



APPG on Women in the Penal System
The Howard League for Penal Reform

Sent via email: Lorraine.atkinson@HowardLeague.org

17 November 2020

Dear Baroness Corston, Ms Doyle-Price MP and Ms Abrahams MP,

Thank you for your letter of 9 November 2020 addressed to the Director of Public Prosecutions, Max Hill QC, enclosing a copy of the briefing published by the All Party Parliamentary Group for Women in the Penal System. I am Director of Legal Services and have been asked to respond in my capacity as the Parliamentary Champion for the CPS.


I note your concern about the provision in the Bail Act 1976 that the “defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare”. I note also that you are seeking changes to that law and that you invite the CPS to avoid using that provision. As you have rightly pointed out it is not possible to establish how widely used this provision is as there is no published data on the issue.

Court bail is a matter for the judiciary, irrespective of any application by the prosecutor. Prosecutors must put before the court material that is relevant to the decision to grant bail and that will particularly include information relevant to the exceptions to bail set out in the Bail Act. Prosecutors must recommend an appropriate course of action to a court based upon the information that is available to them and in doing so they have no discretion to ignore a statutory provision. In considering their representations, the availability of alternative methods by which this exception can be satisfied is clearly relevant and will be brought to the court’s attention by the parties, but ultimately the decision is one for the court.

There is a similar provision in the Police and Criminal Evidence Act 1984 (PACE) relating to police bail. Section 38 of that Act sets out what police custody officers should consider when they come to decide whether a suspect should be released from police custody after being charged with a criminal offence. This power under PACE is for police officers to exercise, not CPS prosecutors.

This is a complex issue and I note that the Ministry of Justice is considering these issues from a policy perspective. I appreciate and understand the wider concerns expressed in your letter and the accompanying briefing, but it follows from what I have said above, that unless the Bail Act is changed the CPS cannot ignore its provisions or instruct prosecutors to exercise any discretion over its application.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line that tapers to the right.

Sue Hemming CBE
Director of Legal Services