



Pre-charge bail: a response to a Consultation on the Introduction of Statutory Time Limits and Related Changes

My response is based on empirical research conducted in two police forces between 2011 and 2013. The research used a mixed method approach to examine the use of pre-charge bail for further investigations in two forces in the England. The data collected for the project includes: observations; 14,173 records of cases in which pre-charge bail was imposed; 297 questionnaires completed by police officers; and 38 interviews with police officers. Both participating police forces have received detailed reports of the research findings. It was agreed with each of the forces prior to the commencement of the research that their identities would remain anonymous.¹

The views presented in this response are my own and do not represent the views of either force. The remainder of the document addresses the questions posed in the consultation document in the light of the findings of the research described above.

Releasing suspects without bail

The amendment to the Police and Criminal Evidence Act (PACE) to allow suspects to be released pending further investigation without bail is to be welcomed. My research found that just under half (47% in Force A and 48% in Force B) of all cases in which pre-charge bail was imposed ended with no further action being taken. This provides some evidence, albeit imperfect, that bail is used in cases where a charge is unlikely and that its use could be reduced. Indeed officers were clear that they were often able to foresee, at the time bail was initially imposed, the cases which would end in no further action.

The challenge will be implementing this legislative change so that it has the desired effect of reducing the use of pre-charge bail. Clear guidance alongside the proposed legislative change will be needed, especially in relation to when it is appropriate and necessary to release rather than bail suspects. The danger is that the police will not use the new power for the following reasons. My research suggests that there are deeply ingrained cultural values and practices which surround pre-charge bail. The majority of police officers in the study viewed the present system as working well, regarding pre-charge bail as a necessary tool, believing that its current use was not excessive. The practice was to release suspects on bail even in cases where the evidence was very slim and a conviction was unlikely because 'there is always a chance' of a conviction even when it appeared to be unlikely during the initial stages of the investigation. More sophisticated forms of evidence gathering, such as improvements in forensic evidence techniques, have contributed to officers' views that it was always worth checking whether any evidence could be uncovered. Furthermore, these views resulted in officers waiting for each and every piece of evidence to be analysed before taking no further action, even when the outstanding evidence would not result in the cases reaching charging thresholds. For these reasons, officers reported that they would

¹ On this basis the research was approved by the University of Leeds Research Ethics Committee.

always bail suspects if any evidence was outstanding. Suspects would remain on bail until all the relevant evidence had been collected and/or analysed. These practices, therefore, contribute to the length of bail periods. Officers articulated the following advantages to releasing suspects on bail rather releasing them without bail:

- Bail provided assurances that they would be able to track down suspects because they were required to return to the police station;
- Bail saved police resources in tracking down suspects;
- Bail enabled conditions to be imposed which provided an element of control over suspects whilst they were on bail;
- Bail provided reassurances to victims and demonstrated that the case was being taken seriously by the police;
- Bail provided an impetus for the outstanding investigations to be completed which would not be present if suspects were released.

Fresh evidence

The proposal to provide further clarification of the definition of fresh evidence is correct and is supported by my research findings, which suggest that there is a great deal of confusion about what constitutes new evidence amongst police officers. This confusion was one explanation of the widespread view of interviewees that releasing suspects, via No Further Action (NFA), when investigations were still to be completed with the potential to rearrest them in the future was not a viable option. Consequently, this proposal will remove *one* of the barriers to releasing suspects rather than bailing them but not all.

Statutory time limits

Statutory Time Limits are an important legal safeguard which should be introduced for pre-charge bail. The difficult question is how to implement a fair yet workable system. I agree with Liberty's view that an absolute time limit would result in some cases being abandoned when investigations are still outstanding whilst others resulted in a premature charge. A more practical and workable system is one in which time limits are set which may be extended in exceptional circumstances. This raises two fundamental questions: what should be the time limits and who should make the decisions about whether they should be extended. These are dealt with in turn below drawing on research evidence.

In terms of the duration of time limits, my research provides some evidence of the length of time suspects currently spend on bail:

- The average time spent on bail was around 6 weeks - suspects spent an average of 47 days on bail in Force A and 46 days on bail in Force B.
- Suspects who were being investigated for drugs or sexual offences spent longer on bail on average than suspects charged with other types of offences.

Table 1 below provides details of the proportion of cases which were completed in the two forces in the study within 28, 60 and 90 days. It suggests that a statutory time limit of 28

days would result in between two thirds and a half of cases exceeding the time limit. If the time limit was set at 90 days somewhere between a quarter and 14% cases would exceed it.

Table 1 Cases completed with 28, 60 and 90 days		
	Force A (%)	Force B (%)
28 days	31	45
60 days	59	75
90 days	72	86
Total number of cases	3928	9752

Taking account of the evidence above, a time limit of 60 days would be proportional for both suspects and the police. This would allow cases involving routine forensic analysis, which officers in my study consistently reported took an average of six weeks, to be completed. At the same time, the limit is sufficiently short to ensure that the time taken to complete the majority of cases is not lengthened by officers working to the maximum period available to them - ample evidence was uncovered in the research that officers worked to the maximum opening up the possibility that time limits may increase not decrease bail periods in some cases. The number of cases which would be need to be reviewed under a 60 day time limit would ensure that the new procedures were not viewed as purely presentational.

In one force, data also suggest that the proportion of cases which result in no further action (NFA) following a period on pre-charge bail may rise after 60 days have elapsed. In Force B, the proportion of cases resulting in NFA increased from 43% when suspects were on bail for between 31 and 60 days to 46% for bail periods of between 61 and 90 days and 51% when bail lasted for over 90 days. In the other force, NFA rates were relatively stable after 60 days had elapsed. In both forces, NFA rates at 28 days or below were higher at 54% and 50% respectively.

Speeding up evidence gathering

My research clearly indicates that according to police officers the primary reason for lengthy bail periods and the necessity of rebailing suspects was the time taken to receive the evidence from outside of the investigation team. The statement in the consultation document that ‘the remainder of the evidence (e.g. statements, DNA and CCTV etc) can be gathered relatively quickly’ (p. 10) was not the experience of the police officers interviewed. Nearly without exception all the interviewees reported that forensic evidence especially analysis of telephones and computers took considerable amounts of time and was the major influence on setting bail dates. It was also the most frequently cited reason for enquiries not been completed before suspects returned to answer bail and therefore requiring them to be rebailed. Whilst medical reports and financial enquiries were singled out for causing lengthy delays, it was clear that delays in the analysis undertaken internally by the police and by forensic companies had a significant impact on the length of bail period because of the much larger quantity of cases involved. Nearly without exception, officers reported that resources were insufficient to handle the amount of evidence which required analysis in *both* internal departments and external agencies.

Review procedures

For principled reasons and to enhance the legitimacy of pre-charge bail, the statutory time limit should be set at 60 days in all cases (with no exceptions) by magistrates' courts. Mechanisms would need to ensure effective legal representation is provided to suspects before and during the hearing. Suspects should have a right to be present at the hearing. In order to minimise the number of cases requiring extensions, a complementary review process should be implemented within the police. My research provides some evidence of the effectiveness of sergeants and Inspectors giving greater attention to, and scrutiny of, bail periods and the re-bailing of suspects from both forces. Officers spoke about review procedures focussing their investigations but that how, overtime, the reviews had fallen down the list of priorities and had largely disappeared from day to day practices. Instigating a statutory scheme of review by an Inspector or above at 28 days should assist in minimising the length of time suspects spend on bail and ensure that investigations are being conducted diligently.

The criteria on which the courts review cases to extend statutory limits should be strengthened to ensure that the reviews are effective. Not only is it necessary to have reasonable grounds for believing that the person on bail of committing the offence and that there are outstanding investigations but that it is *necessary* for the suspect to be on bail during those investigations. Consequently, an additional criterion should be inserted: 'it remains necessary for the suspect to be on bail for the purposes of the investigation of the offence for which s/he was originally arrested or subsequently suspected'.

Bail conditions

My research suggests that inconsistent practices exist in relation to the review of conditions attached to pre-charge bail. Mostly officers reported that once conditions were imposed they were not routinely reviewed. Such practices take no account of changes in the cases over time which may make the conditions imposed unnecessary or require new conditions to be imposed. Consequently, the criteria for review by Inspectors and magistrates' courts should include a requirement to review whether conditions remain necessary including each and every condition which has been imposed. This review procedure should be complemented by a legal right for suspects to challenge the imposition of bail or any conditions imposed at any time by a court. The right to free legal advice should be available in all cases in which suspects are challenging police bail decisions.

Bail conditions are used extensively. In my research, Force B imposed conditions in 67% of cases. The lack of guidance on the use of bail conditions is concerning and statutory guidance should be introduced. This should include a definitive list of available conditions and the circumstances in which they may be used. A statutory criterion should be created for the police to take account of the impact on the suspect of the *package* of conditions imposed as well as each individual condition. Alongside this, police forces should be required to collect and report on the use of conditions. Currently, data on their use are not routinely available. For example, in Force B only data relating to the number of suspects bailed with conditions were available. No data were retrievable relating to conditions such as the number imposed on individual suspects or the types of conditions used.

Wider review of PACE relating to pre-charge bail

The proposed changes to pre-charge bail provide an opportunity for a wider review of the operation of PACE in this area. My research suggests that a number of problems exist with the current law:

1. Amongst interviewees including custody officers there was a considerable amount of confusion and inconsistent practice relating to which sections of PACE (ss. 34(5); 37(2) and 37(7)) should be used and in what circumstances. For example, the two forces in the study were using different sections of PACE to bail suspects for further investigations.
2. The relationship between sections 37(2) and 37(7) was unclear leading to differential use of 37(7). In one force 37(7) was used as a mechanism to impose conditions on pre-charge bail and in the other force section 37(7) was reported to be rarely used. The practice in this force was to keep suspects on bail under 37(2) until they were charged even when all the evidence had been collected and CPS advice sought. Consequently, officers in this force reported that bail under 37(7) was rarely used.
3. The process of rebailing suspects places burdens on both the police and suspects. A number of practices had developed in both forces to streamline procedures. These mainly involved keeping suspects out of the custody suite by rebailing them at the front desk of the station, posting bail notices to home addresses or visiting suspects' homes in order to deliver bail notices. The research uncovered a variety of practices in each force and considerable confusion amongst officers about what might or might not be lawful. Such practices militate against a full review of cases, and particularly the necessity and proportionality of bailing suspects, when there is an identified need for bail to be extended.

The research conducted in the two forces provides an opportunity for evidence based legislative and policy change. It provides independent insights into how pre-charge bail operates from the perspective of the police which would inform the proposals in the consultation document and any future proposals. My response provides only a brief summary of the research findings as they relate to the specific questions raised in the consultation document. I would be pleased to be given the opportunity to discuss the research in more detail.

Please contact me if you have any questions relating to my response or would like to discuss the research findings in more detail.

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