

# National Guidance on Bail Supervision

January 2019

## **NATIONAL GUIDANCE ON BAIL SUPERVISION**

1. This paper sets out revised guidance for the operation of bail supervision services by local authority criminal justice social work and other agencies involved in service delivery that complements local Community Justice Outcome Improvement Plans. It replaces guidance issued in January 2008.

Bail supervision schemes operate within the provisions of the Criminal Procedure (Scotland) Act 1995 (specifically Part III Provision 24 (4) (b))

Bail Supervision is a social work or third sector service whereby individuals who would otherwise be held on remand are released on bail on the condition that they meet with a bail supervisor a specified number of times a week; the aim of these meetings being to support the individual to comply with the conditions of their bail. The term “bail supervision” is not a legislative creation: rather the condition that an individual be placed under supervision is in and of itself a special condition of bail.

### **2. AIMS**

Bail supervision is intended to provide a robust and credible alternative to remand where individuals are assessed as needing a level of supervision and support to meet their bail conditions.

Bail supervision helps minimise the numbers of individuals held on remand in custody pending trial or for reports after conviction who, subject to safeguards in respect of public protection, could be released on bail to the community pending their further court hearing.

Providing bail supervision services orientated to the needs of the individual and the community can help ensure that remand is only used where necessary and appropriate.

### **3. OBJECTIVES OF BAIL SUPERVISION**

- To increase the confidence of courts in the successful completion of bail periods through the availability of supervision;
- To reduce the number of individuals remanded to custody;
- To encourage greater confidence in the use of non-custodial disposals by sentencers as a result of the experience of successful completion of periods on bail supervision;
- To provide appropriate support to individuals in the community, which minimises disruption to families, employment and housing, while ensuring compliance with bail conditions.

### **4. PRINCIPLES OF SERVICE PROVISION**

- Bail supervision should be regarded as an integral part of court social work services;
- Bail supervision does not supplant standard bail but is bail with a supervision condition that provides an additional option for sentencers i.e. needs to be

targeted on those whose application for bail would otherwise have been unsuccessful;

- The priority is to work with the Procurator Fiscal in identifying where bail is to be opposed and where the option of bail supervision would reduce opposition to bail and provide an appropriate alternative to remand;
- The roles of the respective organisations involved in the operation of bail supervision needs to be clearly defined;
- The legitimate expectations of courts need to be clearly understood by all parties;
- Operational arrangements should not unduly delay court procedures;
- Criminal Justice Social Work teams should provide Sheriffs and the Procurator Fiscal with regular updates on the services that have been made available in their area. Services should be developed according to local need and should include services commissioned from Third Sector organisations where appropriate.

## **5. PROCEDURAL ARRANGEMENTS**

### **General**

- Detailed arrangements are determined to a large extent by existing local working procedures and practices of police, procurators fiscal and courts, which vary across the country. These guidelines are not, therefore, intended to be prescriptive but rather acknowledge that local arrangements will need to reflect local circumstances within the context of the principles outlined above; however, this guidance sets out certain minimum standards which should be achievable in all local authority areas;
- An overall framework for service delivery should be developed to include a) transmission of information from police to bail services, b) passing of information from procurators fiscal to bail services c) breach procedures;
- Protocols with partner agencies should be established within the overall framework, in particular by developing links and working agreements with potential third sector partners where practical;
- Sheriffs, procurators fiscal, defence agents and social workers should have access to bail support services via agreed local referral procedures. Within the court setting, social workers can make referrals only through the individual's defence agent;

## **6. TARGETING**

- Bail supervision and bail support services should be known and able to be accessed from all High courts and Sheriff courts, both solemn and summary;
- The setting of local priorities needs to recognise the balance between resource input and anticipated outcomes;
- Criminal Justice Social Work, in collaboration with partners involved in a case as appropriate, should identify individuals, who might otherwise be remanded to custody but based on assessed need and risk can, with the support of bail supervision, be safely released on bail;
- Priority should be given to vulnerable groups such as those with mental health problems, women accused, single parents, people with carer responsibilities,

people with substance misuse issues and young people aged between 16 and 21.

- Professional judgement on where bail supervision would improve outcomes remains key, taking account of the needs and impact on the individual and others including children and family members while ensuring risk and safety implications are fully assessed;
- Other individuals who would suffer extreme difficulties if remanded to custody, are assessed as not being a risk to public protection, or are assessed as not being at risk of self-harm should also be targeted.

## **7. BAIL SUPERVISION**

7.1 Bail supervision combines the provision of verified information to the court with a package of supervision, and assistance with how to access appropriate support services, including accommodation, aimed at providing the opportunity for bail to an individual who would otherwise receive a custodial remand. Information to improve access to appropriate support services related to bail supervision will be dependent on the services provided in local authority areas by community justice partners, including third sector providers. This should include signposting to local housing providers to address obstacles to bail such as no fixed abode or bail address.

7.2 To maximise the throughput and effectiveness of bail supervision, including in ensuring best value, schemes should focus on the assessment, support to access appropriate related services (such as housing), and supervision, including, where needed, preparation of breach reports. Bail supervision staff should case manage the bail order, including identifying support needs, agreeing action plans to address these needs and supporting the individual to access and engage with appropriate agencies.

7.3 A written report should be provided to the court before the grant of Bail Supervision. The attached pro-formas must be used for this purpose. Please refer to Annexes 1 and 2.

7.4 Assessment for bail supervision will need to take account of the following:

- Nature of the charges and any outstanding charges, including breaches of bail;
- Public protection;
- Witness protection;
- Previous failure to appear/absconding
- Previous offending;
- Previous response to supervision;
- Suitability of accommodation;
- Problem areas in the individuals life that may require support during the bail period;
- Any drug or alcohol issues;
- Employment and commitments for child care or dependants;

- Willingness to agree to the conditions of bail and bail supervision.
- Risk assessment with regard to the safety of any supervising staff, especially with regard to undertaking home visits.

Special bail conditions may be imposed which may require more detailed assessment.

#### 7.5 Arrangements for supervision of individuals subject to bail orders:

- Individuals subject to bail orders should be seen by the supervisor within one hour of release from custody unless an alternative arrangement has been agreed.
- The individual should normally report to the scheme bail supervisors a minimum of twice a week in summary cases and three times a week in solemn cases, at least in the first instance. However, the number of contacts required should be assessed for each individual at the beginning of the bail order depending on their situation and reviewed at a formal progress review. Some flexibility is required where the individual is in full time employment or training, in which circumstances contact can be arranged for when the individual is not at work, such as in the evening. Alternatively, once a pattern of reporting is established, contact could be made by telephone or other secure remote means subject to available resources.
- The content of supervision will conform to the action plan agreed for the bail period and where appropriate may include the provision of information and support to access other agencies for advice and guidance on issues such as housing, welfare benefits or education.
- Home visits by the supervising officer should be made on a regular basis. It is expected that the minimum number of home visits will be four in the first month, reducing to two in the second and third months and then further reducing to once a month from month four onwards. This is a minimum standard, but where the supervising officer considers that there is a need for greater frequency of home visits, this is to be considered an operational matter for the discretion of the bail supervision team.
- Bail supervision arrangements should harmonise with any other supervision arrangements already in place and may be liable to reduction on extended periods of bail for solemn cases.

## 8. NON COMPLIANCE/ENFORCEMENT

8.1 The legislative framework for dealing with non-compliance is section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995.

8.2 A consistent and fair approach to enforcement of bail supervision helps the individual to understand that bail supervision operates within a clear

framework of legally enforceable requirements and helps to maintain the credibility of the disposal. In approaching the task of enforcement (including the initiation of breach proceedings) supervisors must use their judgement to decide the seriousness of the non-compliance in any particular case.

8.3 Any failure to comply with a requirement in the Order without reasonable excuse (paragraphs 10 and 11 refer) must be followed up by immediate (normally within 24 hours) preparation of a breach report. The completed breach report should be passed to the police at the earliest possible opportunity.

## **9. THE ROLE OF ACTION PLANS**

Expectations regarding any tasks to be undertaken and the contact to be maintained at each phase in the bail supervision order will be set out in the action plan and subsequent reviews prepared by the supervising officer and agreed with the individual. The extent to which enforcement will be necessary will depend on whether the individual meets these expectations. If the individual fails to meet any specific aspect of an action plan (whether or not it is specified and supported in the order through the attachment of an additional requirement) the failure may constitute a breach and should be followed up immediately. Following breach, if the individual remains subject to bail supervision the supervising officer can review and update the action plan to address any additional needs arising from the breach.

## **10. ACCEPTABLE REASONS FOR NON-COMPLIANCE WITH A REQUIREMENT**

The following reasons may be considered acceptable for the individual's non-compliance with a requirement:

- an explanation provided in advance by the individual and agreed with the supervisor;
- ill-health (the individual must obtain a medical certificate);
- unforeseen requirements placed on the individual by an employer;
- any unforeseen crisis arising from other responsibilities or circumstances.

## **11. WARNINGS**

11.1 There is no legislative provision for or any entitlement to warnings. Nevertheless, common sense suggests that supervisors should be able to exercise discretion in their approach to enforcement. This discretion must be used sparingly and local courts should be informed and consulted on the level of discretion they would wish to see applied. Serious failures to comply with a requirement must always result in an immediate application for breach. Other less serious failures to comply, may, depending on the circumstances, be dealt with either by an application for breach or a warning. No individual should be warned more than twice before an application for breach is made. All warnings must be put in writing to the individual and recorded in the case file. They should also be mentioned in the final report that is sent to the court. Evidence that the individual has been warned for a previous failure to comply

with a requirement will add force to an application for breach on a subsequent occasion.

11.2 When the individual must meet a commitment involving the oversight/support/assistance of a third party, e.g. residence in supported accommodation, etc. there must be clear agreement at the outset between local authority managers responsible for bail supervision and the project/service on procedures for dealing with non-compliance. Where no formal arrangements are possible, the procedures agreed by the supervisor must be endorsed by the supervisor's line manager.

## **12. MONITORING**

12.1 Bail Supervision and support should be included within local Community Justice Outcome Improvement Plans (CJOIPS), and, where relevant, subject to CJOIP reporting and monitoring.

12.2 Arrangements should be put in place for the collection of relevant statistical data, so that the schemes' effectiveness and efficiency can be monitored. The data to be collected should include:-

- The number of assessments carried out for bail supervision;
- The number of bail supervision cases commenced;
- The number of orders successfully completed;
- The number of orders terminated following non-compliance

All of this data should be able to be broken down by gender, age and location. Additional data may be required for local management purposes.

**Community Justice Division**  
January 2019

## A COUNCIL BAIL SCHEME

## BAIL INFORMATION REPORT

**Details of Accused**

Name:	Court:
Date of Birth:	Date of appearance:
Address: (Usual residence)	Nature of opposition to bail
	Address for Bail Purposes (if different)

**Sources of information:****Results of Bail Information Enquiries:**

(Where relevant to the granting of bail, this may include information on the accused's proposed address for bail, employment, finances, health, current supervision or other personal circumstances. It should include any potential risk to others and issues of self-harm.)

Signed: Name  
Date/time:

Bail Information Officer

Front Sheet

A COUNCIL BAIL SCHEME  
ASSESSMENT FOR BAIL SUPERVISION REPORT

Conditions of scheme: Standard conditions of scheme may be included in a front sheet for the assessment and signed by the potential bailee.

**Conditions of the Bail Scheme**

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

In addition to the conditions outlined in the Criminal Procedure (Scotland) Act 1995, I the above named, agree to adhere to the conditions of bail outlined below, in accordance with [insert name of scheme] Bail Scheme.

1. I will adhere to the strict reporting conditions as instructed by the supervising officer, which will be a minimum of twice a week in summary cases and three times a week in solemn cases, for a period of three months, and then as instructed for the remainder of the bail period.
2. I understand that any absences will be viewed as a breach of bail unless a medical certificate is produced.
3. I will arrive at the times stipulated in my reporting instructions and understand that any variation in this arrangement must be agreed in advance with my supervising officer.
4. I will be of good behaviour and understand that abusive language or aggressive behaviour will not be tolerated by the staff of the scheme and may result in breach of my bail conditions.
5. I will not be under the influence of drugs or alcohol and understand that the staff of the bail scheme will report concerns regarding my substance use to the Court at the end of the bail period.
6. Domicile of Citation/Condition of Residence (Delete as appropriate)

I will reside at the following address and understand that I must seek approval from my supervising officer before any change in this arrangement can be made.

.....  
.....

Signed.....

Date.....

Witnessed..... Date.....

<b>Details of Accused</b>	
Name:	Report prepared for: <i>Court</i>  On:  <i>Date report prepared</i>
Date of Birth	
Proposed bail address	<b>Nature</b> of opposition to bail:    Currently remanded – YES / NO (delete as appropriate)
<b>Sources of information:</b>	
<p><b>Bail Officer's Report</b></p> <p>(The assessment report should cover the following issues where relevant to the granting of supervised bail. It should also set out an action plan for supervision, which may in some cases consist of monitoring only).</p> <p>Nature of the charges and any outstanding charges, including breaches of bail;  Public safety;  Witness safety;  Previous failure to appear/absconding;  Previous offending;  Previous response to supervision;  Suitability of accommodation;  Problem areas in the individual's life that may require support during the bail period;  Any drug or alcohol issues;  Employment and commitments for childcare or dependants;  Willingness to agree to the conditions of the scheme;  Risk assessment with regard to the safety of any supervising staff, especially with regard to undertaking home visits.  Action Plan.</p>	
<b>Signed: Name</b>	<b>Bail Information Officer</b>
<b>Date/time:</b>	



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