessment. Officers should be particularly alert to any information indicating further harm, escalation or imminence of harm. They should also consider intelligence as part of this process, as well as existing risk assessments carried out on the offender in any previous cases.

## Suspect interviewing

In domestic abuse cases the suspect might be expecting the victim to withdraw their evidence. Where other evidence exists, it may be central to proving the case, bringing appropriate charges and inducing a guilty plea.

For further information see [APP on investigative interviewing](#).

## Sensitive information about the victim

Supervisors should ensure that officers dealing with domestic abuse cases are aware of the potential risks involved in disclosing certain information to the suspect and any legal adviser. For example, there might be specific risks in providing information about the location of the victim or another witness staying in a refuge, or sensitive personal information such as medical details.

Refuge details and those of anywhere else a victim has moved to for their safety, including safe houses, must never be disclosed to the perpetrator or their close contacts. Refuge details should never be disclosed to anyone without the express permission of the refuge.

## Legal advisers and pre-interview briefings

See APP on investigative interviewing, [APP on investigative interviewing, working with legal advisers](#) for detailed information.

In pre-interview briefings, interviewing officers should consider informing the legal adviser of the existence of photographic evidence, rather than providing access to it before the interview. If photographic evidence is not disclosed to a legal adviser in the pre-briefing, interviewing officers should plan at what stage in the interview its existence should be disclosed.

## Using photographic evidence during interviews

Any photographic evidence should be made available to the interviewing officer for pre-interview planning. It can often be beneficial to allow the suspect to provide a full account before giving detailed disclosure of photographic evidence. If the interview is taking place several days after the incident, interviewing officers should use more recent photographs of injuries which allow for the development of bruising and might show the full extent of the injury. Polaroid photographs should be protected when used in interview by placing them in clear evidence bags.

## Using interpreters during interviews

Officers booking interpreters for suspect interviews should follow the Office for Criminal Justice Reform (2007) [Office for Criminal Justice Reform \(2007\) National Agreement on the Use of Interpreters](#) and should make every effort to source an accredited interpreter. Accredited interpreters are required to comply with professional codes of conduct and may be held accountable for any breach. Obligations include disclosing any conflict of interest, acting impartially at all times and interpreting accurately without seeking to influence the conversation. In domestic abuse cases they should pay particular attention to the points in the following checklist:

### Checklist: Considerations when using interpreters in domestic abuse cases

- Make every effort to source an accredited interpreter, check the identity of the interpreter and whether they have a disclosure and barring service (DBS) disclosure certificate and can present it. All interpreters (excluding telephone interpreting) are required to be vetted to NPPV3.
- Check that the suspect, victim or witnesses are not known to the interpreter, where possible.
- If the interpreter is known to the victim, witness or suspect, this should not be in anything other than a professional capacity – this is particularly important in cases of suspected HBV and only accredited interpreters should be used in such circumstances.
- Check that the interpreter has no other interest in the case, whether personal, financial or commercial.
- Where possible, select the interpreter to conform to reasonable criteria set by the suspect, victim or witnesses, which may include a preference for specific sex, religion, regional origin, political affiliation and cultural background.
- Where possible, use different interpreters for the suspect, victim and witnesses.
- General guidance is that interpreters living in close proximity to the interview premises should be preferred, but in domestic abuse and honour-based violence (HBV) cases it may be prudent to

use interpreters who meet the criteria of the suspect, victim or witness but who do not live within the immediate community. There is a potential risk that they may seek to influence the interview or account, or put pressure on the victim or witness to allow the matter to be dealt with within the local community or family rather than by the police.

- Interpreters should be allowed to interrupt the normal flow of the interview to ask the officer for repetition, clarification or to alert the officer to the possibility of a cultural inference that might have been assumed. Interruptions should be explained to all parties.

Supervisors should ensure that the police take responsibility for arranging interpreters for any part of an investigation and for the requirements of the suspect, or person charged, while they are in custody. Supervisors should monitor the use of interpreters to ensure that the principles of [Home Office Circular 17/2006 Use of Interpreters within the Criminal Justice System](#) are adhered to. See also Office for Criminal Justice Reform (2007) [Office for Criminal Justice Reform \(2007\) National Agreement the Use of Interpreters](#).

For further information see:

- [National Register of Public Service Interpreters Code of Conduct](#)
- [Association of Police and Court Interpreters Code of Practice](#)

## Suspect interviews

Supervisors should ensure that all officers conducting suspect interviews are appropriately trained in accordance with [APP on investigative interviewing](#). Depending on the seriousness or complexity of the alleged offence(s), supervisors should consider appointing a trained interview adviser to assist in the investigation.

Interviewing should be carried out in accordance with the [PEACE model](#) and apply the [seven principles](#) of investigative interviewing. Additional specific considerations also apply when interviewing in domestic abuse cases.

Officers should consider the following areas when planning lines of questioning.

- Status of the relationship between the suspect and the victim, for example divorced, planning to separate, separated or other. (Note: the perceptions of the suspect and victim might be different. The suspect's knowledge of a victim planning to separate might increase the risk to the victim.)

- Previous violence and abuse within the relationship.
- Nature of other relationships, past and present, including history of abuse and controlling behaviour by the suspect.
- Relationship with other family members.
- Character of the suspect.
- Violence and abuse towards strangers and acquaintances.
- Whether the suspect has ever lived abroad for a significant period of time – a foreign conviction check should be considered if so.
- Future intention with regard to the victim, for example is the suspect intending to re-establish the relationship.
- Motive when committing the alleged offence.
- Circumstances leading up to the alleged offence.
- Future residence.
- Relationship with children and details of child contact arrangements, if applicable.

Information from the suspect interview should be used in police bail decision making. It should also assist in the decision making of the Crown Prosecution Service (CPS) and the courts in determining the appropriate method of dealing with the suspect and the risk identification and assessment process.

Other specific considerations include:

- interviewers should avoid coming across as judgemental
- if suspects attempt to minimise their involvement, any contradictory facts known by the interviewers should be put during the interview – it may be the only opportunity to introduce them if the victim does not give evidence
- interviewers should explore counter-allegations in detail to limit the opportunity of introducing new allegations at a later stage
- if a suspect gives an account as to why or how the offence happened which does not correspond with investigation findings, interviewers should challenge the account
- interviewers should not allow their own value judgements to influence the account but should explore the thought processes of the suspect – in domestic abuse cases there may be a history of assaults and abuse, which should be introduced into the interview process
- interviewers should introduce information relating to relevant bad character during the interview

## Spotlight on coercive or controlling behaviour

Understanding the nature of the relationship and whether controlling or coercive behaviour is taking place requires questioning beyond individual incidents.

Some approaches to questioning might include asking the suspect:

- how they feel about the victim – this may elicit statements about anger and control
- how decisions are made in the relationship – this may lead the suspect to discuss control of money or other resources and other inequality in decision making, which is a key component of controlling or coercive behaviour
- how disagreements are resolved – a controlling or coercive perpetrator may struggle to answer this because there are no disagreements or they always end in violence
- what the suspect's role is in the relationship – looking after the partner, being a saviour or adviser to the exclusion of more equal roles could indicate controlling or coercive behaviour is present
- how the incident stopped – an answer indicating fear of the consequences if they carried on, for example strangling, smothering, drowning or assaulting a pregnant woman, could demonstrate an understanding of the impact of their violence
- about their feelings before, during and after the violence – this could encourage them to voice, for example, anger or despair, and assist with identifying their intentions following release for the purposes of risk assessment

Interviewers should be mindful that a controlling or coercive perpetrator may also try to manipulate them or seek their collusion in the controlling behaviour.

## Charging

### Charging

**CPS (2013) Director's Guidance on Charging, 5th Edition** specifies that all domestic abuse cases must be charged by the CPS, subject to a very limited general exception relating to expiry of the PACE clock. The **CPS (2015) Domestic abuse charging advice sheet** has been prepared for police officers and prosecutors to further clarify the existing requirements around police referral of domestic abuse cases to the CPS in accordance with the **Director's Guidance on Charging, 5th Edition**. **CPS (2018) Code for Crown Prosecutors** gives guidance on the general principles to be applied when making decisions about prosecutions, with more specific considerations set out in the

**CPS Aide-memoire on charging in domestic violence cases.** The CPS should consider all the available charges and record the full reasons for any charging decisions made.

When consulting the CPS, police officers should take account of the **Code for Crown Prosecutors**, together with the **Director's Guidance on Charging, 5th Edition**. They should also be aware of the **CPS Legal Guidance on Prosecuting Cases of Domestic Violence** and the **Joint NPCC and CPS Evidence Gathering Checklist for use by Police Forces and CPS in Cases of Domestic Abuse**.

The police should refer to the CPS all domestic abuse cases which are assessed by a decision maker as either meeting the evidential part of the **Full Code Test** or being capable of meeting it (where the **Threshold Test** is applied). In accordance with section 8 of the **Director's Guidance**, where a case is one which must be charged by the CPS (which includes domestic violence), the public interest judgement in that case must be made by a prosecutor, not the police. Where there is doubt as to whether a case should be referred, the CPS should be consulted.

It is also appropriate to consult the CPS for early investigative advice to help build and strengthen a case, especially where the victim is unlikely to give evidence and an evidence-led prosecution may be pursued.

For further information see APP on prosecution and case management, **APP on prosecution and case management, charging process**.

## Charging standards

The police and the CPS have agreed charging standards for certain types of offence, including assaults. These are guidelines to assist in selecting the appropriate level of charge in light of all the facts that can be proved. Officers should be aware of the standards.

The offence for which the suspect is arrested may not be the actual offence with which they are later charged. Crime reports should be submitted where recordable offences have occurred. See **offences associated with domestic abuse** for a selection of possible offences. Conduct can amount to more than one offence and can attract multiple charges, for example conduct in breach of a restraining order may also constitute stalking.

Custody officers and/or the IO should liaise with the CPS at an early stage to seek advice on the sufficiency of the evidence, type of evidence required and the most appropriate charge(s). All advice given by the CPS should be included in the prosecution file. IOs should also liaise with the domestic abuse unit or specialist when preparing the prosecution case papers, to ensure that all relevant information is made available.

## Preparing information for the Crown Prosecution Service

To enable the CPS to make a decision about a particular case, the police should provide them with as much information as possible. This also assists in the effective prosecution of the case, and can be used in the protection of the victim and any children when applying for a remand in custody.

### Checklist: File preparation

The CPS requires the following information, where applicable:

#### Evidence and offence details:

- all relevant victim statements (including [withdrawal statements](#), medical reports, and [victim personal statements \(VPS\)](#) – it is useful to obtain a further VPS later in the case to provide an update on how the offending has affected the victim, as some consequences are not immediately apparent and others have long-term impact)
- previous convictions of all witnesses, including the victim
- all relevant witness statements (including, for example, those of neighbours and children)
- details of the victim's injuries (medical, photographic and written) – these should be as up to date as possible and draw attention to any pending test results which could reveal more serious injury, for example where there is too much swelling to see the injury initially but later tests show a break or fracture which would be relevant to level of charge
- description of the scene along with any photographic evidence or relevant statements, including those from the first officer at the scene
- audio or video recording of victim, witness and defendant interviews
- any photographic or CCTV evidence, or body-worn video (BWV) footage
- digital recordings of a 999 call
- any other case exhibits, for example mobile phone records or social media activity

- relevant police records, for example, pocket note book entries, risk assessments, incident logs, custody records
- any relevant records or statements from other agencies, for example pre-sentence reports from probation, damage reports to local authority or social housing departments, any information or views expressed by adult or children's services departments
- any evidence pending or not currently available to be included as part of the file, when available

Officers should highlight aggravating factors of the offence such as:

- whether the suspect/defendant used a weapon
- whether the suspect/defendant planned the incident

**Relationship – history and current:**

- history of the relationship, particularly if there has been violence or abuse in the past
- status of the victim's current relationship with the suspect/defendant and any future plans
- any indication that the relationship may involve controlling or coercive behaviour, even if it is not the offence being charged
- any past or current civil proceedings and civil orders

**Risk/bail:**

- likelihood of the suspect/defendant offending again
- whether the suspect/defendant has made any threats before or since the incident
- evidence of the defendant or the defendant's relatives or associates contacting the victim since the incident or post charge
- location of the address of the victim and the suspect/defendant in relation to one another
- whether bail conditions apply
- whether the defendant is on licence and if so subject to what conditions (a copy of the licence should be included)
- whether the defendant is currently subject to a suspended sentence
- whether the defendant is subject to any current civil orders (including DVPOs)
- any previous breaches by the defendant of any of the above

**Suspect information and potential bad character evidence:**

- any previous convictions
- offence details of any previous domestic abuse convictions or cautions
- crime reports from previous incidents including those against other victims
- details of incidents forming part of a pattern of controlling or coercive behaviour which took place prior to 29 December 2015 (the commencement of the specific offence of controlling or coercive behaviour under [the Serious Crime Act 2015 s 76](#)).

**Victim and witness care and safeguarding:**

- details of any children of the family, including where they were during the incident and the impact of the domestic abuse upon them – comments made by very young children to police officers, the victim or other witnesses may be admissible as res gestae or hearsay
- effect on the relationship of continuing with the prosecution against the victim's wishes, and the victim's views on their own and their children's personal safety if a prosecution does or does not follow
- whether there is a need for an early special measures meeting with the CPS
- where applicable, which special measures would be available to assist a witness and why
- whether a registered intermediary is or should be involved
- whether an independent domestic violence adviser or other specialist service has supported the victim – they may be able to provide evidence of first disclosure or of the victim's fear if a prosecution based on hearsay evidence is being considered

**Interpreters**

- whether the defendant, victim or witness requires an interpreter and for which language
- names and details of any interpreters used during police interviews
- any requests by the defendant, victim or witness for an interpreter of the same sex or of a particular ethnic group, political orientation or affiliation

**Information required by the prosecutor to assess 'realistic prospect of conviction'**

- whether counter-allegations have been made
- any other information potentially relevant to the credibility of the victim in addition to a previous criminal record, for example previous complaints made or intelligence reports

In some circumstances information might not be readily available, for example forensic samples might be subject to delays. However, the CPS should be made aware of the existence of potential evidence and its current status as soon as possible and kept updated on progress.

The IO should always prominently flag material which should not be disclosed.

See [CPS Legal Guidance on Prosecuting Cases of Domestic Violence](#).

### **Checklist: Additional evidence to support the specific offence of controlling or coercive behaviour**

All of the information set out in the checklist for file preparation is also relevant to the specific [offence of controlling or coercive behaviour](#) under [the Serious Crime Act 2015 s 76](#).

In addition, officers should focus on establishing a pattern of behaviour across different types of evidence. Much of it will be evidence of the victim and perpetrator's day to day living and their interaction.

Types of evidence which may be useful include:

- records of communication between the victim and perpetrator, for example emails, phone records, text messages, social media
- audio or visual recordings of interaction between the victim and perpetrator, demonstrating body language and tone, for example 999 recordings, CCTV, BWV footage
- local enquiries, for example neighbours, regular deliveries, postal services, window cleaner
- witness testimony, for example from family and friends, as to observed behaviour by both parties and its effect and impact
- diaries kept by the victim and/or children
- records of lifestyle and household, including photographic evidence of the scene
- evidence of isolation, for example lack of contact with family and friends, withdrawal from social activities and clubs
- records of interaction with services which show the perpetrator adopting a dominant role, for example always accompanying the victim to banking or medical appointments
- bank records showing financial control
- medical records
- GPS tracking devices installed on mobile phones, tablets, vehicles

- care plan, where the perpetrator has caring responsibilities

These are not exhaustive and any evidence which shows a pattern of control or coercion is relevant.

## Checklist: Evidence-led prosecution

### Evidence to support a hearsay application

Where the victim has given an account in any form, but is unable to give live evidence for one of the reasons listed in [the CJA s 116\(2\)](#) of the CJA, evidence must be provided of the applicable reason in order to make a hearsay application — see [prosecution based on hearsay evidence](#) for a complete list.

Where the victim is in fear:

- a section 9 statement from the victim setting out their fears
- attending officers recording relevant comments or behaviour at the scene in a pocket notebook
- body-worn video footage showing victim's fearful demeanour
- statements of third parties with direct knowledge of the victim's fears, for example friends, parents, neighbours, support workers
- bad character evidence which might reveal a significant background of domestic violence
- evidence of continuing fear through updates on the existence of fear as the trial approaches
- evidence that special measures will not adequately address the victim's fears

Where a victim cannot be traced:

- section 9 statement from the investigating officer detailing all 'reasonably practicable' steps they have taken to trace the victim and the outcome
- any associated exhibits

Where a victim is unfit to give evidence due to their physical or mental health condition:

- statements/reports from medical professionals with first-hand knowledge of the witness's unfitness and who are able to give a firm conclusion

- where mental state has deteriorated since giving the original statement, evidence from a mental health professional who can comment on fitness at the time the statement was taken
- evidence of any enquiries made into whether special measures could enable the victim to give evidence, for example video link

#### **Further evidence when considering a prosecution based on hearsay**

- any comments made by a child from whom a formal statement cannot be taken but which have been recorded in an officer's section 9 statement or pocket notebook, in the statement of the victim or another witness or on body-worn video – these may be admissible as res gestae or as hearsay in the 'interests of justice' under the CJA s 114(1)(d)
- all information which may potentially impact on the credibility of the absent witness, for example the witness's previous convictions or cautions, previous complaints made by them or intelligence reports
- all evidence capable of corroborating the victim's account

#### **Further evidence when considering a prosecution based on a hostile witness (who has made a subsequent conflicting statement which is believed to be false)**

- all evidence that could corroborate the victim's initial account, for example evidence of injury, third party witness statements, body-worn video footage
- all evidence that can rebut or disprove any aspect of the false account, for example an officer's statement which clearly says that the victim was not intoxicated at the time the initial account was given
- any evidence of motive for providing the false account

## **Making bail decisions**

### **Risk**

Officers should review risk when making bail decisions. The primary consideration of an officer determining bail conditions should be the safety and protection of the victim, children and the suspect. The Home Office (2015) Guide on Firearms Licensing Law states that a domestic abuse incident should trigger a review of the certificate holder's possession of a firearm or shotgun. Officers should make the appropriate checks and initiate an urgent review where a firearms or

shotgun licence is held by the suspect, whether they are bailed or remanded in custody.

## Bail – pre and post – charge

When considering granting pre-charge bail to domestic abuse suspects, custody officers should be mindful that delays can compromise the safety of the victim, any children and others associated with the allegation made. Victims may also withdraw support where decision-making is prolonged.

If there is insufficient evidence to charge a suspect, officers should consider releasing them under [PACE s 37\(2\)](#) to enable further enquiries to be completed and allow time for other witnesses to come forward. A suspect granted investigative bail under this section should be bailed for no longer than is reasonably required to complete the investigative action. Unless a protracted investigation or other compelling consideration such as the turnaround time for a forensic examination is involved, the period should be no more than three weeks. See [pre-charge bail principles](#) for further information.

Bail can also be granted to allow for referral to the CPS ([PACE s 37\(7\)\(a\)](#) PACE) or to appear at court after charge ([PACE s 38](#)). In cases where the advice of the CPS is to be sought, the period of bail should be no longer than is necessary to complete any agreed action and submit the necessary report. For further information see ACPO and Crown Prosecution Service (2011) [The Prosecution Team Manual of Guidance](#).

For further information see:

- [CPS Legal Guidance on Bail](#)
- [CPS Domestic Abuse Guidelines for Prosecutors, Bail and remand](#)

## Pre-charge bail – conditions or no conditions?

[Section 47\(1A\) of PACE](#) the custody officer 'normal powers' to impose bail conditions where a person is released on pre-charge bail under [section 37\(2\)](#) (insufficient evidence but further investigation required) or [section 37\(7\)](#) (sufficient evidence but referred to CPS for charging decision) of PACE.

Under [the Bail Act 1976 s 3\(6\)](#) 'normal powers' mean that conditions can be imposed if the custody officer considers them necessary to prevent the person from:

- failing to surrender,
- committing an offence while on bail
- interfering with witnesses or otherwise obstructing the course of justice

If the person is bailed under [PACE section 34\(5\)](#), which applies where further investigation is needed but the grounds for detention have ceased to apply and the person must be immediately released, conditions cannot be attached to the bail.

See also [Torres, R \(on the application of\) v The Commission of Police of the Metropolis \[2007\] EWHC 3212 \(Admin\)](#).

Officers should make every effort to consult victims prior to making the bail decision. Custody officers should refer to victim statements, interview records and any available [victim personal statements](#) before making decisions relating to conditional bail. They should ensure that bail conditions help to protect victims, children and witnesses from intimidation and abuse and do not conflict with existing court orders. Conditions should be justifiable under the [Bail Act 1976](#) and capable of being policed for compliance. All decisions should be justified and recorded.

Commonly used police bail conditions which can offer protection to domestic abuse victims, children and witnesses include:

- not to contact the victim directly or indirectly – where there are child contact issues, this may be modified to allow contact via a third party (solicitor/social services/mutually acceptable family member) in order to arrange child contact
- not to attend the home address of the victim/not to enter the victim's street or a specific area marked out on a map – specified distances may also be used but can be difficult to enforce
- not to go to the victim's place of work
- not to go to a named school or other place the victim or victim's children attend regularly, such as shopping areas, leisure or social facilities, child minders, family, friends
- to live and sleep at a specified address – this should never be that of the victim, whether or not the perpetrator owns the house or is named on the tenancy agreement
- to report to a named police station on specific days of the week at specified times
- to obey a doorstep or tagged curfew within specified times (the curfew address must not be that of the victim)

**No contact means no contact!**

Officers should make it clear to the suspect that contact means any method of communicating with the victim, including sending flowers or cards, texting, messaging, Twitter, Facebook and other forms of social media. It also includes any communication via a third party that is not expressly permitted by the bail condition, be that a friend of the suspect, a member of the victim's family or one of their children, for example sending messages back with the child after permitted contact with the suspect.

Ignoring this could amount not only to breach of bail but also witness intimidation, which is a serious offence.

Where a suspect has been on police bail with conditions, officers must not forget to reimpose them at the point of charge, unless the circumstances have changed and they are no longer applicable. If a defendant is bailed to court without conditions, magistrates are almost always persuaded by defence arguments that the police must not have thought them necessary and that no further incidents have occurred, even where the CPS makes an application to add conditions to the bail.

The police make the initial decision to keep the defendant in custody to appear before magistrates at the next court sitting or to bail a defendant to attend court. All persons charged with an offence and bailed must be bailed to the next available court date as notified by the court. Once a defendant appears before the court, the decision about bail is made by the magistrates and is governed by the provisions of the [Bail Act 1976](#) and any subsequent amending legislation.

## Checklist: Pre-release considerations

Before a suspect is released from a police station officers should:

- inform the victim of the suspect's impending release, regardless of whether the suspect has been bailed or not, and record this notification
- check if the suspect is in possession of keys to the victim's house or car and remove them if so
- if the suspect offers a bail address with a previous or current partner, check not only that the person is happy for the suspect to be bailed there, but also that there is no history of domestic abuse – a curfew should never be imposed at an address where there is or has been domestic abuse
- update the [risk assessment](#) and [safety plan](#)

- ensure that all area control rooms and intelligence databases are updated regarding bail conditions, in case of future calls
- check if the suspect has a firearms or shotgun licence and consider conducting a licensing visit or withdrawing the licence in accordance with the [Home Office Guide on Firearms Licensing Law](#)
- make every effort to ensure that a suspect charged following a domestic abuse incident is placed before the court at the earliest opportunity, preferably before a [specialist domestic violence court \(SDVC\)](#), and that bail is for the shortest period that local service level agreements (SLAs) will allow ? this minimises the opportunities a suspect has to intimidate witnesses

Where a suspect is granted bail, they must be informed of the following points before they are released:

- it is the suspect's responsibility (not the victim's) to comply fully with any bail conditions
- any breaches of bail will be treated as such even if the suspect and/or victim state that they have reconciled or the victim has made contact with the suspect
- it is the CPS (not the victim) who makes decisions in relation to charging
- it is the CPS (not the victim) who makes decisions in relation to prosecution

Supervising officers should monitor the ways in which victims are updated about police bail decisions and decisions relating to charges, including where no charges are brought.

## Remand in custody

If, following appropriate risk assessment and consideration of the grounds for remanding a defendant in custody, the custody sergeant decides to keep the defendant in custody after charge, the IO must ensure that:

- the victim is notified
- the victim is kept informed of the outcome of any court hearing at which bail is considered – an updated risk assessment should be done if the defendant is granted bail by the court
- updated information relevant to bail is requested from the victim at every contact
- the CPS is made aware of all information relevant to bail at the time of obtaining charging advice
- all information relevant to bail is included in the remand file for the prosecutor at court
- an officer with knowledge of the case attends court to assist the prosecutor with up-to-date information and additional enquiries relevant to the bail application

Information relevant to bail in domestic abuse cases includes:

- PNC print
- PNC 2 (offence details) print – essential where there are previous domestic abuse convictions or cautions
- chronology of call-outs/previous history
- current bail conditions, court orders, suspended sentences or licence conditions (a copy of any current order or licence should be included in the file)
- details of any known previous breaches of bail, court orders, suspended sentences or licence conditions
- copies of risk assessments
- details of any children involved
- colour photos of injuries
- victim's current views – on risk, fear, status of the relationship, contact with the offender, both immediate and future
- record of any relevant threats made by the offender – printouts if possible or recorded in an officer's statement if seen or listened to first-hand – this always has more impact than where it is noted only in the victim's statement
- information on any alternative addresses which the defendant may propose as a bail address
- officer's views on whether an appeal under the [Bail \(Amendment\) Act 1993 \(BAA\)](#) (BAA) may be appropriate (it is a CPS decision to appeal under the BAA and is only used in cases of grave concern where there is a serious risk of harm or other significant public interest ground)

See also [CPS Domestic Abuse Guidelines for Prosecutors, Bail](#).

Where there is a risk of intimidation of the victim(s) or any witnesses by the defendant following a remand in custody (which would always apply in domestic abuse cases), the IO should also complete the section on the MG6 which is designed to accompany the defendant to prison. This requires prison staff to prevent the defendant from contacting by telephone, letter or visits the persons listed and forbids prison staff from disclosing any of the contact details. The IO should also liaise with prison staff responsible for monitoring the defendant's communications to ensure that any evidence of contact or attempted contact is secured, as it may reveal further offences.

Where the person charged and remanded in custody is on licence, the IO should liaise with probation services to ensure they are aware of the offending and can consider recalling the person.

## Post-release

### Assisting with the recovery of property

Following an arrest or in response to a court order, officers might be asked to assist with the exchange of property or the removal of property from a residence. They might also be required to facilitate recovery or exchange to prevent a breach of the peace. Officers should only do so if they are sure it does not breach bail conditions.

### Suspect requests for property recovery

Officers should ask the suspect to make a list of property for removal that can be checked with the victim. This list should include items that could reasonably be required for short-term use. Officers should not facilitate removal of a significant amount of property beyond that which is reasonably needed for short-term use, or property that is jointly owned by the couple.

The victim should not be required to be present to observe the recovery of property. Officers should not allow telephone contact from the suspect to the victim to arrange property recovery. The suspect should not have any opportunity to use the arrangements to engage in controlling or coercive behaviour towards the victim. All arrangements, including arrangements for a third party to effect the handover of property, should be made by the police directly with the victim. They should discuss the suspect's requests and determine whether the victim is willing to allow the handover of property. Where appropriate, officers should request that victims prepare the suspect's property for removal by packing it in advance. It may be possible for the victim to appoint a third party to recover property safely.

### Victim property recovery

Victims intending to recover property from a residence should be offered assistance to ensure that this process can be carried out safely. The same safeguards (as for suspect property recovery) exist in terms of the amount of property to be reasonably removed. Officers should note that post-separation abuse is an established risk factor for homicide, and victims seeking to recover property may be at risk of further harm. They should be particularly vigilant that the suspect does not use the arrangement as an opportunity to engage in controlling or coercive behaviour towards the victim.

## Proactive policing of breaches

Compliance with bail conditions should be actively enforced so that perpetrators understand that there are consequences to their actions and victims can have improved confidence that the police will take action in the event of a breach.

This also applies to other types of breaches of orders, in particular **DVPNs and DVPOs, non-molestation orders** and **restraining orders**. The latter are offences in their own right and, if they apply alongside bail conditions which are breached, officers should check whether new offences have been committed. Bail breaches may also be used to build or add to existing harassment charges if properly documented.

Suspended sentences and licences can also be strong deterrents and they should be actively enforced. They can be breached either by failing to comply with their terms or by committing a new offence during the period of the suspended sentence or licence. Where a person charged with an offence is on licence, the IO should liaise with probation services to ensure they are aware of the offending and can consider recalling the person.

## Breach of pre-charge bail conditions

Under **PACE s 46A (1A)**, police can arrest a person they have reasonable grounds to suspect has breached pre-charge bail conditions. They must either charge the person or release them again without charge, whether on bail or without bail. If the person is re-bailed without charge, this must be on the same conditions (if any) as before, as there is no power to add to or vary the conditions.

Arrest for breach of bail conditions allows reconsideration of whether a person is suitable for bail and, consequently, whether they may be charged under the **Threshold Test**. It also gives an opportunity to review any additional evidence obtained while the person has been on bail.

If the police decision-maker:

- considers there is now sufficient evidence to meet the evidential part of the Full Code Test or
- applies the **Threshold Test** (where the custody officer believes there are grounds under the Bail Act 1976 to keep the person in custody) and assesses the evidence as being capable of meeting the evidential part of the **Full Code Test**

the case should be referred to the CPS for consideration of charge.

If the defendant is kept in custody after charge to appear before a magistrates' court, the breach of pre-charge bail conditions is not put before the court in its own right but full details should be provided to the prosecutor so that it can form part of the application for a remand in custody.

Other potential actions which officers should consider following breach of pre-charge bail conditions, whether or not the suspect is charged, include issuing a domestic violence protection notice/applying for a domestic violence protection order or investigating possible additional offences arising from the breach.

## **Breach of post-charge bail conditions**

Where a person is suspected of having breached post-charge bail conditions, whether imposed by the police or the court, they should be arrested and brought before a court within 24 hours (not counting Sundays, bank holidays, Christmas Day or Good Friday).

There is no prescribed content for a breach of bail file, but there must be sufficient information available to the court to allow them to form the opinion that the bail conditions have been breached. This almost always means a statement from the victim, but any additional evidence available should also be provided. Where a breach is denied, it is not unusual for a defendant to call witnesses to support his or her account. There is rarely a similar opportunity for the prosecution as they have no advance notice of the breach, prior to the defendant's arrival at court. The more evidence can be provided in advance, for example an officer's statement, CCTV, copies of text messages, the more likely the court is to form the opinion that the breach occurred. Live evidence from an officer, where relevant, can be very persuasive.

If the court does not find the breach proved, the defendant must be released on the same conditions as before. If it is found proved, bail can be reconsidered and the defendant remanded in custody or released on different bail conditions. It is, therefore, essential to ensure that all relevant information is provided with the file and that the up-to-date views of the victim have been obtained.

Where bail conditions have changed as a result of a breach of bail, the conditions should be updated on the PNC without delay and relevant units informed, for example local intelligence units, neighbourhood policing teams and specialist units.

Breach of bail conditions is always serious, even where a victim has participated in, encouraged or initiated contact. The victim may be acting under the influence of controlling or coercive behaviour.

Officers should never lose sight of the fact that it is the responsibility of the defendant to abide by the bail conditions, and that breach represents not only a breach of measures in place to protect the victim, but also a disregard for the police and court orders. The fact that contact has occurred is regularly used by the defendant as an argument for removing bail conditions, citing the victim's agreement. Enforcing bail conditions and the decision to arrest and bring breaches of bail to the attention of magistrates is a decision for the police and CPS, not the victim.

#### **Within 24 hours**

Officers should be aware that once a defendant has been arrested for breach of bail, the person must be brought before a court and the breach proceedings dealt with within 24 hours (not counting Sundays, bank holidays, Christmas Day or Good Friday). If this does not happen, the defendant must be released on the same conditions as before.

See [CPS Legal Guidance on Bail](#) for further information.

## **Applications to vary bail**

The defence may ask for the case to be listed for an application to vary the bail conditions. It is important to respond promptly and meaningfully to CPS requests for views on the proposed conditions. Once notice has been given by the defence, the matter is usually listed within 48 hours, sometimes less, so the response should be provided as soon as possible.

The officer should make every effort to contact the victim for an update of the situation, for example whether there has been any contact from the suspect, the current status of the relationship, the implications of any new address or other change being proposed. The officer should add their own views, based on their knowledge of the case and circumstances as a whole. Intelligence checks should also be made on any proposed addresses. If no update is provided, the court has to make its decision based only on the information provided by the defence, which may be inaccurate.

Any variation made to the bail conditions should be updated on the PNC as soon as reasonably practicable, so that any breaches of bail can be properly actioned based on current conditions and to reduce the risk of wrongful arrest for conditions no longer in force. They should also be reported to local intelligence units, specialist teams if involved and neighbourhood policing teams, to ensure that all units are acting on the latest information.

# Tags

Domestic abuse