

## LADY CHIEF JUSTICE'S OFFICE

# GUIDANCE ON BAIL APPLICATIONS IN THE HIGH COURT

Coming into effect on 2 May 2023

This guidance replaces the High Court Bail Applications Guidance which was published on 15<sup>th</sup> November 2021. It has been compiled with the agreement of the PPS, PSNI and NICTS

### Key Changes

- Applicants are reminded that applications are to be presented in Form 38 (Annex A). Applications must include the ICOS number(s).
- Where the applicant intends to rely upon any medical and/or other documentary evidence, this should be referred to in the grounds for the application and copies of such evidence should be included with the application.
- Once received from PSNI, PPS shall provide the court with the Structured Outline of Case by email in all High Court bail applications preferably the day before the hearing.
- High Court bail applications will be dealt with via hybrid hearings and in accordance with the [Guidance on Remote, In-Person & Hybrid Attendance](#).
- Generally, and subject to the interests of justice, defendants will continue to attend High Court bail applications remotely, as will police officers. Counsel is required to attend in person (unless they ask to attend remotely). Solicitors may attend remotely if counsel is fully briefed. Interpreters are to attend in person. In applications involving juveniles the applicant's solicitor shall arrange for the social worker to attend in person.

### Lodging an Application for Bail

1. Notice of a bail application must be given in [Form No 38](#) (Annex A).
2. It is essential that Form 38 is fully completed and includes sufficient details, including the ICOS numbers of all proceedings to which the application relates, otherwise the application may be delayed or returned for amendment.
3. Notice of the application should be sent by email to the High Court Bail Office ('Bail Office') at [HC.BailOffice@courtsni.gov.uk](mailto:HC.BailOffice@courtsni.gov.uk).

4. There is no statutory requirement that a person must have an address before they can be released on bail and therefore lack of an address is not a bar to a bail application being made. However, the courts prefer that addresses are provided and approved in advance to avoid a situation where bail cannot be effected. Where an address for bail is to be proposed to the court, prior to making the application the applicant's solicitor should check the suitability of the proposed address with the Police Service for Northern Ireland ('PSNI'). The proposed address, and where possible, PSNI's views on its suitability, should be stated in the grounds of the application.

5. Where the applicant intends to rely upon any medical and/or other documentary evidence, this should be indicated in the grounds for the application and copies of such evidence should be included with the application.

6. The following timelines for lodging an application shall apply:

- Monday hearing 12 noon on Thursday;
- Wednesday hearing 12 noon on Monday;
- Friday hearing 12 noon on Wednesday.

7. It cannot be guaranteed that an application will be listed on the desired hearing date.

8. The Bail Office will forward a copy of the application to the Public Prosecution Service ('PPS'). When PPS receive the updated Structured Outline of Case ("SOC") from PSNI, the PPS shall send it together with the relevant records by email to the Bail Office preferably the day before the hearing. The SOC should also be sent by the PPS to the applicant's solicitor. Where bail has been granted already by the magistrate's court, details of the bail conditions must be included in the bail application by the applicant's solicitor and where possible should also be included in the SOC by PSNI.

9. Prosecuting counsel should summarise the facts of the application to the court as directed by the judge to ensure open justice is maintained.

### **Variation of Bail**

10. Where bail has been granted already by a lower court, an application for variation of bail should be made to the lower court in the first instance, unless there is a specific reason for making the application to the High Court. Any such reason should be detailed in the grounds of the application. Any application for variation of High Court bail should be made to the High Court and may be dealt with administratively.

11. Where the High Court bail is granted in a matter where the applicant has been granted bail already by a lower court, it may still be necessary for the defendant and any sureties to sign for bail.

### **Listing Arrangements**

12. Bail applications shall generally be listed at 10am unless a judge directs otherwise. Those attending by Sightlink should ensure they join and are present at the commencement time.

13. Unless the Lady Chief Justice, or a judge designated by her, directs otherwise, a maximum of 14 bail and bail-related applications will be listed on each bail day.

14. Where the daily limit is reached, any further applications will be listed for the next available bail day, and in any event, not later than 7 days from the date on which notice of the application was received. Where the applicant requires an earlier hearing date, they must provide reasons in writing demonstrating the need for urgency in order that a judicial direction regarding listing may be given.

15. Emergency hearings, during both working and non-working hours, for example for compassionate bail, will be facilitated in exceptional circumstances. Where a request is to be made for an out of hours hearing, contact should be made with the court through the usual out of hours arrangements.

### **Conduct of High Court Bail Applications**

16. High Court bail applications will be dealt with via hybrid hearings and in accordance with the [Guidance on Remote, In-Person & Hybrid Attendance](#).

17. Generally, and subject to the interests of justice, defendants and police officers shall attend High Court bail applications remotely. Counsel shall attend in person, unless they request to attend remotely. Solicitors may attend remotely as long as counsel is fully briefed. Interpreters shall attend in person.

18. Where a bail application involves a person who is under 18 years of age, the applicant's solicitor shall arrange for the relevant social worker to attend in person or, if that is not possible, provide the most recent social work report, LAC Review, CPCC report or other relevant social services documentation.

19. This guidance reiterates the fact that there is a statutory presumption in favour of bail where a court remands or commits for trial a person who is under the age of 18 years (Article 12 of the Criminal Justice (Children) (Northern Ireland) Order 1998). Where issues arise with regard to the identification of suitable accommodation for a looked-after child or a child who cannot return home for any reason, per [LH \(A Minor\), Re Judicial Review \[2018\] NIQB 34](#), best practice in such cases is for the PSNI and Social Services to have a multi-disciplinary discussion

about suitable accommodation and for Social Services to directly input into the bail hearing -

“47. ...This is a case where there was effective liaison with police to ensure a safe placement.... I commend that approach as information sharing is critical in this type of case. In my view it would be a good idea for the Trusts to engage with police in creating a generic list of suitable temporary accommodation to ensure that no issues arise in future and so that that accommodation is provided as swiftly as possible. I was informed that the police have a checklist in relation to juvenile bail hearings. The relevant Trusts also have a checklist dealing with the provision of accommodation. I encourage a multidisciplinary discussion to make sure there is a consistency of approach....

48. In relation to bail hearings I offer some further comments as follows:

- (i) When there is an issue with a child in need, a looked after child or a child subject to a care order, social services should directly input into the bail hearing. I have to say that in my experience this has become an ingrained practice which is to be welcomed in that social services regularly attend at court and often give very valuable evidence about placement issues.
- (ii) A reviewing mechanism is available to the bail court which may be particularly important where short term accommodation is provided.
- (iii) In my view consideration should be given to having “one-stop” for these types of cases where possible. This chimes with the sentiments expressed by Gillen LJ in the Civil and Family Justice Review. If there is a judicial review it should be heard alongside the bail case. It may also be possible to combine a related family case.”

### **Costs in Bail Applications**

20. Legal aid arrangements apply as usual.

21. The court has discretion under [section 59 of the Judicature \(Northern Ireland\) Act 1978](#), to order legal aid taxation. Where an applicant is seeking such an order, rather than the standard legal aid fee, the court will require to be addressed regarding why it should exercise its discretion in that particular case.

No.38

**Notice of Application to the High Court for bail**

(O. 79, r. 2)

In the High Court of Justice in Northern Ireland

Kings Bench Division

(Crown Side)

In the matter of <sup>(1)</sup> \_\_\_\_\_ an applicant for bail

of <sup>(2)</sup> \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Birth <sup>(3)</sup> \_\_\_\_\_

Proposed address \_\_\_\_\_

Take notice that the applicant ordered to be committed to/detained in <sup>(4)</sup> \_\_\_\_\_ hereby applies to the High Court for an order that he be released from custody <sup>(5)</sup>

- pending his trial
- pending the hearing of his appeal

upon such terms and conditions as the court may think just.

**Case details**<sup>(6)</sup>

<b>Court Location and Date</b>	<b>Offences on which committed and/or detained</b>	<b>Not Certified/ Certified under the Justice &amp; Security Act 2007/ Both</b>	<b>Date and Court remanded to</b>	<b>Date of Committal and Court committed to</b>

Name and Station of Police Officer in charge of the case \_\_\_\_\_

Name(s) of co-accused (if any) \_\_\_\_\_

Where application is made pending an appeal<sup>(8)</sup>

(a) Applicant is appealing against <sup>(5)</sup>

- conviction
- sentence
- conviction and sentence

(b) Sentence imposed \_\_\_\_\_

(c) Court to which appeal lies \_\_\_\_\_

(d) Date fixed for hearing (if known) \_\_\_\_\_

The grounds on which this application is made are as follows <sup>(9)</sup>:

\_\_\_\_\_

Applications lodged before noon on Mondays to Fridays normally will be listed for hearing on the working day after the next working day. Please indicate if this application will be ready to proceed in this timeframe

YES		NO	
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If no please indicate preferred listing date: \_\_\_\_\_

**Previous applications (if any) for bail <sup>(10)</sup> before a magistrates' court and/or the High Court in respect of this offence:**

Date	Court	Result

### Sureties

In the event of the applicant being admitted to bail the following persons would be willing to stand as surety(ies) for due surrender of the applicant to his bail:

Name<sup>(11)</sup> \_\_\_\_\_ Name \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

Occupation \_\_\_\_\_ Occupation \_\_\_\_\_

**Solicitor details (For completion by the applicant's solicitor):**

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_ E-mail address: \_\_\_\_\_

Telephone and fax number: \_\_\_\_\_

**Personal Applicants**

The Governor of the place of detention must facilitate the signature of this form by applicants who are not legally represented.

**Signature of applicant** <sup>(12)</sup> \_\_\_\_\_

**Date:** \_\_\_\_\_

To: The Central Office, Royal Courts of Justice <sup>(13)</sup> [HC.BailOffice@courtsni.gov.uk](mailto:HC.BailOffice@courtsni.gov.uk)

For office use only:

Date received	Time received

**Notes**

- (1) Insert full name of applicant.
- (2) State home address of applicant.
- (3) State date of birth of applicant.
- (4) State place to which he/she has been committed or in which he/she is detained (specify if he/she is a new committal).
- (5) Delte whichever is not applicable.
- (6) It is essential that the correct court and remand date is stated otherwise the application will be delayed.
- (7) [Left blank]
- (8) If the application for bail is for the purpose of an appeal, copy notice of appeal **MUST** be lodged.
- (9) Set out the grounds on which the application is made. No affidavit is required in support of the application. Where documentary evidence is to be relied upon, this

should be detailed and a copy lodged with the application.

- (10) Here give date(s) of previous applications, the court to which they were made and the result.
- (11) The name(s) of a surety or sureties may be inserted although it is not necessary to give these details at this point.
- (12) Where the applicant is not represented by a solicitor, the applicant must sign the application.
- (13) Where a hard copy of the application is lodged, two copies of this form must be completed. Where completed by the applicant in person they must be sent to the Central Office, Royal Courts of Justice, by the Governor of the prison or other place where the applicant is detained.