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Liberty's Response to the Home Office Consultation on Pre-Charge Bail

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

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Introduction

1. Liberty welcomes the opportunity to respond to the Government's consultation on the reform of pre-charge bail, commonly known as police bail. We further welcome the acknowledgement by Government that the time has come to *"look at statutory time limits on the use of pre-charge bail to prevent people spending months or even years on bail only for no charges to be brought."*¹ Home Office consideration of this issue follows the consultation exercise launched by the College of Policing (CoP) in 2014. The CoP sought to gauge concerns around the use of police bail and views on the need for a greater standardisation of processes to address well-documented concerns around the consistency, transparency and rigour in the use of police bail. The consultation canvassed views on amendments to the current bail principles and wider reform of the system. Liberty's response to the CoP made clear that whilst improvements in process are a positive step, they will have minimal impact unless combined with hard-edged, legislative reform. We therefore welcomed the decision of the Home Office to directly address the issue of a statutory time-limit, amongst other issues, in the present consultation exercise. This consultation considers:

- Legislative change to facilitate release without bail, notwithstanding the need for further investigation, in cases where there is no operational need for a person to be placed on bail;
- The case for an expansion of the kinds of information which can be considered "new evidence" for the purposes re-arresting an individual;
- In addition to the merits of a statutory time limit, the appropriate duration and the need to differentiate between different types of investigations;
- A system of internal and external review of bail, with a requirement of judicial authorisation for grants of bail exceeding 28 days;
- The exclusion of certain categories of investigation from the review system;
- The use of memoranda of understanding to ensure the speedy co-operation of public bodies in a criminal investigation.

2. This response will consider all of the consultation proposals, however Liberty remains convinced that a statutory time-limit is an indispensable feature of a fair and efficient and police bail system.

¹ Rt Hon Theresa May MP, Speech to the College of Policing, October 2015: <https://www.gov.uk/government/speeches/home-secretarys-college-of-policing-speech>.

Current law

3. The *Police and Criminal Evidence Act 1984* ('PACE') sets limits on the length of time for which suspects can be detained without charge. The basic time limit is 24 hours (section 41(1)). An officer ranked superintendent or above can extend this to 36 hours in some circumstances (section 42(1)). Finally, the Magistrates' Court may allow a suspect to be detained for up to 96 hours (section 43(1)). The police speak of a suspect having a certain amount of time left on their "custody clock": this refers to time remaining until the suspect reaches the maximum time for which they can be detained without charge under PACE.

4. After arresting a suspect, but before a charging decision has been made the police may release the suspect on bail. This is known as granting "pre-charge bail" or "police bail". Under PACE the police are required to grant pre-charge bail in certain circumstances: for instance, they must do so when they do not have enough evidence to charge a suspect with an offence, but think it necessary to continue their investigation without holding the suspect in custody; or when they have enough evidence to charge a suspect but are waiting for a decision from the CPS on whether charges should be brought.² Police are also empowered to grant bail if further investigation is needed even if grounds for detention have ceased to apply.³

5. A suspect's "custody clock" is paused when they are granted police bail, and only starts again when they are brought back into detention. That means that the police can use pre-charge bail to buy themselves more time to investigate a crime before bringing a charge. Take the example of a suspect to whom the maximum 96-hour limit applies under section 43(1) of PACE. Assume that the suspect has been detained for 90 hours, is released on police bail, and is then detained again a month later. At this point, the police can detain the suspect for a further 6 hours before reaching the limit for bringing a charge. As there is no limit on the length of time for which the police may keep a suspect on bail, the police can theoretically pause the "custody clock" indefinitely.

6. The *Criminal Justice Act 2003* introduced the power for police to attach conditions to bail.⁴ At present the only limitations on the conditions imposed are the requirement that a condition serves a purpose for which bail can be granted⁵ and the exclusion of a small

² Police and Criminal Evidence Act 1984, sections 37(2) and 37(7)(a) respectively.

³ PACE, section 34(5); bail granted under this section cannot have conditions attached.

⁴ By the *Criminal Justice Act 2003*, Schedule 2, paragraph 6(3).

⁵ Under sections 3(6) and 3A of the BA, a custody officer can impose police bail conditions where it appears necessary to ensure that the person: surrenders to custody; does not commit an offence

number of conditions in the *Bail Act 1976* ('BA').⁶ Once bail has been granted by a custody officer that officer or another at the same police station can vary the conditions and in doing so can impose more onerous conditions.⁷

7. Where a person is released on bail, after arrest but before charge, in circumstances where there has been a duty imposed to attend at a police station, and that person fails to attend the police station at the appointed time, they will be guilty of an offence⁸ and can be arrested without a warrant.⁹ Where a person breaches other police bail conditions, there is a power of arrest under s. 46A (1A). While a person released on conditional police bail can apply to the Magistrates' Court for the conditions to be varied¹⁰ there is little in the way of statutory guidance as to when a Magistrate should adjust the conditions.

The consultation proposals

Release without bail

8. The consultation considers two overlapping provisions of PACE which provide a statutory basis for a grant of police bail. Section 34(5) provides for an individual to be released on bail in a case where there is a need for further investigation, but no need for an individual to be detained. It makes no provision for release without bail where further investigation is required. By contrast, section 37(2) specifies that a custody officer must release an arrested person either with or without bail where there are no grounds to detain. The Government's assessment is that, whilst the power to release without bail exists under section 37, in general it is used in cases where an out-of-court disposal is pursued, or where a decision is made to charge an individual by post. On the basis of this analysis, the operational need for bail, in cases where there is insufficient evidence to charge, is not routinely considered and the decision to release pending further investigation without bail is not routinely taken.

while on bail; does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; for his own protection or, if a child or young person, for his own welfare and in his own interests.

⁶ Under the Bail Act 1976, section 3A(1) and (2), a custody officer cannot require suspects to subject themselves to electronic monitoring, stay in bail hostel, make themselves available for police inquiries or attend a police interview before they are required to surrender to custody.

⁷ Sections 3A(6) and 5B of the BA.

⁸ Section 6 BA. A warrant can be issued for a person who has absconded: s 7 BA.

⁹ Sections 37C and 46A PACE Act.

¹⁰ Section 47(1E) PACE Act.

9. The consultation paper considers amending section 34(5) to make express provision for an individual to be released without bail - even in cases where there is a need for further investigation - where there is no operational reason to grant bail. The Government envisages the use of this power in conjunction with another provision which would explicitly extend the definition of “new evidence” for the purpose of re-arresting an individual. Under the Government’s proposal, a statutory definition of “new evidence” would include information which may have previously been in the police’s possession, but which they could not be expected to have analysed because of the volume of information or barriers to access. The example given is of information stored on a computer which is in the possession of police.

10. Combined, these two proposed reforms are framed as a means of reducing incidences of police bail and focusing police attention on the operational necessity for a grant of bail. Whilst it is possible that the Government’s proposal would reduce the use of bail where not operationally necessary, Liberty is concerned that these changes would increase instances of re-arrest on the basis of existing evidence (albeit evidence which had not been analysed prior to an individual’s release) and do nothing to address the prolonged legal limbos experienced between arrest and decisions to charge or take no further action. As acknowledged in the consultation document, a grant of police bail helps to ensure that the detention time limit is not exceeded for an individual in relation to a single criminal investigation. A scheme which reduces the circumstances in which police bail is used whilst increasing the possibility of successive arrests, each clearing the custody clock, replaces one set of civil liberties concerns with another. Liberty considers that encouraging the use of release without bail could lead to situations where the detention clock is effectively extended in relation to one criminal investigation. More concerning still is the prospect that, in cases where the custody clock is running out, the proposed changes could be seen as an encouragement to release with a view to re-arrest on the basis of a loose and flexible definition of “new evidence”. Whilst we appreciate the merits of an approach which would ensure bail is only used in cases where it is operationally necessary, we are concerned about the potential to constructively extend periods of pre-charge detention.

A statutory time limit

11. There is currently no legal limit on the length of time for which the police may keep someone on police bail. This means that when suspects present themselves at a police station as required a few weeks or months following their arrest and initial bailing, the police can simply re-bail them – i.e. ask them to return again at a later date - and can continue doing this for as long as they wish. As a result of our public advice and information service,

Liberty has long been aware of, and concerned about, the damage caused by this legal limbo, both to suspects, victims and their families. During the passage of the *Police (Detention and Bail) Bill* in 2011 many parliamentarians voiced similar concerns and pressed the Government on the problems of principle and practice created by an effectively indefinite police bail period.¹¹ Public unease at the lack of statutory backstop has since grown. The problem attracted significant media and public attention in light of the prolonged police bail periods for journalists suspected of involvement in the phone-hacking scandal. In September 2013, *The Sun* expressed concern over the time that suspects in Operations Elveden and Tuleta had spent on bail: it reported that 39 suspects remained on bail without charge after two years.¹² *The Guardian* reported the Metropolitan Police's response to this, in which it admitted that "*there is genuine concern on our part about the length of time that some of those arrested have been bailed*".¹³

12. The wide police discretion to impose conditions over protracted periods of police bail compounds the problem. Liberty recognises the role that conditions can play in ensuring that victims and witnesses feel protected – particularly in domestic violence cases - and that suspects are not able to abscond. However, aside from limited exclusions, police discretion to impose conditions is unfettered by law allowing restrictions to be imposed that, in the aggregate, cause hardship and deepen the misery caused by an indefinite state of limbo. As the College of Policing recognises "*the conditions imposed on this type of bail can substantially restrict the freedom of suspects*" and that "*this can be particularly distressing for individuals who have been subject to lengthy periods of conditional bail and ultimately not charged with any offence*".¹⁴ Examples of conditions which police can impose include a requirement to live at a fixed address, report to a local police station, obey a curfew, avoid named people or places, surrender a passport, obey a prohibition on the use of a bank account and provide a financial guarantee for attendance at court. Life on bail can be just as painful for suspects' family members as for suspects themselves: letters we receive from

¹¹ For the Opposition, the Shadow Home Secretary, Yvette Cooper, said "*the House should also have concerns about the possibility of the use of endless police bail. There are cases, and there have been cases, where people have been left on police bail, including with conditions, long after another suspect has confessed to the offence. There are other cases where investigations have run dry but action was not taken to end the bail arrangements. Long bail can sometimes mean that delays are allowed to develop, and they eventually become counter-productive in securing justice*" (Hansard, 7 July 2-11: Column 1690). In response, the Government made clear its intention to address these concerns (Hansard, 12 July 2011: Column 609).

¹² "Axe endless bail", *The Sun*, 1 October 2013.

¹³ "Liberty calls for bail time limit as journalists and others left on bail for up to two years", *The Guardian*, 29 September 2013: <http://www.theguardian.com/law/2013/sep/29/liberty-bail-limit-hacking-suspects>.

¹⁴ Public consultation, Use of Pre-charge bail, Improving standards for the Police Forces of England and Wales, College of Policing, March 2014 available at: http://www.college.police.uk/en/docs/Pre_charge_bail_consultation.pdf, page 7.

people on bail often speak of the impact on their spouses and children. Liberty has heard of cases whereby conditions have been placed on a suspect's family members as well as the individual suspect.

13. The consultation paper considers Liberty's proposal that a six month statutory time limit be placed on police bail, but ultimately rejects this approach. The Government's objection is two-pronged. The first concern is that individuals may "game" the system by failing to co-operate with investigations in the hope that they defeat the time limit.¹⁵ As the Consultation Paper itself observes, however, any such individual would be subject to re-arrest should new evidence become available, or could be charged at a later date by post. This reality neutralises the Government's claim that the introduction of a statutory limit would create perverse incentives to frustrate criminal investigations. However, the second objection raised by the Government to the introduction of a statutory limit deserves further attention. The consultation paper argues:

*"Placing a hard limit of a six month maximum may not enable the police to investigate thoroughly those complex cases, such as those involving historic inquiries or large amounts of financial evidence or where, for example, mutual legal assistance processes need to be used to obtain evidence from overseas...."*¹⁶

14. The consultation paper makes clear that the Government considers there to be cases where a six month limit would be insufficient, but fails to acknowledge that this is not an argument against a statutory maximum, but rather a disagreement about the appropriate period of time. No attempt is made to grapple with the issue by, for example, suggesting an alternative limit or pin-pointing types of case which could be subject to a more generous statutory maximum. Figures provided in the Evidence Base attached to the consultation document show that around 85% of cases are dealt with within 3 months, with many forces having no-one on bail for longer than 6 months.¹⁷ These numbers are extrapolated from figures obtained by the BBC through freedom of information requests, they do not show grants of bail by offence type and are "*indicative only*".¹⁸ It is surprising and disappointing, particularly given long-standing public concern about use of police bail, that the Home Office has failed to compile accurate statistics about its use. In particular, despite numerous

¹⁵ Home Office Consultation Paper, *Pre-Charge Bail: A Consultation on the Introduction of Statutory Time Limits and Related Changes*, page 8.

¹⁶ *Ibid.*, page 7.

¹⁷ *Ibid.*, page 22.

¹⁸ *Ibid.*, page 22.

references in the paper to the demands of complex cases as an obstacle to a statutory limit, no statistical information is provided by Government to support these claims.

15. Liberty has consistently argued on the basis of principle and available evidence that a six-month limit strikes an appropriate balance between the need to give the police time to conduct thorough investigations and the need to limit the distress that bail causes for uncharged suspects.¹⁹ We recognise that making the maximum bail period too short could have adverse consequences. Unduly limiting the period for which a suspect may be bailed by police could encourage premature and inappropriate charging or impede public protection by inhibiting the police's ability to gather sufficient evidence to deal with crime, particularly in complex cases and/or those involving forensic analysis. It should not be assumed, however, that imposing a reasonable maximum bail period would place unmanageable strain on police investigations. The evidence suggests that six months is an adequate period for police to gather and analyse evidence post arrest. A 2012 National Policing Improvement Agency report found that "*forensic (e.g. DNA, blood, fingerprints) and digital forensic (e.g. on computers and mobile phone) tests were associated with waits of least four weeks in all of the forces visited*".²⁰ While digital forensic tests could reportedly take longer, there is nothing to suggest that such tests would take anything like six months. ACPO's own principles state that bail should only last more than 28 days in exceptional circumstances, suggesting our proposed time limit is fair and realistic.²¹

16. Available evidence further suggests that there are many reasons why investigations may continue for protracted periods. The CoP's recent response to its 2014 consultation exercise on police bail highlights a number of these factors, noting that respondents to its consultation "*pointed to the poor quality of police submissions as a reason for extended delays*".²² Multiple suggestions are made by the CoP for improving bail management, for example through the appointment of single points of contact (SPOC), and for the standardisation of processes, for example by tying the escalation of decision making to the proposed length of bail.²³

¹⁹ "Liberty's Briefing on all stages of the Police (Detention and Bail) Bill in the House of Commons", July 2011, p. 9; "Liberty calls for bail time limit as journalists and others left on bail for up to two years", *The Guardian*, 29 September 2013: <http://www.theguardian.com/law/2013/sep/29/liberty-bail-limit-hacking-suspects>.

²⁰ National Policing Improvement Agency, *The police use of pre-charge bail: An exploratory study*, July 2012, page 19-20.

²¹ ACPO Bail Principles available in the College of Policing's pre-charge bail consultation http://www.college.police.uk/en/docs/Pre_charge_bail_consultation.pdf, pages 9&10..

²² College of Policing, *Response to the Consultation on the Use of Pre-Charge Bail: Improving Standards for the Police Forces of England and Wales*, December 2014, page 15.

²³ *Ibid.*

17. The CoP response also documents widespread complaints about third party delays on the part of outside agencies involved in criminal investigations such as the CPS or forensics services. The consultation paper itself acknowledges that delays on the part of third parties contribute significantly to protracted periods of police bail. The Government proposes that the police be encouraged to enter into memoranda of understanding with other public authorities to facilitate the sharing of information or even the use of court production orders to compel speedy co-operation. The consultation paper gives the example of medical evidence which, if not produced expeditiously, could delay a CPS charging decision, affecting the course of the investigation. The CoP's consultation response also identified a general perception that police need to be stricter in agreeing deadlines with third parties. The CoP reported that organisations are unable to meet deadlines "*because of their own resource constraints*",²⁴ and highlighted the fact that there are no national standards to govern timescales for CPS decisions in particular. Significantly, as a result of their extensive consultation process, the CoP remarked that "*a view which appears to be widely shared across both the police service and the CPS is that the key to reducing pre-charge bail periods is efficient and effective evidence gathering, and that more targeted investigations should be encouraged.*"²⁵

18. The issue of quality of initial investigatory work and the timeliness of an arrest have perhaps an even more direct bearing on the length of police bail than issues of resource and third party delay. In its 2012 Report NPIA found that bail was being used excessively and unnecessarily to the detriment of the police service.²⁶ The report identified four core sources of unnecessary or protracted use of police bail: "*unplanned arrests, insufficient quality in initial investigations, demands on limited custody space and differing perceptions on levels of evidence required for charge leading to delays in the process.*"²⁷ The NPIA found that unplanned arrests were driven in part by policies which mandate immediate arrest for certain offences (including for example, shoplifting) or required 'named suspects' to be arrested within 14 days regardless of whether investigative work had been completed or not. The study further recorded a trend towards arresting first and investigating later, even for planned arrests. The NPIA also gave examples of aspects of organisational culture liable to lead to premature or unnecessary arrest, such as risk averse senior officers, and the consequent view amongst response officers that arrest was the safe option.

²⁴ Ibid., page 13.

²⁵ Ibid., page 13.

²⁶ National Policing Improvement Agency, *The police use of pre-charge bail: An exploratory study*, July 2012.

²⁷ Ibid., page 5-6.

19. Liberty believes that as a matter of principle there should be a statutory limit on police bail. Just as the law has long recognised the need to prescribe a maximum period of pre-charge detention for suspects, so too should it recognise the significant interference with rights posed by police bail (especially where conditions are attached) and the corresponding need for protection and safeguards against abuse. Further, a statutory maximum limit is, in practice, the best way to ensure diligent and expeditious investigations. The law's current silence on when a charging decision must be reached encourages what Lord Thomas has called a "*culture of delay*" to develop.²⁸ Even the police have started to acknowledge this. ACPO has introduced ten key bail principles, and some forces have included maximum bail periods in their own policies.²⁹ The 2012 NPIA report confirms beyond all doubt that investigations could be conducted much more quickly if there was a genuine incentive to do so and certain internal processes were reformed. It is also important to emphasise that a six-month "backstop" would not stop the police from bringing charges at a later date. If a suspect's bail period expired and new evidence came to light later suggesting that there were grounds for a charge, the police would still have the power to re-arrest and charge them.

Bail reviews and authorisations

20. The consultation paper purports to propose a 28 day limit for bail, but with more protracted periods available if authorised by reference to set criteria which the Government proposes to include in either primary legislation or regulations. Liberty struggles with the claim that the Government's proposal is a limit in any meaningful sense. The Paper envisages bail of up to 28 days would continue to be authorised internally by police, unlimited further extensions would be possible, but specific authorisation would be required at 3 monthly intervals. The consultation paper considers two potential models for periodic review. Model 1 would see bail reviews up to 28 days carried out internally at Inspector level. Magistrates' Court authorisation would be required for an extension of bail beyond 28 days, with further Magistrates' authorisation required at 3 months and thereafter every 3 months up to 12 months. Extensions of bail beyond 12 months would require Crown Court authorisation for each extension of 3 months. Model 2 would operate in a similar fashion, but with internal review permitted up to a period of 3 months, albeit that for periods of between 28 days and 3 months, review by a Chief Superintendent, rather than an Inspector would be

²⁸ Hansard, 12 July 2011: Column 619.

²⁹ National Policing Improvement Agency, *The police use of pre-charge bail: An exploratory study*, July 2012, page 20.

required. In addition to these models, the consultation states “*a further safeguard for suspects could be to include periodic independent reviews of bail*”.³⁰ It is suggested that this process could mirror pre-charge detention reviews under PACE and be subject to the same review criteria.³¹ It appears that this system would run alongside the structure of periodic authorisations described in the same section of the consultation paper.

21. A requirement of judicial authorisation can provide an important protection in circumstances where the proportionality of using a particularly intrusive power in relation to an individual is at issue. In the context of the extension of pre-charge bail periods, where the judicial determination will be required to rely heavily on an assessment of resource allocation and operational efficiency it is unclear how much of a safeguard judicial authorisation will be. The consultation paper appears to envisage that a judge considering an application to extend bail beyond 28 days would do so by reference to extenuating circumstances described in either primary or secondary legislation. It appears from the consultation paper that an authorising judge would also consider PACE review criteria currently used in relation to pre-charge detention. These criteria include consideration of whether an “*investigation is being conducted diligently and expeditiously*” and whether there is “*a need for further investigation of any matter in connection with which he or she was originally arrested*”.³² These are operational policing considerations and it is extremely difficult for a judge to assess the efficiency and effectiveness of internal procedures, particularly in the context of a short hearing. Currently, in cases where a suspect is subject to lengthy police bail, he or she has the option to make a habeas corpus judicial review application to the High Court. However, in practice, the courts have shown significant deference to the police’s conduct of investigations. This was made clear in the case of *R (on the application of C) v Chief Constable of ‘A’ Police and another*,³³ where the claimant, who had been given six and a half months’ bail, invited the court to order that the investigation against him be halted, citing among other factors the “*unduly leisurely timetable*” which the police had followed. The court refused to do so, stating that it would only close down a police investigation “*in the most exceptional cases*”. This judicial deference leaves bailed suspects largely at the police’s

³⁰ Consultation Paper, page 9.

³¹ Detention reviews assess whether: there remain reasonable grounds for suspecting the person on bail of committing the offence in question; there is a need for further investigation; the investigation is being conducted diligently and expeditiously; and any conditions remain necessary to ensure either surrender to custody, than no further offences are committed, that the individual does not interfere with the course of justice, for the person’s own protection or in the case of a young person in the interests of their own welfare.

³² Consultation Paper, page 9.

³³ [2006] EWHC 2352 (Admin).

mercy. As Conservative MP, Gareth Johnson, a former criminal solicitor, said during the debate on the *Police (Detention and Bail) Bill* in July 2011:

*I have dealt with numerous situations in which people have been bailed for [...] inordinate periods [...]. There is little recourse for those people, other than making a lengthy and costly judicial review application to the High Court. They simply have to suffer the inordinate delay and return again and again to the police station, waiting, and sometimes hoping and pleading, for a decision to be made in their case.*³⁴

These concerns are likely to apply with even greater force to the lower courts.

22. Whilst the prospect of external review and authorisation may offer some benefits by encouraging police to engage, at regular intervals, with the ongoing legitimacy of bail, judicial authorisation in this context would embroil the courts in the detail of police process, while internal police review is unlikely to tackle well documented issues such as organisation risk-aversion and other practices and policy which contribute to lengthy grants of bail. Liberty is also seriously concerned by the suggestion that evidence disclosed to the courts in the context of a bail authorisation process could be withheld from the individual concerned and his or her legal representative. Any system which allows the police service to have a private conversation with the judge about material used to support its case, excluding the opportunity for an individual to challenge or even review evidence, is incompatible with the bedrock principles of our justice system. The consultation paper talks of the incorporation of procedural safeguards to ensure the system operates fairly, but Liberty firmly believes that a process which permits unequal access to the judiciary offends fundamentally against transparency and equality of arms in an adversarial system of justice.

23. Later on in the consultation paper, the Government makes reference to “*exceptional cases*” which are to be subject to a wholesale exemption from the process of authorisation and review.³⁵ The paper gives no statistical information to support its case, but indicates that the kind of cases which may be excluded would be those handled by specialist agencies such as the Serious Fraud Office or the National Crime Agency. Whilst the government clearly envisages creating an exemption for certain specified offences, it states further that “*an exemption might be sought in any case where there are truly exceptional circumstances*”.³⁶ A Magistrates’ Court authorisation would be needed for an exemption to apply, but the Government foresees this being granted routinely on the papers, at least for

³⁴ Hansard, 7 July 2011: Column 1708.

³⁵ Consultation Paper, pages 11-12.

³⁶ Consultation Paper, page 11.

certain types of offence. Liberty is concerned that the authorisation and review system described in the paper is at best a partial system and fails to provide the strong structural safeguards of a statutory limit, even in those areas where it applies.

Conclusion

24. Liberty accepts that some modern day police investigations will take significantly longer than the general pre-charge detention limit of 96 hours to resolve and the police power to bail a suspect rather than continue to detain her is vital. It can help ensure that necessary evidence is collected in accordance with PACE and that complex charging decisions are properly taken. However allowing the police the power to bail and re-bail indefinitely is a counter-productive policy that causes harm to suspects and victims alike. Suspects face the uncertainty and fear of having the threat of prosecution hanging over them indefinitely; living with that threat entails making no plans, putting life on hold. In addition and as the College of Policing have recognised “*excessive bail duration and repeat bailing compromise resources and custody capacity. They can also have a detrimental effect on investigations, sometimes leading to poorer outcomes for victims, witnesses and communities, due to loss of momentum in investigations.*” Short of this, long bail periods at the very least cause distress to victims, who understandably want to see the perpetrators of crime charged quickly.

25. We welcome the Government’s acknowledgment of the need to reform our system of pre-charge bail, but are concerned that a number of the proposals in this document will replace one set of civil liberties concerns with another and fail to tackle the bad-practice which can lead to protracted delay. Liberty believes that introducing a six-month limit is a straightforward and sensible way of reducing the harm that the existing system is causing to suspects and victims alike.

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