



# **Pre-charge bail and Release Under Investigation: an examination of their use, effectiveness and impact on suspects' and victims' rights and confidence in the criminal justice system**

**Professor Anthea Hucklesby**

## **Key findings**

- Pre-charge bail and Release Under Investigation (RUI) were often treated as administrative processes rather than decisions impacting the lives of suspects and victims during a stage in the process when reported offences were allegations, a significant proportion of which did not result in further action.
- Investigation teams led on, and made most of the decisions about, pre-charge bail and RUI. Consequently, most of the checks and balances provided by the Police and Criminal Evidence Act (PACE) 1984 were removed, bypassed or reduced. This blunted their effectiveness in ensuring that bail and RUI were used in ways which adhere to the principles of the Act, especially the separation of custody and investigation functions, and protecting suspects' and victim's rights.
- The law relating to pre-charge bail is confusing and over complicated resulting in legally questionable decisions and additional work for the police.
- Recent changes to the law by the Police, Crime, Sentencing and Courts Act 2022 resulted in an increased use of bail and a reduction in RUI. Three-quarters (75%) of suspects were bailed. A high proportion of individuals suspected of offences involving victims were bailed from custody.
- A significant number of suspects (28%) who were bailed initially were later RUI. Consequently, only 57% of suspects were on bail by the end of the investigation raising concerns about victims' protection and suspects' rights.
- Conditions were frequently attached to bail. They were imposed formulaically based on the type of offence. RUI was usually used in preference to unconditional bail.
- A culture of inaction existed in relation to alleged breaches of conditions leaving victims vulnerable and reducing their trust and confidence in the police and the wider criminal justice system as well as denting the credibility of bail generally.
- The average time spent on bail or RUI has increased significantly compared with pre-2017 – 102 days post-2022 compared with 46/47 days pre-2017.
- Bail cases were dealt with more quickly (with averages between 71 and 96 days) than RUI cases (averages between 104 to 186 days) with those switched from bail to RUI during the investigation taking the longest (averages between 141 to 186 days).
- A high proportion of suspects who had been on bail during the investigation were not bailed post-charge, resulting in any bail conditions being removed. Many of these suspects were issued with postal requisitions rather than being charged in person.
- Suspects were charged in 31% of cases. Two-thirds (65%) of cases ended in no further action.
- Victims were generally informed rather than consulted about police decisions relating to bail. The formulaic use of conditions raised concerns about the extent to which victims were adequately protected.

## Introduction

Pre-charge bail (thereafter bail) is a police power regulated by the Police and Criminal Evidence Act (PACE) 1984. It is used when suspects, who have been arrested for an offence, are released from police detention pending further investigations (s. 37(2)) or a Crown Prosecution Service (CPS) charging decision (s.37(7)). All bailed suspects are required to return to the police station at an appointed date and time. Bail may be unconditional or conditional.

Bail has been subject to periods of intense scrutiny over the last decade, which most recently resulted in legal changes being included in the Police, Crime, Sentencing and Courts (PCSC) Act 2022. The 2022 Act reversed many of the changes that were introduced by the Policing and Crime Act 2017. The purpose of the 2017 Act was to limit the use of bail and the time suspects spent on bail. It enshrined a presumption against bail and introduced time limits for bail alongside a review and extension regime. It led to a dramatic decline in the use of bail and the emergence of RUI leaving many victims insufficiently protected and suspects 'in limbo' (Hucklesby, 2021). RUI has no legal basis and means that suspects are released with no requirements whilst investigations continue and there are no statutory review dates.

The PCSC Act 2022 repealed the presumption against bail enabling bail to be imposed when necessary and proportionate. It extended the initial Applicable Bail Period (ABP) from 28 days to three months and allowed senior police officers, rather than magistrates' courts, to authorise bail extensions at three and six months. It also introduced a three hour pause in the PACE detention clock to incentivise arrests for breaches of bail. It placed a duty on the police to consult victims about bail and the imposition of bail conditions. The College of Policing (2023) published Statutory guidance.

## Police knowledge, views and attitudes to bail and RUI

Most officers displayed a basic knowledge and understanding of bail and RUI, but some gaps were apparent. Although most officers recalled receiving training on bail and RUI, the findings raised concerns about whether it was sufficient,

correctly targeted, effective, and/or delivered in the most useful way.

Most officers saw merit in using both bail and RUI and no interviewees suggested that RUI should not be available. A significant minority of participants preferred RUI because it was 'less fuff' i.e. it was more efficient, less work and less pressurised. This represents a considerable shift in police attitudes compared with pre-2017 when bail was viewed as an indispensable police power (Hucklesby, 2015; 2021)

Bail was viewed as useful for protecting victims, keeping control of suspects and expediting investigations. It was synonymous with conditional bail. Unconditional bail was rarely used, being replaced by RUI when conditions were deemed to be unnecessary.

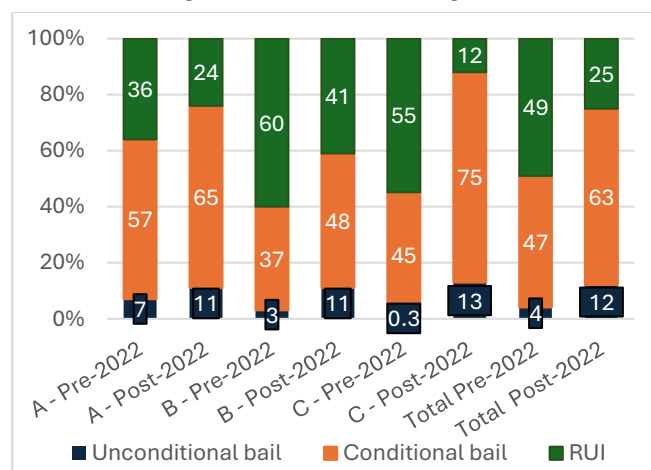
A risk adverse culture was evident in which all reasonable lines of enquiry would be exhausted before no further action was taken, even if the outstanding evidence was unlikely to be sufficient to charge suspects. Consequently, some suspects may be spending longer on bail and RUI than necessary.

Changes to bail in the PCSC 2022 Act were overwhelmingly endorsed and welcomed because they provided a better balance between suspects' and victims' rights and reduced pressure on the police. Only a small minority of participants suggested any further changes to bail and RUI.

## Bail/RUI status during the investigation

Three quarters (75%) of suspects were initially released on bail post-2022 representing an increase of 24% compared with pre-2022 (see Figure 1). Unconditional bail was rarely used.

**Figure 1 Percentage of suspects released from custody on bail and RUI by force**



Individuals suspected of all types of offences were more likely to be bailed post-2022, but the increase was much larger for acquisitive offences (burglary, vehicle crime and theft and fraud) than other offence types (see Table 1).

**Table 1 Proportion of suspects initially granted bail by most serious offence type**

	Pre-22	Pre-22	Post-22	Post-22	Change
Offence	N	%	N	%	%
Burglary	146	42	362	92	+50
Vehicle	63	20	203	69	+49
Theft & Fraud	84	26	225	68	+42
Drugs	67	8	422	48	+40
Weapons	88	29	185	67	+38
Property damage	119	53	189	80	+33
Robbery	149	62	291	94	+32
Public Order	272	52	346	83	+31
Violence	2314	75	2856	92	+17
Sexual	530	81	647	96	+15
Driving	13	2	74	9	+7
Other	123	28	213	46	+18
Total	4019	51	6161	75	+24

Pre- and post-2022, bail was used most often for offences raising safeguarding concerns (violence and sexual offences) (see Table 1). Post-2022 the range of offences considered to raise these concerns had expanded to also include many acquisitive and property offences (burglary, robbery, vehicle crime and theft and fraud). As a result, bail was invariably imposed when offences had, or would be expected to have, an identified victim.

Pre- and Post-2022, RUI was used mostly for 'victimless' offences or offences against the Crown i.e. 'Rex' offences such as driving and drugs. Determining whether bail is appropriate on the basis of offence type does not conform to the legal requirement that its use must be necessary and proportionate.

The lack of protection afforded to victims of domestic violence because of the high use of RUI was raised as a particular concern after the 2017 Act (Centre for Women's Justice, 2019). These concerns appeared to have diminished because the proportion of individuals suspected of domestic violence related offending who were bailed increased from 71%

pre-2022 to 90% post-2022.

Post-2022, 28% of suspects who were initially bailed were moved to RUI during the investigation resulting in any bail conditions being removed (see Table 2). Consequently, just over half (57%) of suspects were on bail by the end of investigations.

**Table 2 Proportion of suspects who were on bail at the conclusion of their cases by most serious offence type**

	Pre-22	Pre-22	Post-22	Post-22	Change
Offence	N	%	N	%	%
Burglary	75	25	210	68	+43
Robbery	62	28	179	67	+39
Theft & Fraud	32	14	117	51	+37
Sexual	222	42	343	77	+35
Vehicle	35	13	111	47	+34
Property damage	77	36	146	70	+34
Public Order	142	32	202	60	+28
Violence	1398	49	2050	77	+28
Weapons	38	14	82	36	+22
Drugs	18	2	127	22	+20
Driving	6	2	26	11	+9
Other	49	19	110	53	+34
Total	2140	31	3701	57	+26

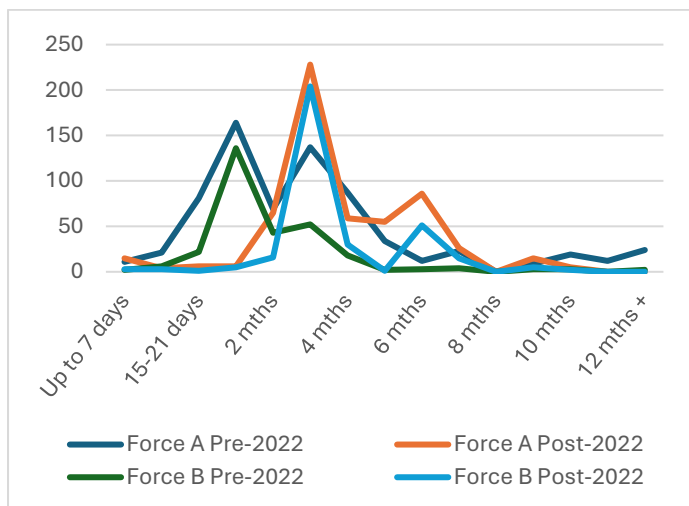
The largest increases in the use of bail throughout investigations were for acquisitive offences (burglary, robbery and theft) (see Table 2). As only three quarters (77%) of individuals suspected of sexual or violence offences were on bail at the end of the investigation, a significant minority of victims were left without the protection of bail conditions.

Suspects were moved from bail to RUI for two reasons, because bail lapsed due to the ABP running out or due to a positive decision to change their bail status. Bail lapses happened relatively frequently. Forces had recognised the problem and begun to put measures in place to prevent them. Decisions to move suspects to RUI were taken by investigation teams when investigations were expected to be lengthy and/or to avoid bail reviews and extension applications. Other reasons included changes in the circumstances of victims and/or

suspects, the passage of time since the incident, and suspects' compliance with bail conditions. Figure 2 demonstrates a clear link between suspects moving to RUI and dates when bail would need to be extended.

Moving suspects from bail to RUI was a simple and routine administrative process with little independent scrutiny.

**Figure 2 Time spent on bail before suspects were moved to RUI**



### Conditional bail

Most (93%) suspects released on bail had conditions imposed. Conditions were used to safeguard victims, manage suspects (particularly the risk of offending) and to ensure that suspects answered bail. The imposition of bail conditions appeared to be formulaic and based largely on type of offence. Post-2022, if alleged offences raised safeguarding concerns or were acquisitive offences with identified victims conditions would be invariably imposed.

Most suspects had one or two types of conditions imposed, most frequently, not to approach victims and to keep away from their address. There was little evidence that conditions were reviewed during investigations, and they were rarely amended. Any changes to conditions were usually requested by suspects rather than being police-led. Suspects were not routinely brought into custody for conditions to be changed, contrary to legal requirements.

### Bail for CPS charging decisions (PACE s.37(7))

Most suspects were released on bail from custody for further enquiries (s. 37(2)) but 11%

were bailed for a CPS charging decision (s.37(7)). Investigations are legally required to be completed before s.37(7) bail can be used but the research findings raise questions about whether they always were.

Suspects were not always moved to s.37(7) bail and back to s.37(2) bail during the investigation when legally required, confirming the findings of the pre-2017 research (Hucklesby, 2015). The process of moving suspects to s.37(7) bail and back to s.37(2) if the CPS required further enquiries to be undertaken, was described as complex, confusing and time consuming. The introduction of gatekeeping teams to triage cases before they were sent to the CPS produced legally 'grey' time periods when the bail status of suspects was unclear.

PACE 1984 suspends the ABP whilst cases are with the CPS. Calculating the ABP when files moved backwards and forwards between the CPS and the police was subject to error and was one of the causes of bail lapsing to RUI.

### Decision-makers

Bail/RUI decisions have become primarily the responsibility of investigation teams, contrary to a fundamental principle of PACE 1984 whereby custody and investigation functions should be separated. Although custody sergeants were the final arbiters of initial decisions and influenced investigators' recommendations, they rarely had a direct impact on the decisions made. Their influence was limited to tweaking conditions and ensuring that suspects had an opportunity to voice any concerns about bail and/or conditions. Investigation teams were responsible for all bail/RUI decisions after suspects had been released from custody. Custody officers' roles were largely relegated to administrative tasks.

The role detention officers, i.e. civilian staff, played in the bail process varied with some practices raising concerns about whether they were doing what were, legally, custody officers' tasks.

### Bail Management Teams (BMTs)

Two of the three forces in the study had created BMTs. These were widely welcomed because they were a source of advice and oversaw all bail related matters after the initial release. BMT's tasks included sending reminders to officers

about suspects answering bail, actioning tasks sent to them by investigators, such as moving suspects from bail to RUI, and following up lapsed bails and suspects who failed to answer bail. BMTs contributed to bail and RUI being viewed as administrative processes rather than decisions which had implications for the lives of suspects and victims. They also appeared to result in the deskilling of investigators, allowing them to view the management of bail as someone else's role. There was some evidence that the approach of maintaining bail/RUI as part of the normal business of custody blocks deterred some of the questionable practices of investigation teams.

### **Extensions**

Bail review and extension procedures were created by the Policing and Crime Act 2017 to ensure that bail and any conditions remain necessary and proportionate and that investigations are being conducted expeditiously. The procedure was retained by the PCSC Act 2022, requiring extensions to be authorised every three months. Clear disincentives exist to refusing extensions because suspects would be moved to RUI or no further action taken, potentially leaving victims vulnerable.

Extensions by Inspectors at three months and Superintendents at six months were reported to be invariably authorised. Inspectors from investigators' own teams were responsible for authorising extensions at three months, raising concerns about the extent to which decisions were independent and maintained separation of investigatory and custody functions.

Extensions were a routine part of investigations which involved certain types of cases and/or evidence. Extension applications were made based on enquiries which were viewed as outside of investigators' control (forensic analysis, digital evidence and third-party material). Although there was some evidence that bail reviews ensured that investigations were completed within ABPs, they were also avoided by moving suspects onto RUI (see Figure 2). This was most likely to happen when investigators were responsible for the lack of progress. Such practices were sometimes condoned by some Detective Inspectors.

### **Breaches**

Despite changes made by the PCSC Act 2022 to incentivise the arresting of suspects for breaches of bail conditions, it rarely happened. A culture of inaction existed both in monitoring conditions and acting upon evidence of breaches. Conditions were viewed as 'toothless tigers', because PACE 1984 requires that suspects are re-released on the same conditions if investigations are not completed. As investigations were rarely ready to progress, normal practice was for breaches to be noted in the investigation log. There was little evidence that breaches were risk assessed or that risk influenced police responses. Arrests involved additional work for investigators (and custody blocks) which also functioned as a disincentive to act. This applied equally to arresting existing suspects for new offences.

### **Outcomes**

A third (31%) of individuals released on bail and RUI were charged, with a further 4% receiving out of court disposals. Two thirds (65%) of cases ended in no further action.

Most of those charged (73-80%) received a postal requisition rather than being charged in person. Postal requisitions were preferred because they were quicker and easier, but they resulted in bail and any conditions being removed during a period of heightened risk. Moving suspects to RUI to facilitate postal charging was also reported to occur frequently. The ability to charge suspects by postal requisition was one of the often-stated advantages of RUI.

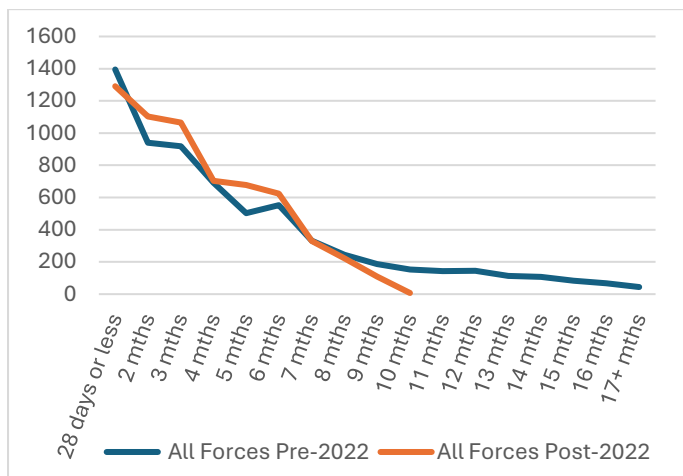
### **Time to disposal**

The PCSC Act 2022 increased the initial ABP from 28 days to three months. All forces invariably bailed suspects for three months using automatic calculators to do so. Little flexibility was reported in setting bail return dates, even when officers thought that enquiries could be completed more quickly. The 'policy' appeared to be driven by administrative convenience and expediency. It also appeared to have arisen from a mistaken interpretation of the law which conflated the ABP with the bail return date.

Statutory bail reviews influenced police behaviour. Officers worked to ABP deadlines,

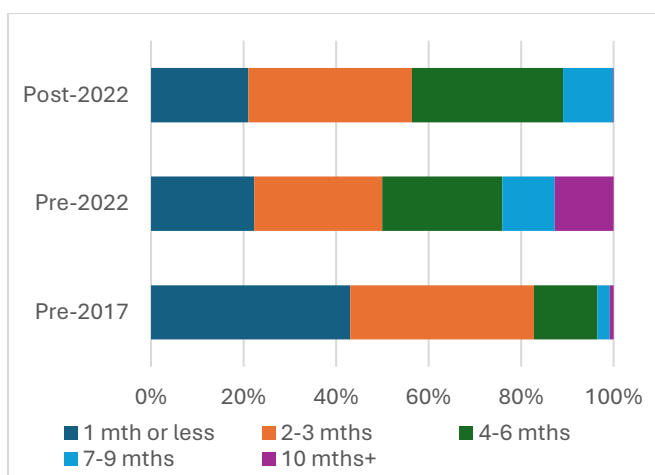
using the dates to manage their workloads and prioritise cases. Peaks in moving suspects from bail to RUI (see Figure 2) and case completions were apparent in the period immediately before review dates (see Figure 3).

**Figure 3 Time to disposal**



Lengthening the initial ABP in the PCSC Act 2022 increased the time suspects spent on bail or RUI. Cases took longer to complete on average post-2022 compared with pre-2017 and pre-2022. The mean time to completion increased post-2022 to 102 days from 94 days pre-2022. This is double the means found pre-2017 which were 46/47 days (Hucklesby, 2015). Pre-2017, 80% of cases were completed within three months compared with around half pre- and post- 2022 (see Figure 4).

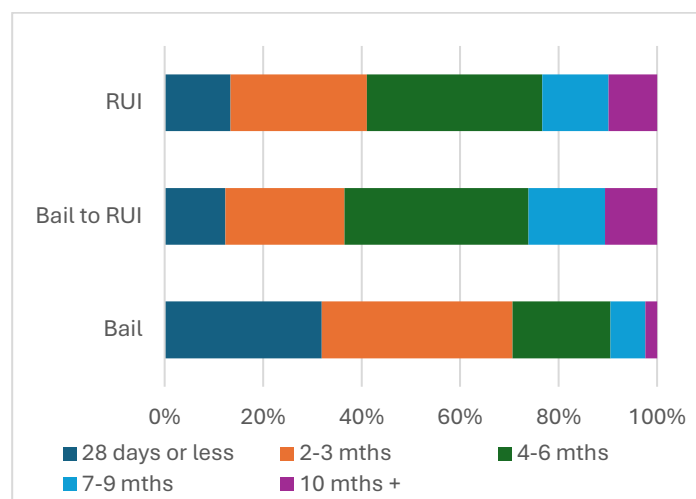
**Figure 4 Time to disposal by periods of legislative change**



When suspects were on bail cases were completed more quickly – 71% of bail cases were completed within three months compared with 42% of RUI cases and 36% of cases switched from bail to RUI (see Figure 5). At six months, over 90% of bail cases were completed compared with three quarters of RUI cases.

Post-2022, the mean time to completion for bail cases ranged from 71 to 96 days compared with a range of 104 to 186 days for suspects on RUI throughout the investigation. The highest mean completion times were for cases switched from bail to RUI (ranging from 141 to 186 days) suggesting that these cases may be moved due to a lack of progress with the investigation. These data confirm interview findings that bail cases were prioritised over RUI cases because bail was subject to reviews and extensions required approval.

**Figure 5 Time to disposal by bail status**



**Protected characteristics**

Some differences in bail/RUI decisions and outcomes according to protected characteristics, especially ethnicity and nationality, were apparent from the administrative data. These need to be explored by further research and closely monitored by the Home Office and individual forces. Protected characteristics should be taken into account when making bail/RUI decisions but the lack of significant differences between men and women and adults and juveniles raise questions about whether they were considered sufficiently.

Initial analysis suggested no significant variations in bail/RUI decisions according to ethnicity or nationality, but differences became apparent when more in-depth analysis was undertaken. Suspects from minority ethnic groups were more likely to be moved from bail onto RUI when controlling for offence type. British nationals from minority ethnic groups were more also likely to be switched from bail to RUI than all White suspects. Foreign national suspects from minority ethnic groups were

more likely to remain on bail throughout the investigation than White suspects and British Nationals from minority ethnic groups.

Differences were apparent in outcomes. White suspects and British Nationals were more likely to be charged than suspects from minority ethnic groups and foreign nationals.

### **Victims in the pre-charge bail process**

The PCSC 2022 required the police to seek victims' views on whether, and what, conditions should be imposed and notify victims of the conditions imposed and any changes to bail/RUI. These legal duties continue throughout the investigation.

Safeguarding victims was articulated to be the primary consideration in bail/RUI decisions. Victims were likely to be informed about police decisions at the beginning of the investigation, but there was less evidence that they were actively involved in decision-making. The research findings raise concerns about the authenticity of consultations, the use of standard bail conditions rather than fully considering what was necessary to enable victims to continue with their everyday activities, a lack of proactive monitoring of conditions, the police's reliance on victims reporting breaches, and a lack of responses to alleged breaches. Victim's organisations reported that these concerns were likely to result in victims not reporting breaches and withdrawing their cooperation.

The relationship between bail conditions and civil orders, including non-molestation orders and Domestic Violence Prevention Orders, was unclear with some officers viewing them as alternatives whereas victims' organisations saw them as mutually reinforcing. Another function of bail conditions from the perspective of victims' organisations was to send important messages of reassurance to victims and indicate to other institutions such as the family courts that the allegations were being taken seriously.

### **Conclusion**

The current approach to managing bail and RUI appears to be in line with the Statutory guidance which describes bail as 'an integral part of the investigation' (College of Policing, 2023, para. 5.2). It is also an expedient way for individual

officers to handle their workloads and for police forces to manage the number of people under investigation and their busy custody blocks. However, the research findings raise many concerns about whether suspects' and victims' rights are being protected sufficiently.

To ensure fair, workable and effective bail and RUI decisions and processes requires changes to PACE, the Statutory guidance and police forces' policies and practices as recommended in the report. However, the number of individuals on bail and RUI is large and growing, adding to pressures on police forces. Further scrutiny of initial decisions to investigate offences and, particularly what is and is not a reasonable line of enquiry, would assist with decreasing the number of individuals on bail and RUI and reduce the proportion of them that end up with no further action being taken.

### **Recommendations**

It is recommended that the **Home Office**:

1. amend PACE 1984 (and the Statutory guidance) to state that extensions must be authorised by PACE/custody Inspectors;
2. amend PACE 1984 to abolish the distinction between pre-charge bail (s.37(2)) and s.37(7) (CPS) bail which creates unnecessary complications and legally questionable practices;
3. consider removing the power to release suspects from custody on s.37(7) (CPS) bail recognising that cases are rarely sent to the CPS immediately;
4. consider the legal status of suspects on bail during the time that files are being prepared by investigators and reviewed by police decision-makers;
5. consider amending PACE 1984 to include a presumption of bail rather than the current neutral position;
6. consider whether custody officers should have responsibility for consulting and liaising with victims about the bail/RUI status of suspects; and
7. produce guidance to clarify the relationship between bail and RUI and civil orders and to reinforce the message that they should be used as mutually reinforcing safeguarding measures.

It is recommended that the **College of Policing**:

8. consider amending the Statutory guidance to state that unconditional bail should be used in preference to RUI;
9. strengthen the Statutory guidance to ensure that all changes to conditions are authorised by custody sergeants and amendments are communicated to suspects orally and in writing by custody sergeants;
10. amend the Statutory guidance to underline that the primary responsibility for bail and RUI decisions, and for managing bail and RUI, lies with custody departments rather than investigation teams;
11. provides further guidance on the tasks which can and cannot be undertaken by detention officers in relation to bail/RUI.
12. amend the Statutory guidance to ensure that cases can only be moved from bail to RUI during the investigation in exceptional circumstances, and with the authority of senior officers;
13. strengthen the Statutory guidance to clarify that all suspects initially released from custody on bail should be charged in person with the expectation that post-charge bail should be imposed with appropriate conditions;
14. amend the Statutory guidance to clarify that moving suspects from bail to RUI for the purpose of issuing postal requisitions should only be done in exceptional circumstances; and
15. amend the Statutory guidance to clarify that bail return dates may be shorter than the Applicable Bail Period and should be set with reference to the expected time required to undertake outstanding investigations.

It is recommended that **police forces**:

16. strengthen review procedures to ensure that bail, including any associated conditions, is no longer necessary and proportionate before it is removed;
17. monitor the use of RUI throughout investigations and not just at the point suspects are released from custody;
18. put processes in place to monitor the use of postal requisitions when suspects are

on bail;

19. put additional training in place to underline the importance of authentic consultation with victims in relation to the bail/RUI status of suspects;
20. put mechanisms in place to comprehensively monitor the use of bail and RUI throughout investigations for all protected characteristics.

### **The research project**

The project investigated the use of bail and RUI before and after the PCSC Act 2022. It was undertaken in three police forces between March 2023 and April 2024. Data include: 18 days of observations in custody blocks, administrative data relating to 16,093 custody records from before (May and June 2022) and after (January and February 2023) the PCSC Act 2022 came into force, 271 surveys completed by police officers and interviews with 97 police officers and four victims' organisations. The data closely matched that collected in a previous study in the early 2010s (Hucklesby, 2015; 2021) facilitating a comparison between three time periods when different legal frameworks were in place – pre-2017, pre-2022 and post-2022.

### **References**

- Centre for Women's Justice (2019) *Super-complaint on police use of protective measures in cases involving violence against women and girls*, at <https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5c91f55c9b747a252efe260c/1553069406371/Super-complaint+report.FINAL.pdf>
- College of Policing (2023) *Pre-charge bail: statutory guidance*, London: Home Office at <https://assets.publishing.service.gov.uk/media/63ff27fa8fa8f527fb67cb02/Pre-charge-bail-statutory-guidance-web.pdf>
- Hucklesby, A. (2015) *Pre-charge bail: an investigation of its use in two police forces*, University of Leeds at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail>
- Hucklesby, A. (2021) 'Pre-charge bail and release under investigation (RUI): an urgent case for reform', *Criminal Law Review*, 2: 79-94

The full research report and more information about the research are available at: <https://birmingham.ac.uk/prechargebail> or by contacting Professor Anthea Hucklesby, University of Birmingham, UK (A.Hucklesby@bham.ac.uk).

© September 2024