

# The clock is ticking – Bail breaches & Covid-19

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In the chaos that Covid-19 has brought to our criminal justice system it is now, more than ever, important for practitioners to remember the fundamental principles when considering breaches of bail in the magistrates' court.

A defendant who has been remanded on bail may be arrested without warrant if a constable has reasonable grounds for believing that they are likely to break or have broken any of their bail conditions (section 7(3) Bail Act 1976). Breach of bail, whilst arrestable, is not a standalone criminal offence.

## The 24-hour time-limit

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Upon arrest for an alleged breach of bail, a defendant must be brought before a magistrates' court '*as soon as practicable*' and in any event **within 24 hours of arrest** (section 7(4) Bail Act 1976). The hearing need only be before a single justice. Sundays, Christmas Day, and Good Friday do not count for the purposes of this time limit (section 7(7) Bail Act 1976). All other public holidays do count. In practice this means that if a defendant is arrested at 11am on a Saturday, the time limit expires at 11am on the Monday. If a defendant is arrested at 11am on a Sunday, the clock does not start ticking until the Monday (12:01am) and expires at midnight on Monday.

What must happen before the clock stops ticking? Is it sufficient for the defendant to be brought to the court cells within 24 hours? Or, for the case to be called on but the breach not yet determined by the magistrates?

## The caselaw

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In *Governor of Glen Parva Young Offender Institution, ex parte G* [1998] QB 877, the defendant was arrested for a suspected breach of bail and taken to the cells of a magistrates' court within 24 hours. Despite being at court, the defendant's case was not brought before a magistrate until two hours after the expiry of the 24-hour time-limit. The Divisional Court held that the requirements of section 7(4) were not satisfied simply by bringing the defendant within the precincts of a magistrates' court: **the defendant must be brought before a magistrate**. Failure to meet the 24-hour time-limit must result in the defendant's immediate release from custody; any continued detention is unlawful (per Simon Brown LJ at p. 298).

In *R (Hussein) v Derby Magistrates' Court* [2001] 1 WLR 254, the Divisional Court examined whether a District Judge had power to entertain breach proceedings where the matter had been put back in the list by a justice already seized of the matter. The defence argued that the police power to detain the defendant under subsection 7(4) is limited to bringing the defendant to court as soon as practicable and, upon doing so,

there was no power to detain the defendant thereafter. The District Judge therefore had no power to entertain the breach proceedings because there was no power to adjourn or to remand the defendant in custody. Whilst in principle this makes sense, the Divisional Court preferred a more pragmatic approach. The Divisional Court recognised that breach of bail was a unique situation in which speed of determination is of the essence; section 7(5) should not be interpreted as requiring the procedural rigidities that are appropriate for a formal hearing but often conducive to delay (para 30). Consequently, the District Judge did have jurisdiction to entertain the breach proceedings (para 31). The Divisional Court did not need to examine the 24-hour time-limit because the final breach proceedings had concluded within 24 hours of arrest.

The principal authority on the 24-hour time-limit is *R (Culley) v Crown Court sitting at Dorchester* [2007] EWHC 109 (Admin). In *Culley*, the Divisional Court examined a situation in which a hearing to determine a defendant's alleged breach of bail had commenced within the 24-hour time-limit (unlike *Glen Parva*) but was not completed before the expiry. After reviewing various authorities, including *Glen Parva*, the Divisional Court held that **a justice is required to complete the required investigation and make a decision within the 24-hour period**. Even if the hearing has commenced but not yet concluded, the continued detention of the defendant becomes unlawful from the moment the 24-hour period has expired. Any decision to remand the accused in custody after that time, is *ultra vires* and unlawful (per Forbes J at paras 19-20).

Most recently, in *McElkerney v Highbury Corner Magistrates' Court* [2009] EWHC 2621 (Admin), the magistrates' court had called on the case within 24 hours of the defendant's arrest but the justice had not yet reached a decision before the expiry of the time limit. The justice continued the hearing despite the expiry of the 24-hour period and remanded the defendant in custody. An application for habeas corpus was made to the Divisional Court. Prior to the application being heard, bail was reconsidered by the magistrates' court and a fresh decision to remand the defendant in custody was made. The Divisional Court was critical of the decision in *Culley* and noted that '*it is not on the face of it a requirement that the justice's decision be reached within that 24-hour period*' (at para 10). Importantly, this comment is obiter; the Divisional Court clarified that '*no decision is required on the point in the present proceedings*' (para 11). No decision was required, because of the re-consideration of bail at the subsequent hearing.

## Conclusion

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The decision in *McElkerney* is often incorrectly cited as authority for the proposition that, provided the magistrates' court have started to deal with the breach of bail, it need not be resolved within the 24-hour period. This is incorrect. It is not sufficient for a

magistrates' court to call on the matter at 10am, ostensibly starting the hearing in the belief that it has satisfied section 7(4) and adjourning it until later in the afternoon once the 24-hour period has expired. *Culley* remains binding and **the entire decision-making process under subsection 5 must be concluded within the 24-hour period**. If not, then the defendant must be immediately released and any continued detention is unlawful.

This time-limit is even more important during Covid-19 when technology causes delays in the virtual hearings and matters are often put back in the virtual list. Note to practitioners – keep an eye on the clock!

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