



Consultation by the College of Policing on new pre-charge bail principles

Response from Netpol – The Network for Police Monitoring • July 2014

Police powers were significantly extended by amendments to PACE in the Criminal Justice Act 2003, allowing officers to attach conditions to bail prior to bring charges without the clear statutory timelines and limits found in other areas of the arrest process. In choosing to conduct a consultation, the College of Policing acknowledges that there are “wide variations in the length of time people can remain on bail” that leads to public concerns about “a lack of transparency and trust”.

The Network for Police Monitoring (Netpol), which brings together activists, campaigners, lawyers and researchers to monitor public order, protest and street policing, is concerned primarily in this submission with one section of the public: individuals exercising their rights to freedom of expression and assembly through public protest.

We believe strongly that pre-charge conditions prohibiting an individual from engaging in any further protest activity, including the use of geographic exclusion zones, represent exactly the kind of concerns about “quasi-judicial punishment” that were raised during the hasty passage of the Police (Detention and Bail) Act 2011.

We recommend that

- **Pre-charge bail conditions restricting the rights of individuals to engage in public protest under Articles 10 and 11 of the European Convention on Human Rights (ECHR) should never be used in situations where an individual has been arrested for a protest-related offence.**
- **If the police genuinely believe bail conditions are necessary, charges should be brought before a court that can properly consider all the relevant issues.**

Netpol believes that in the overwhelming majority of protest-related arrests, the supposed benefit of pre-charge conditions in “minimising the length of time suspects are detained while enquiries are undertaken” is irrelevant, as there are no obstacles to processing most arrestees within 24 hours and in most cases there is never any prospect of convincing a magistrates court to extend detention beyond 36 hours.

Furthermore, we believe that the only “element of flexibility” is the flexibility afforded to the police to restrict further participation in protest.

The basis for our position on pre-charge bail conditions

We are not alone in viewing police bail as little more than a tool to deter participation in protest. In his recent report¹ on ‘Freedom Of Peaceful Assembly And Association in the UK’, UN Special Rapporteur Maina Kiai expressed concern about the use of pre-charge bail conditions, saying²:

I am also dismayed about very strict police bail conditions, which have been imposed on protestors who have been arrested, to deter them from further exercising their rights. Such conditions may be challenged before a court, but the process is costly and can be a strain to some, especially when legal aid is being cut as part of austerity measures.

The public may expect that any pre-charge conditions are always imposed lawfully – that police bail is proportionate and some thought has been given to whether its use constitutes an unjustified interference with an individual’s Article 10 and 11 rights. Instead, we believe there is increasing evidence of a strategy that incorporates mass arrests at political demonstrations followed by blanket imposition of pre-charge bail conditions, to deliberately inhibit ongoing protest and paralyze political campaigns.

Forces that have used this tactic include the Metropolitan Police (against Critical Mass cyclists³ and anti-fascist campaigners⁴), Sussex Police (against anti-fracking protests in Balcombe⁵) Thames Valley Police (over many years against nuclear disarmament protesters⁶) and Nottinghamshire Police (against Climate Camp protesters arrested in 2009⁷ – who notoriously had their charges thrown out after the

¹Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, June 2013: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-39-Add1_en.pdf

²Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12945&LangID=E>

³Critical Mass challenge to police bail conditions, August 2012 <http://netpol.org/2012/08/08/critical-mass-challenge-to-police-bail-conditions/>

⁴Mass arrest – an abuse of power, Sept 2013 <http://netpol.org/2013/09/09/mass-arrest-an-abuse-of-power/>

⁵Fracking protesters allowed to return to Balcombe, August 2013

<http://www.telegraph.co.uk/news/uknews/crime/10243083/Fracking-protesters-allowed-to-return-to-Balcombe.html>

⁶Police bail in the dock, BBC News 30 June 2011 <http://www.bbc.co.uk/news/uk-13973932>

⁷Power station protest plot suspects released on bail, April 2009

<http://www.theguardian.com/uk/2009/apr/14/protesters-power-station-arrests>

activities of undercover police officer Mark Kennedy received public attention).

The low threshold for setting conditions and their discretionary nature are an invitation to abuse police bail in order to restrict legitimate protest, particularly involving individuals belonging to or associated with groups critical of the state or of corporate interests. Conditions are poorly defined and often seemed designed to guarantee that they are breached. Examples include:

- Restrictions on freedom of movement (either based on residency conditions or exclusions zones); including entry to specific areas or boroughs associated with on-going protests.⁸

Restrictions prohibiting protesters' return to geographical areas associated with protest have recently been used concerning arrests arising out of the opposition to the DSEi arms fair in London in September 2013, numerous student occupations over 2013 and the Dale Farm eviction in October 2011.

- Restrictions on freedom of association - including not to associate in public in groups larger than four or six people without prior police permission⁹, or not to associate with fellow activists¹⁰. They may also specifically deter or even deny the right to engage in protest, for a specific period.

Such bail conditions were used against arrestees from the London protests against the G8 summit in June 2013, which saw protesters arrested at the start of the week then banned from the remainder of their scheduled "Week of Action".

Londoners have been prohibited, under pre-charge bail conditions, from entering 'central London', with no wider geographical guidance. Others have been banned from 'organising' with no clarification as to whether this includes attending public meetings, private meetings with activist friends, banner painting, writing for a website or even drafting press releases.

Conditions against 'publicly associating' with particular people have included no clear distinction or guidance about behaviours that may be perceived as 'public' as opposed to 'private'. For example, could sharing a car, walking in the same street together, attending the same pub or participating in the same public meetings or demonstrations, regardless of whether they comprise of a handful of people or hundreds, constitute a breach?

In some long-standing protests, it is apparent that decisions are made at a policy level to impose police bail on individuals involved in specific protests. For example, Thames Valley Police have routinely imposed police bail on arresting protestors known to be associated with Aldermaston Women's Peace Camp (AWPC),

⁸Hillson C, "Framing the Local and the Global in the Anti-Nuclear Movement: the Law of Politics in Place" (2009) *Journal of Law and Society*, Vol 36, pp44-109. See also "Activists win right to return to fracking protest site", David Brown, *The Times*, 14 August 2013.

⁹ *Students 'Persecuted for Protest' Says MP*, BBC News, 9 December 2013
<http://www.bbc.co.uk/news/education-25233418>

¹⁰ *Lawyers to fight bail conditions that 'stifle' climate protests*, *The Guardian*, Sunday 3 May 2009
<http://www.theguardian.com/environment/2009/may/03/climate-rush-protesters-bail-challenge>

irrespective of the alleged offence or circumstances – other than engaging in particular forms of protest at certain geographic locations. Conditions are imposed preventing arrestees from returning to the camp during the period of bail, preventing an early court appearance and reducing numbers at the camp. Custody sergeants have been issued with a pre-prepared map of the area from which arrestees are excluded and identical written conditions have been imposed on all arrestees - with the same legal justification - from a particular protest, irrespective of the individual circumstances.

It is alarming enough that, unlike normal bail (under the Bail Act 1976, for example), the repeated use of blanket pre-charge bail conditions is neither proportionate nor relating to the individual circumstances of a defendant. However, when combined with mass arrests where there is little apparent intention to pursue prosecutions, police bail is little more than a cost-effective means of disrupting protest activity, especially when participating in or organising protest is expressly prohibited, without the inconvenience of dealing with a formal legal process. It enables the police to impose a direct and significant punishment, restricting freedom of movement and potentially disrupting work, social life and access to family members, which can last for months at a time.

These are extremely broad and deeply authoritarian powers, which we argue the police have repeatedly used against protesters irresponsibly. In these circumstances, we believe that the threat police bail represents to the right to engage in public protest under Articles 10 and 11 of the ECHR is such that the only solution is for the complete withdrawal of the use of pre-charge conditions for protest-related offences.

Case Studies

The following case studies illustrate some of the many problems with protest-related pre-charge bail:

CASE STUDY: ALDERMASTON WOMEN'S PEACE CAMP, BERKSHIRE 2010

In February 2010 four women from AWPC were arrested for 'Willful Obstruction of the Highway' (s137 Highways Act 1980 – a minor, non-recordable offence) during a protest outside the nuclear weapons factory. All were released on identical conditional police bail, to return to Newbury Police Station three months later in May. Conditions included an exclusion area around AWE Aldermaston, defined by public highways close to the base, and ensured that the women would be unable to return to the camp for the duration of the conditions.

The women requested a bail variation hearing at the local Magistrates Court, during which they successfully challenged the conditions. The stipendiary magistrate, in a written decision, reduced the exclusion area to one section of road and the perimeter fence. The police were present throughout the hearing.

However, on answering police bail in May, conditions were re-imposed on all four – despite the court's decision – and bail extended again. There appears no way to challenge the police's refusal to accept court decisions of this type.

CASE STUDY: 'STOP THE MARCH FOR ENGLAND' PROTEST, BRIGHTON 2013

N was arrested in Brighton in April 2013 with two friends after a confrontation with a group of members of the far-right English Defence League, despite an independent witness coming forward immediately to police to insist that the three anti-fascists had done nothing other than defend themselves from attack.

All three were released on police bail with conditions "not to publicly associate" with each other. This meant they were unable to attend meetings or events together but from the start, it was unclear what the conditions meant in practice. There was no guidance available and the opinions of their lawyers differed as to whether 'publicly associating' meant sharing a car in public, attending the same pub, or even contributing to the same email discussion list.

N described reaching the point where her two close and trusted friends – a part of what she called her "support network" – would come to her house but they felt they could not go out of the front door or out to the local shop to buy food together. As a single parent, N was extremely mindful that a breach of her pre-charge conditions would have serious implications for her family. It meant that she was forced to cut back on other political activism – but because she refused to do so completely, she often felt worried about inadvertently breaching her police bail.

This situation continued for two months until charges against N and her friends were dropped for lack of evidence.

CASE STUDY: ANTI-BNP COUNTER DEMONSTRATION, WESTMINSTER 2013

P was one of 58 people who were part of the mass arrest of anti-fascists at a counter-demonstration against the BNP at Westminster on 1 June 2013.

His initial police bail conditions were extremely broad: "not to protest or organise any protest". In theory, this would have prevented his continuing involvement in campaigns around the G8 summit on 17 and 18 June in Northern Ireland and so, following pressure by his solicitor, the conditions were amended to a ban on "attending demonstrations within the M25 where the English Defence League (EDL), English Volunteer Force or BNP may be present".

However, P said that he "kind of ignored" the police bail conditions from the start because he knew it is not a criminal offence to do so: even if he had been arrested for breaching the conditions, the police would either release him on bail again with the same conditions or would be forced to formally charge him.

When P was eventually charged, he was given unconditional bail: indeed, the officers who charged him seemed unaware that pre-charge conditions had ever been applied.

The case against P and the other four defendants collapsed at a trial in April 2014, after the CPS failed to ensure the senior police officer who imposed limitations on the protest was able to attend and face cross examination.

CASE STUDY: ANTI-EDL COUNTER DEMONSTRATION, WHITECHAPEL 2013

On 7 September 2013, J was one of 286 people who were kettled by police for five hours and then subjected to mass arrest at another anti-fascist counter-demonstration against the EDL in Tower Hamlets. This was the largest mass arrest in the UK since 1990.

At 4am the following morning, J was released with police bail banning her from “attending demonstrations within the M25 where the English Defence League (EDL), English Volunteer Force or BNP may be present” – the same conditions applied to arrestees at the previous anti-fascist protest in Westminster.

J had never been arrested before but her pre-charge conditions were identical to the all the other arrestees who received police bail – a blanket ban with no regard to whether individuals had previously been arrested or charged. She was kept on these conditions for two months before receiving confirmation that she faced no charges.

CASE STUDY: PROTESTS AGAINST ECO-STREAM, BRIGHTON 2013

T was on police bail for several weeks following arrests during pro-Palestinian protests against the now closed Eco-Stream store in Brighton. Sussex Police imposed pre-charge conditions on arrestees “not to enter Western Road Brighton between the junction of Montpelier Road and North St on Saturdays between 11am and 5pm”. However, Western Road is one of the main bus routes in Brighton and the shop was just one of many along Western Road. Saturdays were the usual times of the protests.

The reason given for the conditions was to prevent further offences but most of those arrested have no previous criminal record and three were arrested for non-imprisonable offences.

However, T was one of a number of activists who was never charged.

CASE STUDY: SQUATTING PROTEST, BRIGHTON 2012

W was arrested at a campus protest in 2012 at the University of Sussex against Mike Weatherley, the Conservative MP for Hove and Portslade, who was due to talk about a new law that made it a criminal offence to squat in residential properties.

His pre-charge conditions included not only no contact, directly or indirectly, with “Mike Weatherley, his constituency office or his staff”, but also exclusion

from “any part of Hove” or “anywhere in Brighton west of London Road and the Old Steine” – essentially half of the city, shown by a line drawn down the middle on a map.

W was kept on these conditions for six months. When he was eventually charged, he was granted immediate unconditional bail at his first court appearance and later acquitted of all charges.

CASE STUDY: DALE FARM EVICTION, ESSEX, OCTOBER 2011

Seven people were arrested at the Dale Farm eviction in 2011 for obstruction of a bailiff contrary to s178 of the Town & Country Planning Act. This is a non-imprisonable offence. After receiving police bail to return, all were offered cautions, reflecting the minor nature of the offence, which some accepted; others did not accept the cautions and prosecutions against them were ultimately discontinued.

All seven were bailed for two months (in one case, the period was extended) and all given strict blanket bail conditions including a prohibition from entering the whole county of Essex. For a number of the arrestees, this meant they were unable to continue in their role as legal observers, ensuring media coverage of the eviction and helping to guarantee that Travellers’ voices were heard. One had been living at Dale Farm and his bail conditions prevented him from returning to his home (he did not have an alternative address).

After charges against them were dropped, all seven settled civil claims against Essex Police.

Other recommendations

In situations beyond the imposition of pre-charge conditions on individuals arrested for a protest-related offence, we urge the College of Policing to recommend:

TIME LIMITS

It is Netpol’s view that in general, police bail of indeterminate length is unacceptable. Other aspects of the arrest process are subject to strict statutory timelines. In contrast, those on pre-charge bail can be left in virtual limbo for months or years. They may often never see a courtroom and, after months of living under restrictions, the process can just be quietly abandoned.

Pre-charge bail for prolonged periods can be extremely mentally distressing to individuals concerned. It may have a particularly harsh impact on those who experience mental health issues, those with carer or childcare commitments (most often women) as well as those on low incomes who may struggle to meet the cost of travelling to attend multiple re-bails. The perceived stigma and time commitment taken to attend multiple re-bails may also affect those individuals that are most vulnerably employed.

Netpol supports the Law Society's recommendations to limit the length of pre-charge bail to a maximum of 28 days¹¹.

RELIABLE PRE-CHARGE BAIL STATISTICS

We believe there should be greater clarity on how many arrests result in conditional pre-charge bail, the nature of conditions imposed, and how many of those individuals subject to pre-charge bail conditions ultimately go on to be charged. Surprisingly, there is currently no adequate or routine collection of police bail statistics. A few discreet studies¹² into police use of pre-charge conditions have focussed only on the functionality of the system in terms of policing efficiency rather than human rights considerations.

Routine collection of pre-charge bail statistics would enable greater transparency and public accountability, as well as the ability to map geographical inconsistencies between different police authorities.

These statistics should be disaggregated by ethnicity, race, gender, sexuality, faith or any other characteristics to establish the extent that any particular groups are subject to discrimination in decisions about the use of police bail, or the scope of conditions imposed.

About Netpol – the Network for Police Monitoring

The Network for Police Monitoring (Netpol) seeks to monitor public order, protest and street policing that is excessive, discriminatory or threatens civil rights. We are a network of activists, campaigners, lawyers and researchers sharing knowledge, experience and expertise to effectively challenge policing strategies that are unnecessarily damaging to any sector of our society.

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¹¹ "Law Society calls for 28 day limit on police bail", BBC News, 28 May 2013
<http://www.bbc.co.uk/news/uk-22624648>

¹² For example, "The police use of pre-charge bail: An exploratory study", Joe Hillier and Jenny Kodz, National Policing Improvement Agency, July 2012