

Rape Crisis South London has provided the following information to Centre for Women's Justice for use in a super-complaint about police failures to use protective measures.

Anecdotal evidence about changes to bail conditions including:

Trends we've noticed in the service over the years and changes over time:

- We were told at a police-facilitated training about the bail changes that granting of bail moving forward will be where it is necessary and proportionate. This has not been the case.
- One of our ISVAs has seen so few cases where a perpetrator has been arrested and had bail conditions. She thinks it is probably less than five in the whole time she has been working at RASASC, since starting in November 2017. She has supported approximately 90 clients in that time. She wasn't working at RASASC before the changes to the Bail Act.
- The same ISVA has never heard of the police feeling that a perpetrator should be on bail and pushing for this to happen. They have seemingly just accepted the changes and the new way of working.
- Since the introduction of the Bail Act, we do not see bail conditions as a matter of course. Routinely, perpetrators are asked to go into the police station for a voluntary interview and consequently released under investigation. This includes perpetrators who are being investigated for childhood sexual abuse.
- We have seen the increased use of voluntary attendance interviews occurring at the same time as the changes to the bail regime in April 2017. This suggests voluntary attendance is being used to avoid granting bail. Police officers have told at least two members of staff as such.
- We were told at a training we attended that if a perpetrator is not arrested and bailed, he will be released under investigation. Prior to this happening he and his solicitor will sign a letter / form detailing the various offences he may be committing if he contacts the survivor. There was some confusion as to whether all police were using this template letter / form.
- We are seeing that police practice and standards have gradually deteriorated over time. This is particularly the case since R V Allan, disclosure and the current restructuring of the Met and introduction of Borough Command Units.
- When the changes were introduced we were clearly told that this would not affect cases that had already been reported – but would affect cases

going forward. This has not been the case at all. We have seen multiple, multiple instances where perpetrators were due to attend the police station to be re-bailed. Instead, bail was rescinded and survivors were later informed that the perpetrators were no longer on bail. We estimate that this has happened in nearly every instance where bail conditions were in effect before the changes. Understandably, this has caused significant distress, confusion, anxiety and fear. This is particularly so when survivors were informed that this would NOT be the case.

- Following on from this, the information we received at the time was categorically: “These changes are due to start on Monday 3rd April and will not be retrospective i.e. they will not apply to people already on bail or arrested before the 3rd April”. To stress, this was absolutely not the case.
- We were also told that there would be an increase in Texos phones / special schemes / safety measures, but of course with a limit on resources and capacity for these – particularly a financial limit. We were also informed there would be an increase in civil orders – non-mols / DVPOs. Again, with limits around this and who can get them. We haven’t seen any evidence of this.

Impact on survivors:

- Confusion. Survivors believe that if someone’s been reported for a sexual offence then surely they’ll be arrested? It is very difficult to hear that this probably won’t be the case. We have talked about the changes with survivors quite a lot, and how arrests / bail are extremely rare now.
- Fear. Lots of survivors have asked for reassurance from the police that despite there being no bail conditions, perpetrators can still face consequences if they approach a survivor e.g. potentially be charged with harassment or witness intimidation.
- Frustration and anger around the fact that the investigation has little to no impact now on the lives of abusers when it is so disruptive for survivors
- A practical impact is that not arresting perpetrators limits the evidence that can be gathered from them. So for example, one of our ISVAs had to push really hard for a perpetrator’s mobile phone to be taken, because they had to arrest him to get it.

- There have been instances where there have been no bail conditions and a perpetrator has contacted a survivor during the ongoing criminal justice process. The police were made aware and nothing was done. We have had some survivors who have been close to withdrawing their support for the prosecution after contact from the perpetrator.

Reasons we think the changes are in effect / the police are failing to arrest and bail perpetrators:

- Anecdotally the information given to survivors about the changes usually amounts to 'we just don't do that anymore'. They allude to there having been changes and basically say they don't have the power to arrest and bail perpetrators any more.
- One of our ISVAs has also had police say things about the level of threat not being "high enough" which feeds into that culture that some abuse is worse than other abuse etc. This is particularly so with survivors of childhood sexual abuse.
- The back-and-forth conversation between the police officer who thinks bail is important and the DS who makes the bail decision can be lengthy and therefore, from the police's point of view, applying for bail seems pointless.
- We have also heard anecdotally that bail applications put a huge strain on the DIs whose workloads have increased exponentially. We heard that signing off on bail applications was taking up a lot of their time, which might explain some of the reasons other officers are not applying for it. Our notes from a meeting we attended on this stated that the a police officer "estimated she would have on average 40 applications for extensions per week". At the same meeting, we noted that "police think they will never meet 'exceptional circumstances' to extend bail beyond the 3 months".
- We've also heard from staff members that they have seen an increase in NFAs where bail was "given" - as police didn't want to keep jumping through hoops for bail extensions.
- We were told the change was because perpetrators were "kept on bail for too long". Paul Gambaccini was kept on bail for over 12 months and then met with the Home Office to complain.
- We also noted at the time that the police were extremely unhappy about these changes.

What we said organisationally when the changes were introduced:

Clients of the advocacy service have often found the presence of bail conditions hugely reassuring when they have reported the sexual violence, as it puts in place some form of security and safety from their abuser.

We have also been told that the police should increase the use of protection measures, to ensure survivors feel as safe as possible.

Our centre hopes that the impacts of these changes will be minimal. However, we are aware that this is far from guaranteed, and already the lack of a legal mechanism to prevent contact is causing increased anxiety among our clients. (Our understanding is that) something can only be done if witness intimidation takes place, not to prevent it in the first place.

There has been no clear guidance, and there is consequently a chance that this new legislation will be put into practice very differently across the country. We are concerned what these changes will actually look like. Moreover we worry for what they will mean for those survivors who do not have access to an ISVA service that can advocate for them to ensure their voices are heard.

Our centre wholeheartedly agrees that police investigations take far too long. The impacts for survivors of a prolonged time spent waiting in limbo for the criminal justice system to come to an end cannot be overstated. Nonetheless we do not feel that the answer to this problem is to reduce the length of time that a perpetrator can be on bail. It is instead to find ways of ensuring justice occurs in much shorter lengths of time. The message that these changes send to survivors are dangerous. They say that the needs of perpetrators are greater than those of survivors. This must be rectified, and the needs of survivors must be placed at the centre of future changes to legislation.

What we were told by police:

- That the main change is that there is now a presumption of release without bail in all cases, unless necessity and proportionality criteria are met.
- That necessity and proportionality will often apply in sexual violence cases. It applies to everything they do. That they should have no problem justifying why bail is necessary and proportionate.

- Necessity and proportionality have not been defined.
- That the Met may be increasing the number of DIs so more are available to grant bail. We don't think this has happened thus far, and may be significantly impacted by the recent change to Borough Command Units.
- That bail conditions should only be in place where the perpetrator meets the threshold test and poses a significant risk i.e. dangerous or flight risk. How perpetrators of sexual violence are NOT considered 'dangerous' in this context is outrageous and very worrying!
- That, due to the changes, there are now more robust measures in dealing with witness intimidation offences. We haven't seen any evidence of this.
- That the police will continue to manage risk and follow new process to ensure their safety – which is the most important thing.
- Specifically, that new pre-charge bail applies to cases reported on / after 3rd April and so should NOT affect any existing bail cases. As discussed above, this was not the case.

Francesca Jarvis

Independent Sexual Violence Advocate (ISVA) Coordinator

Rape Crisis South London

Rape & Sexual Abuse Support Centre

P.O. Box 383

Croydon

CR9 2AW



RASASC
Rape & Sexual Abuse Support Centre
RAPE CRISIS SOUTH LONDON

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