UNIVERSITY OF LEEDS

Pre-charge bail: an investigation of its use in two police forces

Professor Anthea Hucklesby

Pre-charge bail is the legal power which enables suspects who have been arrested and detained by the police to be released pending further investigations.

Key findings

- Pre-charge bail is an enabling police power which allows officers to use it in a wide variety of circumstances and disparate reasons.
- Pre-charge bail is a frequently used police power which is part of routine police practice. Improved investigation techniques have directly and indirectly resulted in the greater use of pre-charge bail.
- Officers viewed the present system as working well, seeing pre-charge bail as a necessary tool, believing its current level of use to be unavoidable and the time spent on bail largely outside of their control making it challenging to implement reforms.
- Bail procedures have been adapted to operate in ways which fit with officers' working practices ostensibly streamlining procedures so making efficiency savings but raising issues of legality and legitimacy.
- The law relating to pre-charge bail is complicated allowing different sections of the Police and Criminal Evidence Act (PACE) to be used to bail suspects within and between police forces.
- Bail conditions were only available for use in one force but they were used frequently.
- The average time spent on bail was between 6 and 7 weeks. A small proportion of suspects spent considerably longer on bail.
- Practices between forces, including the length of time spent in detention before release on bail and length of bail periods, were remarkably consistent between the two forces.
- Considerable variations in practice and views were uncovered within both police forces which resulted in suspects being treated differently raising questions of legitimacy.
- Outcomes were consistent between the two forces. Just under half of all cases in which pre-charge bail was imposed ended in no further action.
- Suspects were bailed 'just in case' evidence came to light even when it was foreseeable that their cases would result in no further action.

Recommendations

- The law relating to pre-charge bail is comprehensively reviewed and revised.
- The law and procedures relating to alternatives to pre-charge bail, such as rearrest on fresh evidence, is clarified.
- A review of procedures throughout the pre-charge bail process is undertaken with particular scrutiny directed at those related to varying bail and rebailing suspects to ensure that they support its legal and ethical use.
- Mechanisms for the routine monitoring of pre-charge bail are put in place including those which enable close scrutiny of its use with different ethnic groups, the use of bail conditions and the types of conditions imposed.

The research was conducted in 2 police forces in England between 2011 and 2013. The data comprises: observations; 14,173 pre-charge bail records; 297 questionnaires completed by police officers; and 38 interviews with police staff.
The views presented in this paper are those of the author and do not represent the views of either force.

The legal framework

Pre-charge police bail is governed by the Police and Criminal Evidence Act 1984. The law has been amended by a succession of legislation which has resulted in a complicated set of legal provisions (Home Office, 2007). The original power for the police to grant bail and to require individuals to report back to the police station is enshrined in s.47(3) of PACE 1984.

The police are able to release suspects on bail at two stages before charge. S.34(2) requires the police to release suspects when their detention is no longer necessary. In these circumstances they are able to release suspects with or without bail. Ss.34(5) and 37(2) of PACE 1984 deal with cases in which there is insufficient evidence available to charge suspects. S.34(5) of PACE 1984 provides that the police may bail suspects before they are charged to return to the police station in order for further inquiries to be conducted. S.37(2) requires the police to release suspects on bail unless there are reasonable grounds for believing that detention is necessary to secure or preserve evidence relating to an offence for which they are under arrest or to obtain such evidence in interview.

S.37(7)(a) or (b) (as amended by the Criminal Justice Act 2003) relates to cases in which there is sufficient evidence to charge suspects. S.37(7)(a) allows suspects to be bailed whilst the Crown Prosecution Service (CPS) make a charging decision. S.37(7)(b) deals with cases where bail is granted for reasons other than CPS advice. Conditions may not be imposed on s.34(5) bail but may be imposed under ss.37(2) and 37(7).

The research discussed here primarily examined the use of bail when there is insufficient evidence to charge suspects to allow further enquiries to be carried out (ss.34(5) and 37(2)).

The study uncovered a considerable amount of inconsistent practice relating to which sections of PACE (ss.34(5), 37(2) and 37(7)) were used to bail suspects and in what circumstances. In Force A, the majority of suspects were released on bail for further enquiries under s.34(5). By contrast, Force B released most suspects under s.37(2) with or without conditions but used s.34(5) in a small number of cases.

The relationship between ss.37(2) and 37(7) was unclear leading to differential use of section 37(7). In Force A, s.37(7) was used as a mechanism to impose conditions on pre-charge bail because force policy was that conditions were not normally available when enquiries were outstanding. In Force B s.37(7) was rarely used. Only s.37(2) bail (i.e. bail for further enquiries) was reported to be used even when sufficient evidence to charge suspects existed and a CPS charging decision was being sought (i.e. a situation in which the law requires s.37(7) to be used). In both forces no procedures existed to move suspects between different types of pre-charge bail and it was reported that this did not happen in practice. Whatever the status of the investigation, suspects remained on bail under ss.34(5) or 37(2) in both forces respectively. Cases were not progressed to s.37(7) for a number of reasons including: i) officers perceptions that they would be unable to re-interview or collect additional evidence once suspects were on s.37(7) bail; ii) the procedure required suspects to attend the police station; and iii) the forces' IT system did not facilitate it. Arguably, such practices leave forces open to legal challenge.

Officers' knowledge of the law and policy on pre-charge bail was superficial in line with the limited and dated training which had reportedly been received. It was evident that many officers used the powers without really understanding their significance or the law. The complexities of the law were not appreciated by officers. They were confused about various aspects of the law, policy and procedures. Generally officers' views and practices were based on accepted practice rather than on formal policies and procedures.

The purpose of pre-charge bail

According to officers pre-charge bail has a multiplicity of functions. It was clearly viewed as an enabling tool which could and was used for many purposes including legitimate and less legitimate reasons.

All officers were positive about pre-charge bail and most believed it was a vital policing tool. According to them, the purpose of pre-charge bail was to collect further evidence and changes in the techniques of investigation had increased its use. However, more sophisticated techniques of investigation had also improved the likelihood of conviction even on what appeared to be the slimmest of evidence. Consequently, officers reported that they would undertake further investigations – send samples for forensic analysis and so on - even if they believed that it would come back negative. Consequently, officers rarely considered not proceeding with a case despite suggesting that cases in which no further action was taken were often foreseeable.

It also identified a culture amongst officers of using pre-charge bail just in case new evidence came to light even if the chances of it doing so were remote. The availability and increasing sophistication of evidence gathering tools such as forensic techniques were in the eyes of the officers increasing the chances of a successful outcome, i.e. a charge so were fuelling the use of

pre-charge bail and making them less likely to make a speedy decision to take no further action when appropriate. Keeping tabs of suspects and ensuring that officers knew where to find them and confusion over what constitutes new evidence to justify rearrest were also reasons for keeping suspects on bail rather than taking no further action and rearresting them later if new evidence came to light.

The use of pre-charge bail

Males comprised the majority of both samples (86% and 88%). The median age of suspects was 23 (Force A) and 28 (Force B). Juveniles comprised 22% of the sample in Force A and 16% in Force B. The ethnicity of bailed suspects broadly reflected the proportion of suspects from different ethnic groups in arrest data of both forces.

Suspects were bailed for a wide range of alleged offences of varying seriousness but the patterns of alleged offences was similar in both forces as Table 1 demonstrates.

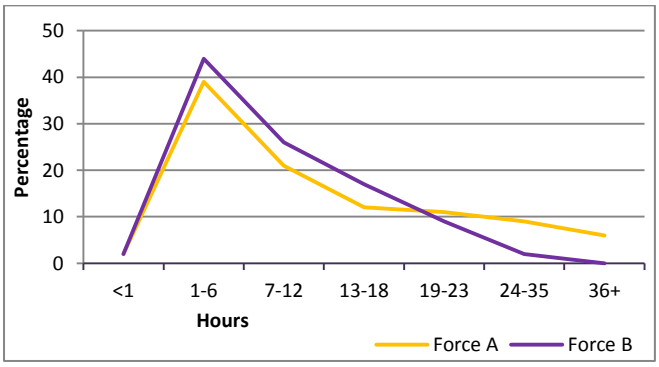
Table 1 Percentage of suspects bailed for different types of alleged offences

	A (%)	B (%)
Violence	33	32
Theft-related	23	19
Property	19	13
Drugs	9	11
Disorder	6	6
Sexual	4	6
Traffic	3	7
Other	3	6
Total number	3924	10146

Time spent in detention before release

Figure 1 demonstrates that there was a clear pattern in the time suspects spent in police detention prior to being bailed across both police forces. The majority of suspects spent less than 12 hours in custody.

Figure 1 Time spent in detention prior to release on pre-charge bail



Rebails

Data on the number of occasions suspects were bailed were only available in Force A. In this force 60% of suspects were bailed on one occasion, 21% twice and 10% three times. Most of the remaining suspects were bailed on between 3 and 8 occasions. The use of rebails varied between custody suites with some using multiple bail periods more than others.

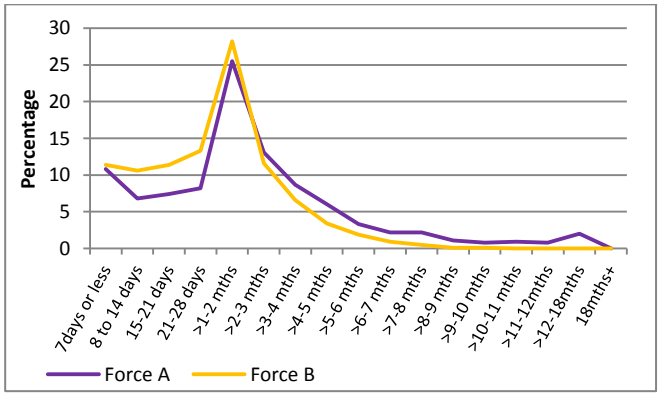
Rebailing practices was reported to vary between and within both forces. Some officers set long bail dates to avoid rebailing suspects whilst others preferred to use shorter periods and rebail when necessary. Both forces had attempted to reduce the use of rebails which had limited short-term impacts - saving police time but which did not appear to have reduced the time suspects spent on bail.

Officers had adopted practices which streamlined procedures at various stages, most notably in relation to 'varying' bail and rebailing suspects. The practices, such as rebailing suspects outside of the custody suite raise issues of legality and had potentially worrying implications: cases were not routinely reviewed to ensure the rebailing suspects was necessary and proportionate; conditions were not reviewed; legal advice was not available to suspects; and how much of the custody clock was consumed was unclear. Consequently, there was clearly potential for legal challenge and/or for cases to be compromised.

Time on bail

Figure 2 demonstrates that the profile of the time suspects spent on bail was similar in both forces. The average time suspects spent of bail was also strikingly similar at 47 days in Force A and 46 days in Force B.

Figure 2 Time on bail



Yet in Force A, the time spent on bail varied e.g. the percentage of suspects spending one month or less on bail ranged from 47% to 20% and those spending over 6 months on bail ranged from 15% to 4% across different custody suites. By contrast, the time spent on bail was remarkable consistent across Force B with the

peak being around 6 weeks coinciding with the usual reported timescale for forensic results to be returned.

Bail conditions

Force A had a policy not to impose bail conditions on pre-charge bail. A situation which nearly all those interviewed in the force disagreed with, despite recognising some of the downsides of conditions. In Force B conditions were used frequently – in 67% of cases – and were regarded as synonymous with pre-charge bail. Variations existed in the use of conditions between different areas of the force. Most areas used conditions in between 65% and 68% of cases but their use ranged from 61% to 76%.

Data on which conditions were imposed were not available but interviewees reported that 'banning' conditions, i.e. keeping away from people and places, were the most frequently used. Conditions were reported to have a multiplicity of purposes but were primarily viewed as a mechanism to control suspects.

Monitoring and enforcing conditions was not routine. Uncovering breaches was hit and miss. Officers were fully aware of the problems with conditions: they were difficult and often impossible to monitor and enforcement mechanisms were not fit for purpose. Despite this there was universal support for their widespread use.

Reviewing the necessity of conditions when they were initially imposed or later on in the case was variable. Conditions were not routinely reviewed when suspects were rebailed. Instead, conditions were reported to be 'rolled over', a practice which was facilitated by the IT system which did this automatically.

Outcomes

One measure of how often pre-charge bail is used appropriately is the outcome yet it is acknowledged that this is imperfect because cases change over time and it would not be expected that every suspect would be charged or dealt with for a criminal offence.

Table 2 Outcomes

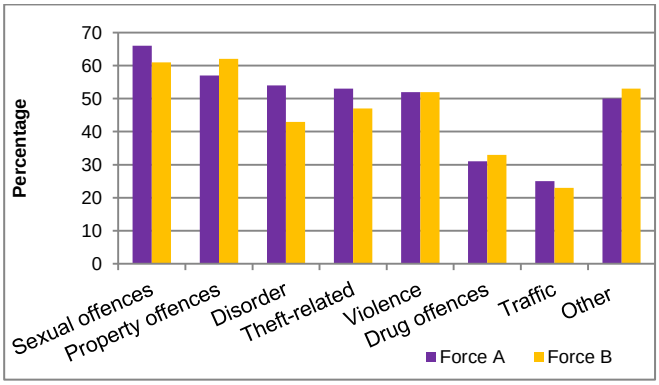
	Force A	Force B
Charged	39	39
Dealt with	9	12
No Further Action (NFA)	48	47
Other	4	2
Total number	3925	10149

Outcomes were remarkably consistent in the two forces. Table 2 demonstrates that nearly half of all cases were not proceeded with. Just over half of cases ended in a charge or were dealt with by way of a caution or out of court disposal.

Outcomes varied according to demographic and offence characteristics. In both forces, females were less likely to be charged or have no further action (NFA) taken and more likely to have their cases dealt with by way of out of court disposals. White European suspects were more likely to be charged than other ethnic groups and their cases were less likely to end in NFA. Differences in outcomes for ethnic groups were found within police forces raising questions about whether pre-charge bail is being used appropriately for all ethnic groups.

Outcomes varied for different offence types in both forces. For example, the percentage of suspects charged varied from 72% for traffic offences to 25% for property offences in Force A. Figure 3 demonstrates that the forces had similar outcomes for different offence types.

Figure 3 Percentage of cases ending in NFA for different offence types



Outcomes varied across different custody suites and areas in both forces. For example the percentage of suspects charged in Force B varied between 48% and 35%. Similarly, the proportion of NFA cases ranged from 51% to 39%.

Prospects for reform

There was little appetite for reform amongst officers. Knowledge of alternative ways to deal with cases, via using NFA and rearrest on fresh evidence for example, was limited and reported to be little used. Officers had a strong belief that bailing suspects was the only viable option when further enquiries were deemed necessary because of the disadvantages of using the alternatives. Opposition to change appeared to be on ideological, rather than practical grounds. Officers were also resistant to utilising a greater proportion of the initial detention clock instead of bailing suspects because it resulted in a less thorough and more rushed investigation.

More information is available from: Professor Anthea Hucklesby, School of Law, University of Leeds, UK (A.L.Hucklesby@leeds.ac.uk; 0113 343 5013)