**CHAPTER 10**

ANALYSIS OF EXERCISES 1 AND 2

You were asked to consider two examples which will require a decision of the magistrates’ court as to whether or not bail should be granted. In each case you were asked to consider the facts from the point of view of the prosecuting solicitor and the defence solicitor. Below is a summary of the arguments likely to be advanced. The prosecution will begin each submission with an explanation of how each defendant came to be charged with the offence for which he appears and an outline of the evidence linking him to that charge. Note the interplay between the grounds for objecting to bail and the factors relied on to substantiate those grounds.

**Prosecution submissions in relation to Karl Green—Exercise 1**

In relation to Exercise 1, the prosecution is likely to oppose bail on the grounds that Green will abscond, commit further offences and interfere with witnesses.

The prosecution will point to the evidence and to the fact that this is a very serious offence that could still result in a murder charge and that the defendant is subject to a suspended prison sentence. What is more, the defendant is already on bail for an earlier serious offence of violence. The risk of conviction is high, so too is a lengthy custodial sentence. The real risk of custody test is clearly passed. The prosecutor will highlight a fairly recent conviction for failing to surrender and Green’s poor community ties. Taken together, these all point to a substantial risk that this defendant will abscond if released on bail. It goes without saying that the requirement for there to be a real prospect of imprisonment is met.

The prosecution will further suggest that Green is likely to commit further offences if released on bail. In establishing this ground, a court should have regard to the risk that the defendant may do so by engaging in conduct that would, or would be likely to cause physical or mental injury to any person other than the defendant. Green is already on conditional bail for an earlier, unrelated serious allegation of assault and has already answered an allegation that he breached one of his bail conditions. The CPS will invite the court to consider his lengthy criminal record for violence. In short, Green is not a man to be trusted. The defendant lives on the same estate as the injured party and his family. Such a serious assault is likely to engender feelings of hostility on the estate and the risk of Green being drawn into further confrontations cannot be ignored. The CPS can point to the fact that the presumption in favour of bail does not apply in this case. Under s. 14 CJA 2003, bail may not be granted to an individual aged over 18 who is already on bail on the date of the offence unless there is no significant risk of him committing an offence on bail. The provision is in force in relation to offences carrying life imprisonment. Conviction for s. 18 GBH carries such a sentence.

Finally the prosecution is likely to argue that the defendant will interfere with prosecution witnesses. The defendant has a lengthy record consisting of violent assaults and is evidently easily provoked. One of the witnesses is a friend of the injured party who lives in close proximity to the defendant.

**Defence submissions in relation to Karl Green—Exercise 1**

The defence solicitor would be faced with an uphill task in this case. One thing the solicitor should have done is to contact Green’s sister, who lives some ten miles outside the area for confirmation of an offer of alternative accommodation. We will assume such an offer has been made.

The defence solicitor would remind the magistrates of the fact that they have heard only one side of the case. Green’s intention is to plead not guilty, maintaining he acted in self-defence. It is a defence he put forward at the police station and he has a witness to substantiate his version of events.

Taking each of the prosecution’s objections in sequence and dealing with the risk of absconding, the defence solicitor would point out that Green has had ample opportunity to run and hide between the occurrence of the incident and his subsequent arrest. He has strong community ties, having been born in the area. He has a son he sees regularly and a job which will be lost if he is remanded into custody. He has only one previous conviction for failing to surrender. The defence solicitor should explain the circumstances surrounding this and stress the fact of Green having voluntarily surrendered at the time and in turn receiving a fine.

So far as the danger that he might commit further offences is concerned, again he denies intentionally assaulting the injured party and has not of course been convicted of any offence arising out of the incident at the pub. He cannot deny the fact that he is on conditional bail for a further assault. All that the defence solicitor can say about it is that he accepts some level of criminal responsibility and awaits his deserved punishment. The offence was unforgivable but was committed while Green was very drunk. The defence solicitor will have to try to put a positive spin on Green’s criminal past, highlighting what, if anything, has changed since the offences were committed. Unfortunately some of his previous convictions are fairly recent. The defence solicitor should deal with the earlier breach of bail conditions, stressing the mitigating factors that were obviously accepted by the court. It is not evident that Green is in the habit of committing offences while on bail.

So far as interfering with witnesses is concerned, the defence solicitor will put forward an adamant denial that this would happen, as Green would not wish to make matters worse for himself.

The best that Green could possibly hope for in this case is the grant of bail subject to stringent conditions. The defence solicitor might suggest a condition of residence at the sister’s address. This would d­­eal in part with the risk of failing to surrender and the risk of the commission of further offences due to possible confrontations. It would also help to deal with the risk of interference with witnesses. No doubt, Green would be prepared to agree with any condition that kept him out of prison including a condition of reporting to his local police station, a condition of no contact with prosecution witnesses and a curfew. In the circumstances, however, bail is likely to be refused.

**Prosecution submissions in relation to Daniel Phillips—Exercise 2**

In relation to Exercise 2 the prosecution is likely to argue that Daniel may abscond, commit further offences and interfere with the injured party. The allegation against Daniel is extremely serious and he is currently subject to a suspended sentence of imprisonment. Once again, the need for there to be a real prospect of imprisonment is met.

The CPS will point to the circumstantial evidence against Daniel Phillips linking him to the crime scene and his no comment interview at the police station. It took three days in which to locate Mr Phillips, as he was not residing at his mother’s address. The risk of conviction is high, as is the prospect of a prison sentence.

So far as the commission of further offences and interference with prosecution witnesses is concerned, the prosecution will make plain the injured party’s feelings in this case. The defendant’s behaviour would suggest he is an obsessive individual with little respect for authority. He is charged with resisting arrest on this occasion and has previously breached a court order. In establishing the risk that the defendant will commit further offences, a court should have regard to the risk that the defendant may do so by engaging in conduct that would or would be likely to cause physical or mental injury to any person other than the defendant. Daniel is subject to a restraining order preventing him from harassing Ms Hughes. He clearly cannot leave her alone. With the restraining order in force there would seem to be little point in imposing a condition that he does not contact Ms Hughes. The risk that he may seek to harm Ms Hughes or interfere with her is extremely high.

**Defence submissions in relation to Daniel Phillips—Exercise 2**

On a practical point, if the defence solicitor can persuade Daniel’s new girlfriend and her mother to attend court, so much the better.

The defence solicitor should remind the magistrates of the presumption in favour of bail. The defence advocate should challenge the nature of the prosecution’s case against Daniel. He will no doubt point out that there is no forensic evidence to connect him to the crime scene and that he was advised not to answer questions at the police station on legal advice. The only evidence against him is the tenuous nature of voice identification by a witness who is not certain. He is likely to stress that the earlier access visit went off without any difficulties and that he would have no reason to want to burn down Ms Hughes’s house. What is more, he has an alibi (his girlfriend and her mother) who will say he could not possibly have been setting fire to his former girlfriend’s home. Consequently, he will not abscond because he has little fear of being convicted. He can offer a fixed address and has a job, which will be lost if he is remanded into custody. He will not abscond because his son is important to him. Furthermore, his new girlfriend is pregnant with his child and needs his support.

So far as the risk of him committing further offences is concerned, the defence solicitor will say that these are a thing of the past. He is abiding by the terms of his restraining order, which remains in force. He is benefiting from the input of the probation service and is addressing the reasons for his past offending.

The defence solicitor is likely to offer bail conditions to include residing at his current address, reporting to his local police station and a condition that he does not contact Ms Hughes or her friend.

**Decision of the court in each case**

In relation to Karl Green, the magistrates remand him into custody and send the case forthwith to the Crown Court. Their reasons for doing so are the substantial risk that the defendant will abscond having regard to the serious nature of the allegation and the risk of him committing further offences, in the light of his criminal record and the fact that he is already on bail for a similar serious allegation of assault. They are not convinced that the imposition of conditions would alleviate their concerns. Karl Green may consider making an application for bail to a Crown Court judge in chambers.

In relation to Daniel Phillips, after some deliberation the magistrates decide to grant him bail conditional on him residing at the address of his girlfriend’s mother, reporting to his local police station three times a week and a further condition that he should keep away from and not try to contact Rachel Hughes or her friend. In their view, the imposition of conditions would alleviate the risk of Mr Phillips committing further offences and interfering with prosecution witnesses.