



Prosecution appeals against bail

Standard Note: SN/HA/6310
Last updated: 27 April 2012
Author: Sally Lipscombe
Section: Home Affairs

Under the *Bail Act 1976* there is a general presumption that a person accused of an offence should be granted bail when he appears before a magistrates' court or the Crown Court in the course of proceedings for the offence, or when he applies for bail. However, this presumption does not apply in specified circumstances, including where the offence is punishable by imprisonment and there are substantial grounds for believing that the accused would abscond, commit an offence or interfere with witnesses while on bail.

If the decision to grant a suspect bail is taken by a magistrates' court, then under the *Bail (Amendment) Act 1993* the prosecution can appeal against this decision to the Crown Court. However, if the decision to grant a suspect bail is taken by a Crown Court, then there is currently no prosecution right of appeal against this.

The Government is proposing to legislate (by way of the *Legal Aid, Sentencing and Punishment of Offenders Bill*) to introduce a new prosecution right of appeal against Crown Court decisions to grant a suspect bail. This proposed change is largely down to a campaign by John and Penny Clough, whose daughter Jane was murdered by her ex-partner Jonathan Vass. At the time of the murder Vass was on bail awaiting trial for nine counts of rape and four counts of assault against Jane. When charged he had initially been remanded in custody by magistrates but he successfully appealed against this decision and was granted bail by the Crown Court. The prosecution had no right of appeal against this decision under the current provisions of the 1993 Act.

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1 The decision to grant bail

The *Bail Act 1976* sets out the general law on bail. Section 4 of the Act creates a presumption that a person accused of an offence should be granted bail when he appears before a magistrates' court or the Crown Court in the course of proceedings for the offence, or when he applies to a court for bail. **However**, this presumption does not apply if one of the exceptions specified in Schedule 1 applies or if section 25 of the *Criminal Justice and Public Order Act 1994* applies.

One of the principal exceptions in Schedule 1 is cases where the offence is punishable by imprisonment and there are substantial grounds for believing that the accused would abscond, commit an offence or interfere with witnesses while on bail. There are also provisions to allow bail to be denied if the defendant needs to be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

Under section 25 of the *Criminal Justice and Public Order Act 1994* the presumption in favour of bail does not apply to a person who has been charged with or convicted of certain serious offences (such as murder or rape) if he already has a previous conviction for any such offence. Section 25 provides that such a person shall only be granted bail if there are "exceptional circumstances" which justify it.

Bail can be granted with or without conditions. Detailed legal guidance on the legislation governing bail is available on the [Crown Prosecution Service website](#).

2 The prosecution's current right of appeal against bail

The *Bail (Amendment) Act 1993* provides that the prosecution can appeal against a court decision to grant a suspect bail in the following limited circumstances:

- the accused has been charged with or convicted of an offence punishable with imprisonment;
- the prosecution is conducted by or on behalf of the Director for Public Prosecutions (this includes prosecutions conducted by the Crown Prosecution Service (CPS)) or by a specified prosecutor listed in the schedule to the *Bail (Amendment) Act 1993 (Prescription of Prosecuting Authorities) Order 1994, SI 1994/1438*; and
- before bail was granted, the prosecution made representations opposing bail.

This right of appeal only exists in respect of bail decisions taken by magistrates' courts; the Act does not contain any equivalent right of appeal in respect of bail decisions taken by Crown Courts.

If the prosecution wishes to appeal against the grant of bail, it must give oral notice of appeal to the court that has granted bail at the conclusion of the proceedings in which bail has been granted **and** before the suspect has been released from custody. Once the court has received the prosecution's oral notice of appeal it must remand the suspect in custody until the appeal has been determined or otherwise disposed of.

The prosecution must then serve written notice of appeal on both the magistrates' court and the suspect within two hours of the conclusion of the bail proceedings. If it fails to do so, the appeal shall be deemed to have been disposed of and the suspect will be released on bail on the terms granted by the court.

Prosecution appeals against the decision of a magistrates' court to grant bail will be heard by a Crown Court judge. The hearing of the appeal by a Crown Court judge must be commenced within 48 hours of the date on which oral notice was given (excluding weekends and public holidays). The appeal takes the form of a full rehearing, following which the judge may remand the suspect in custody or grant bail subject to such conditions (if any) as he thinks fit. The prosecution has no further right of appeal should the Crown Court judge decide to grant bail.

Guidance from the CPS states that the right of appeal should be exercised "judiciously and responsibly" and only in cases of "grave concern", going on to advise that the overarching test should be whether there is a "serious risk of harm" to any member of the public.¹ Further guidance is provided on assessing the risk of harm:

In considering whether an appeal is appropriate, the seriousness of the offence is a factor to be considered. The public interest ground should not be used to justify appeals in less serious cases. The nature of the offence which the defendant faces is relevant if it illustrates the risk created by granting bail. Examples might be extreme cases of personal violence such as murder, rape, robbery or aggravated burglary, particularly if it is alleged that weapons have been used in offences of violence or during the commission of sexual offences.

A serious risk of harm to public safety and property may give grounds to justify an appeal. Examples might be arson with intent to endanger life or being reckless as to whether life is endangered, terrorist offences or riot.

The risk to the individual victim or victims will be a factor. The following situations may justify the exercise of the right of appeal:

- A record which discloses previous convictions, particularly of a similar kind against the same victim or victims with similar characteristics;
- Evidence of violence or threats of violence to the victim or his or her family; or
- Evidence of undue influence over the victim, for example where there are alleged sexual offences against young people or children.²

¹ CPS website, [Legal Guidance: Bail – Considerations re appeal](#) [accessed 27 April 2012]

² Ibid, [Right of appeal](#) [accessed 27 April 2012]

3 Jane Clough

In July 2010, nurse Jane Clough was murdered by her former partner Jonathan Vass.³ At the time of the murder Vass was on bail having been charged with nine counts of rape and four counts of sexual and common assault against Miss Clough. After he had been charged in late 2009, Vass had originally been remanded in custody by magistrates. However, 12 days later he successfully appealed against this decision and was freed on bail by Judge Simon Newell sitting at Burnley Crown Court, despite the opposition of police and prosecutors. The prosecution had no right of appeal against this decision, as the current provisions of the 1993 Act only provide for prosecution appeals against bail decisions taken by magistrates' courts, not Crown Courts.

Following Vass's conviction for murder, Jane's parents criticised Judge Newell's decision to grant him bail, telling the BBC that they believed he was responsible for Jane's death.⁴ The Judicial Communications Office (JCO) issued a statement on behalf of Judge Newell that said he had not been told of any concerns expressed by Jane in relation to her safety, nor was he presented with any evidence that Vass was likely to commit further offences against her. The CPS, however, said that it had told the judge that there was an "extreme likelihood" that Vass would interfere with witnesses if released on bail:

The JCO said the judge had worked within the framework of the Bail Act 1976, which gives a presumption of bail except in specific circumstances. Bail was granted with conditions that Vass lived at a specified address; that he was not to contact his former partner, either directly or indirectly; and that he was not to enter Burnley or Pendle except to attend court or appointments with his solicitor.

"In this case, at no stage was the judge told of any concerns expressed by Ms Clough in relation to her safety, nor was there any evidence presented to the court that Mr Vass was likely to commit further offences against her," the JCO said. Vass had been of previous good character.

The CPS said it successfully opposed bail when Vass first appeared before magistrates, charged with rape, in December 2009. The defence appealed against the decision to remand him in custody at the crown court on 11 December.

"The prosecution opposed that application on the grounds that there were substantial risks that he would interfere with witnesses, particularly with Jane Clough, and a strong likelihood that he might abscond," the CPS said.

"The prosecution case put before the judge was that the defendant had been committing offences of rape and serious sexual assaults, which by their nature are violent crimes, against Jane Clough, for a number of months."⁵

The *Lancashire Telegraph* obtained transcripts of the bail hearings in the magistrates' court and Crown Court, and came to the following conclusions about the apparent conflict between the statements from the JCO and the CPS:

Both statements are supported by the transcripts, as experienced prosecutor Roger Green opposed bail on the grounds of 'witness interference'.

³ ["Parent of murdered nurse: judge freed brute to kill our daughter"](#), *Daily Telegraph*, 15 October 2010

⁴ ["Judge who bailed rape accused 'blamed' for nurse murder"](#), *BBC News*, 8 November 2010

⁵ ["Judge freed known violent man to kill, says Crown Prosecution Service"](#), *Guardian*, 9 November 2010

But the tapes reveal that the judge was never explicitly told about any fears Vass would go on to offend against Jane.

(...)

Chief Crown Prosecutor Ian Rushton told the Lancashire Telegraph that by the December 11 hearing, the full scale of Vass's alleged offending – including nine counts of rape – was before the judge.

He said: "Rape does suggest violence and, in our view, we made the judge fully aware of the allegations and the risk of him trying to contact witnesses. I think the counsel made it quite clear and the judge has then got to make a difficult decision.

"What is not clear from the transcripts is that the barrister met with police before the hearing and was fully up to speed on the fears they held.

"We feel those concerns are implicit when talking about 'witness interference', which is the provision of the Bail Act statute which we had to hang our objections on."

But the CPS did not choose to oppose bail on the grounds of a risk of Vass committing further offences, which was an option open to them.⁶

4 Proposals for change

Since her murder, Jane Clough's parents John and Penny have been leading a campaign that aims (among other things) to change the law so that the prosecution have the right to appeal against Crown Court decisions to grant a suspect bail.⁷ This campaign has been taken up by Members from all parties, resulting initially in a Private Member's Bill and then in amendments to the *Legal Aid, Sentencing and Punishment of Offenders Bill*.

4.1 The *Bail (Amendment) Bill 2010-12*

On 28 June 2011, Conservative Member Andrew Stephenson introduced the [Bail \(Amendment\) Bill 2010-12](#). Miss Clough was one of his constituents. Speaking at the Bill's First Reading, Mr Stephenson said there was a need to "rebalance the legal standing of bail verdicts". He went on to say:

By allowing the prosecution to appeal against bail decisions, we will make sure that judges can be held accountable for the decisions they make. Even the best judge will not get every decision right and surely there should be a safeguard for when a decision is made that clearly looks ill-advised or incomprehensible. Making such a change would also protect the rights and freedoms of victims of crime and their families. As I previously mentioned, Jane became a prisoner in her own home. It strikes me as totally unacceptable that Jonathan Vass was allowed to roam free, while Jane lived under the constant shadow of her tormentor and rapist. I have received support from across the House from more than 50 MPs who want to see this issue addressed. We must ensure that victims of crime are protected from further punishment.⁸

Mr Stephenson withdrew the Bill after the Government confirmed that it supported the principle of the Bill and would be introducing relevant legal changes by way of the *Legal Aid, Sentencing and Punishment of Offenders Bill*.⁹

⁶ "Account of Lancashire nurse killer's two bail hearings revealed", *Lancashire Telegraph*, 30 June 2011

⁷ See the "Justice for Jane" website for full details of their campaign's aims

⁸ [HC Deb 28 June 2011 cc787-9](#)

⁹ Andrew Stephenson, *Leader/Times Column*, 13 January 2012 and [HC Deb 11 January 2012 c174](#)

4.2 The Legal Aid, Sentencing and Punishment of Offenders Bill 2010-12

The Government introduced the [Legal Aid, Sentencing and Punishment of Offenders Bill](#) in the House of Commons on 21 June 2011. The Bill included a number of proposed amendments to the law on bail, but nothing that would have given the prosecution a right of appeal against Crown Court decisions to grant bail.¹⁰

During the Bill's Commons committee stage Helen Goodman, then a shadow Justice minister, moved an amendment (drafted by former Solicitor General Vera Baird QC) that would have introduced such a right of appeal.¹¹ The amendment proposed that prosecution appeals against a Crown Court decision to grant bail would be heard by another Crown Court judge. The amendment received cross-party support, although concerns were expressed about its drafting: in particular that it would give one Crown Court judge appellate capacity over another of equal seniority. Robert Buckland suggested that these concerns could be addressed if the appeal were to be heard by a High Court judge, rather than another Crown Court judge.

In response, Justice minister Crispin Blunt said that the Government supported the general thrust of the amendment and would therefore be looking at resources and other practical implications (e.g. estimates of the number of times this right of appeal might be used by the prosecution) before drafting the necessary legislative amendments.

Following a meeting with Jane Clough's family shortly after the Commons committee stage debate, the Director of Public Prosecutions Keir Starmer said:

From my perspective ... having given the matter careful consideration, I have come to the view that we would welcome the introduction of such a power for the prosecution.

We would not anticipate such a right of appeal being used very often; however, where it was felt that a judge had got a decision on bail wrong, and the interests of victims and the wider public demanded that such a decision be challenged, then this would be regarded as a useful and appropriate option for the prosecution to have available to it.¹²

The Government's amendment to the Bill was moved during committee stage in the Lords.¹³ The amendment would insert new provisions into the 1993 Act to enable the prosecution to appeal against a Crown Court decision to grant bail to a person charged with, or convicted of, an offence punishable with imprisonment. The appeal would be heard by a High Court judge. The new route of appeal would only be available if the Crown Court decision to grant bail was not itself the result of a prosecution appeal against a magistrates' court decision to grant bail, as Justice minister Lord McNally explained:

So if a defendant was granted bail by the magistrates, the prosecution appealed and the Crown Court granted bail, the prosecution would not be able to appeal further. This is to stop a continuing series of appeals on a matter that by then would have been considered by two courts.¹⁴

¹⁰ See section 7 of [Library Research Paper 11/53 Legal Aid, Sentencing and Punishment of Offenders Bill](#) for an overview of the bail provisions in the Bill as introduced

¹¹ [PBC Deb 11 October 2011 cc695-701](#)

¹² CPS press statement, [DPP meets family of Jane Clough](#), 24 October 2011

¹³ [HL Deb 9 February 2012 cc369-372](#). For the full text of the amendment, please see [Lords Amendment 262 to the Bill](#).

¹⁴ [HL Deb 9 February 2012 c372](#)

The procedural requirements currently set out in the 1993 Act relating to the serving of oral and written notices of appeal (including the time limits for doing so) and the hearing of the appeal would also apply to the new right of appeal.

Lord McNally said:

... this is a matter that has been the subject of a campaign by Jane's parents following the release on bail of Jonathan Vass by the Crown Court, despite representations from the Crown Prosecution Service. We considered this matter very carefully. We took account, on the one hand, of the fact that a right of appeal would necessarily impose an additional burden on the High Court. On the other hand, there was strong support for change in the other place, as we have heard, and the Director of Public Prosecutions has made it clear that he too is in favour of such a change in our law.

Our conclusion was that without calling into question the correctness of decisions made by Crown Court judges in the vast majority of cases, it is not right that such decisions should be beyond challenge. We are persuaded of the case for changing the law in order to ensure that victims and their families, and the public at large, are protected.

The effect of the provision will be that the decision to appeal must be made immediately, before the defendant has been released, and as the defendant would be held in custody pending the appeal, the appeal must be heard very quickly. Listing cases at such short notice before a High Court judge clearly has resource implications, and it is important that the right of appeal should be used sparingly. This will be recognised in the guidance that the Director of Public Prosecutions will issue to his staff, which will require a decision to appeal to be approved at a senior level.¹⁵

The amendment was agreed without division. Penny and John Clough said they were “delighted” by the decision to change the law.¹⁶

¹⁵ [HL Deb 9 February 2012 c372](#)

¹⁶ [“Jane Clough campaign: Bail law changes backed by House of Lords”](#), *BBC News*, 9 February 2012