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| To: SOCIAL WORK (OPERATIONS & SERVICES) SUB COMMITTEE | | Subject: USE OF BAIL AND REMAND, A CONSULTATION – THE SENTENCING COMMISSION FOR SCOTLAND |
| From: DIRECTOR OF SOCIAL WORK | | |
| Date: 5 OCTOBER 2004 | Ref: JD\JS\MM | |

1. Purpose of Report/Introduction

To advise Committee of the draft response to the Consultation Paper, The Use of Bail and Remand circulated for consideration by The Sentencing Commission for Scotland and to seek approval for the response to be submitted on behalf of the Lanarkshire Criminal Justice Grouping.

2. Background

- 2.1. The Sentencing Commission for Scotland prepared the Consultation Paper, The Use of Bail and Remand for consideration by significant partners in the Justice process.
- 2.2. A Committee report was presented to Social Work (Operations and Services) Sub Committee in August 2004 advising of the consultation when it was agreed that the response would be submitted to Committee for approval.
- 2.3 It was agreed that this should be a joint submission on behalf of the Lanarkshire grouping. This was viewed as being an important approach in view of the current consideration by the Scottish Executive of the Single Agency.

3. Considerations

- 3.1. The consultation paper acknowledges that the review of Bail requires to balance the rights of the accused with the interests of public safety and the smooth running of Judicial Proceedings,
- 3.2. The consultation paper lists a series of questions arising from each of the papers sections, which are as follows:-
 - Part 1 – Introduction
 - Part 2 – The Law
 - Part 3 – The role of the Police and the Procurator Fiscal in relation to bail
 - Part 4 – Court Decisions – pre-trial and during trial
 - Part 5 – Reviews and Appeals in respect of pre-trial decisions
 - Part 6 – Breach of Bail
 - Part 7 – Bail Post Conviction
- 3.3. The response is written in the form of comments to each of the relevant questions, which are included in the response.
- 3.4. The response was prepared in partnership with South Lanarkshire Council and will be submitted on behalf of the Lanarkshire Criminal Justice Grouping subject to agreement of the Social Work (Operations and Services) Sub Committee.

4. Personnel and Financial Implications

- 4.1. As the paper is a consultative document there are no personnel or financial implications at this time.
- 4.2. The Court and Bail services within the Lanarkshire Grouping are managed and operated by South Lanarkshire Council Social Work.
- 4.3 Any future developments or proposed developments in relation to Bail would require funding arrangements to be reviewed.
- 4.4 Any further considerations in this service will be reported to a future Committee.

5. Recommendation

5.1 Committee is asked to: -

- (i) Agree the attached response on the consultation document, which will be submitted on behalf of the Lanarkshire Grouping.
- (ii) Request the Director of Social Work to report on any further developments to a future Committee.
- (iii) Otherwise note the content of the report.



Director of Social Work
21 September 2004

For further information on this report please contact Jim Scullion, Justice Services Manager on telephone 01698 332040.

The Sentencing Commission for Scotland

The Use of Bail and Remand

Consultation paper – Response by the Lanarkshire Justice Grouping

General Comments

In order to improve the consistency of service availability to those subject to bail, Local Authorities will require adequate funding for bail services. There is a correlation between those who continue to offend while on bail and chaotic lifestyles and there is a need to be able to negotiate with partners in the local authority, health and the voluntary sector for the provision of services that will support those on bail. In some instances this will require access to appropriate and supported accommodation.

General Questions

Part 1 - Issues

Question 1: What steps do you consider could be taken to reduce the number of offences committed by those on bail?

Question 3: What steps do you consider could be taken to reduce the number of those remanded in custody without jeopardising the safety of the public, creating a risk of further offending or hindering the smooth operation of judicial proceedings?

Answer to Questions 1 and 3 - More use of bail supervision and support packages linked to curfew which could include electronic monitoring but could be a police curfew. In some instance access to appropriate accommodation needs to be improved. Benefit issues arising from housing need require to be quickly resolved. Different types of supervision and monitoring mechanisms need to be considered, for example for some individuals who do not have particular needs for social work support a reporting mechanism to the Police might suffice.

Question 2: What steps do you consider could be taken to ensure that those granted bail appear in court when required to do so?

Answer - There is a need for an escorting type service to Courts. Those who are chaotic do not necessarily remember when they have to appear and a simple escort service may allow cases to run more smoothly.

In general there is a need to rationalise the process by rolling outstanding matters together wherever possible. Whilst this might dissuade some from appearing it would at least simplify the situation and avoid genuine oversight/confusion. Consideration could also be given to using incentives

such as discount on sentences (raised in Summary Justice Review). In our experience, the enacting of warrants can be haphazard and ways of improving this require to be considered.

Question 4: What steps do you consider could be taken to promote more widespread understanding amongst the public, the media and politicians about what is involved in decision making in relation to the use of bail and remand?

Answer - Explicit (statutory) criteria and transparent citing of reasons for decisions would assist understanding and debate.

Part 2 - The Law

Question 1: Do you consider that the criteria to be taken into account by the Court in deciding whether to grant bail should be prescribed in statute?

Answer - Statutory criteria are desirable to promote transparency, together with stated reasons for decisions. Some degree of flexibility may need to be considered to take account of local circumstances.

Question 2: Do you consider that enacting such statutory criteria would promote consistency in decision making?

Answer – The use of police reporting or curfew could be added for those who don't require specific services.

Question 3: Do you consider that the range of standard bail conditions is adequate? If you do not, what additional standard conditions do you consider should be imposed?

Answer - Additional standard conditions might include police reporting/ low level supervision, use of electronic monitoring in some cases and access to appropriate services in others.

Part 3 – The Role of the Police and the Procurator Fiscal in Relation to Bail

Question 1: Do you consider that the Police and Procurator Fiscal (PF) should be able to impose conditions on an accused person who is liberated without appearing in Court?

Answer - In principle the police and PF might impose appropriate conditions on persons liberated without court appearance.

Question 2: If you do, what conditions do you consider they should be able to impose?

Answer - These might include reporting to police, limited exclusions from places/activities etc. These might be time limited and subject to review by the Court.

Question 3: Do you consider that the factors taken into account by the Procurator Fiscal in deciding whether to oppose bail are the right ones? If you do not, what factors do you consider should be taken into account?

Answer - Broadly the factors considered by the PF on bail are liable to be the right ones, although a balance needs to be struck between safety/risk/seriousness of offence and inconvenience to the court system/delays. Individuals should not be remanded because they are of No Fixed Abode and accommodation needs to be addressed. There can be an issue of the appropriateness of addresses for bail purposes particularly where the alleged offence involves domestic or child abuse. Councils have already developed some local protocols to ensure that the address proposed does not place other vulnerable individuals at risk.

Question 5: Do you consider that the criteria which the police and procurator fiscal take into account in deciding whether to liberate an accused pending appearance in court should be prescribed by statute?

Answer - Statutory criteria and stated reasons seem desirable to encourage consistency in decision making on liberation pending appearance.

Part 4 – Court Decisions – Pre-Trial and During Trial

Question 1: What information do you consider should be available to the Court in making a bail decision?

Answer- Information available should include updated information on address/current living circumstances (bail information/standdown reporting). Further categories of information should similarly be made available to assist applications, reviews and appeals. This should include not just static information on histories that indicate risk/non appearance at Court etc, but also dynamic and changing circumstances which may ameliorate risk. This includes stable living circumstances, partner/family support/ engagement in appropriate treatment services/employment, outstanding matters and response to previous orders. Essentially, an expanded bail information service could provide a valuable resource.

Question 2: Do you consider that further categories of information might assist the Courts in making decisions on bail applications, reviews and appeals?

Answer - Factors to consider have to include risk of harm/re-offending and non-appearance to court, offence seriousness, but should include the dynamic factors outlined above. Gender needs should be taken into account unless the seriousness of the offence and the level of risk preclude this.

Question 5: If a person has been refused bail by the Court, do you consider that the Procurator Fiscal should thereafter be able to admit such a person to bail?

Answer - If the PF does not object the Court should be obliged to grant bail. However, if the Court has refused bail the PF should be able to admit bail thereafter, if reasonable cause can be shown i.e. if a material change of circumstances can be evidenced which could reasonably be seen to reduce court's concerns re risk.

Question 7: What supports should be available to a person on bail to try to ensure that he or she completes the period on bail satisfactory?

Answer - Consistency could be improved by better information being available. Bail supervision/supports should be tailored to the individual as their needs/risks indicate. There will be specific risks and vulnerabilities to specific groups of offenders but perhaps more in common than apart e.g. place of relative safety, individual support, mentoring and access to appropriate treatment.

Question 8: Do you consider that greater availability of bail hostels and other accommodation providing support to accused persons on bail would enable the courts to release more accused on bail.

Answer - The history of bail specific accommodation is mixed in terms of Scottish demand. An availability of Criminal Justice specific supported accommodation which could in part support bail may be a more practical idea. This could offer different models for providing accommodation other than 'hostel' provision. Demand for bail only provision may be limited in demand and appeal for offenders. Recording of reasons for bail and remand should be recorded and transparent.

Part 5 – Review and Appeals in Respect of Pre-Trial Decisions

Question 1: On what basis should the High Court deal with an appeal in respect of bail – as a review of the exercise of discretion by the Sheriff or Magistrate or by assessing the case afresh, which might include information additional to that which the Sheriff or Magistrate considered

Answer - It would be preferable to consider matters afresh for the good reason that some risk factors are dynamic and susceptible to change. There should therefore be the ability to consider new information not just review the previous decision.

Part 6 – Breach of Bail

Question 1: Do you consider that committing an offence while on bail should be prosecuted as a separate offence rather than as an aggravation of the new offence?

Answer - An aggregation may have some attraction in terms of efficiency. A useful emphasis would be on rolling together as far as practical all outstanding matters including breaches of bail.

Question 3: Do you consider that there should be a presumption against bail where a person has breached a condition of bail or is alleged to have committed an offence on bail.

Answer - Each case should be considered on its own merits given that in individual circumstances there may be relevant factors to be taken into account. Risks may change and allegations may not be founded.

Part 7 – Bail Post-Conviction

Question 1: Do you consider that it would be helpful to have more judicial guidance from the Appeal Court on issues relation to the grant and refusal of interim liberation.

Answer - In respect of interim liberation, guidance from the Appeal Court would be helpful , particularly where an individual has already spent time in custody.

Question 3: Do you consider that the criteria to be taken into account by the court in deciding whether to grant interim liberation should be prescribed in statute

Answer - It may be appropriate to provide information to allow the Court to make its decision. That may require a period of adjournment to ensure that all appropriate information is available to the Court.