

Pre-charge bail and released under investigation: Striking a balance

This inspection was a joint thematic inspection led by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and supported by Her Majesty's Crown Prosecution Service Inspectorate (HMCPIS). The inspection assessed the way in which police forces have responded to changes to bail, and in particular the introduction of the presumption of release without bail (RUI), as introduced by the Policing and Crime Act 2017. The inspection took place between September 2019 and April 2020 and the report was published on 8th December 2020. A response is due by 2nd February 2021.

Key findings:

Protecting the victim

- Too little consideration has been given to how bail legislation changes would affect victims
- RUI leaves too many victims without the reassurance and protection that bail conditions can provide
- All too often, the police don't seek the views of the victim when deciding whether to bail a suspect and impose conditions
- The police don't always inform the Crown Prosecution Service that a suspect has been RUI

The effect on suspects

- Suspects who are RUI are rarely told about progress in the investigation

Delays in investigation

- The police often give RUI cases less priority than bail cases, meaning investigations take much longer than they should
- In too many cases, the decision to release a suspect under investigation rather than bail happens because of delays in digital forensic analysis
- Suspects often move from bail conditions to RUI after 28 days
- Not all cases are charged as early as they could be, when the investigation has been completed by police and while the suspect is in custody

The national picture

- There is no accurate local or national picture of bail and RUI
- Few forces comply with national guidance in relation to RUI

Recommendations

The report makes ten recommendations, two of which apply to police forces:

- Forces should develop processes and systems to clearly show whether suspects are on bail or RUI. This will help them to better understand the risk a suspect poses to victims and the wider community and will help to increase safeguarding.
- Forces should record whether a suspect is on bail or RUI on the MG3 form when it is submitted to the CPS. This should be regularly checked and any changes in bail or RUI provided to the CPS. The CPS should work with the police to ensure this information is provided.

The full report can be viewed here:

<https://www.justiceinspectrates.gov.uk/hmicfrs/wp-content/uploads/pre-charge-bail-and-released-under-investigation-striking-a-balance-1.pdf>

Chief Constable's response

I am very grateful for the joint HMICPS and HMICFRS report "Pre-charge bail and released under investigation – striking a balance".

The report identified two recommendations for Police Forces and I am pleased that significant progress is already being made towards these by our Criminal Justice teams.

The first recommendation relates to developing processes and systems to clearly show whether suspects are on bail or released under investigation in order to better understand the risk posed by the suspect to victims and the wider community, and to increase safeguarding. In Devon & Cornwall a RUI (released under investigation) team were established in December 2019 who manage and review all crimes where the suspect is released under investigation, and review suspects on police bail, using a specifically developed report. Key elements of the review include statutory time limits for offences and working with officers to ensure their prosecution files are completed and submitted according to timescales. The RUI team successfully worked through a backlog of cases that arose prior to the team's arrival. Each week the team proactively provide Inspectors and Superintendents with details of cases that may be coming up to certain time limits for review to ensure investigations and file submissions are progressing accordingly, thus reducing risk and continuing to identify opportunities for safeguarding. Processes to report on compliance are currently being developed with accountability through the Investigation Standards Board. The team are also expanding their responsibilities to include reviewing action plans and encourage communication internally and with partners to ensure issues are identified and resolved at the earliest opportunity.

The second recommendation relates to recording whether a suspect is on bail or released under investigation using a MG3 (a communication form between officers and the Crown Prosecution Service) which should be regularly checked and updated with any changes. The recommendation also states CPS should work with the police to ensure this information is provided. Again, I am pleased to report progress against this recommendation is already underway. A request has been made to our IT contractor to make the required changes to our file preparation system. Whilst there are some final costings to be completed before this and some other documents are made live, there is traction against this recommendation. Devon & Cornwall Police has an excellent working relationship with the Crown Prosecution Service in the South West, and I have every confidence in effective and efficient reciprocal communication channels to ensure this information is provided.

Safeguarding residents of and visitors to Devon & Cornwall remains at the heart of our policing service, and I welcome the report which highlights ongoing opportunities to ensure this continues to be delivered to a high standard.

Police and Crime Commissioner's response

The Commissioner welcomes this report, which highlights a number of unintended but important consequences brought about by legislative changes to bail, in particular the presumption of RUI. The report is clear that nationally police forces have worked hard to implement the new legislation, but that the Home Office's lack of focus on victims through the development of the legislation, along with the speed of change required and insufficient provision of guidance has created some problems.

Whilst the report recognises that the necessary changes should be led by the Home Office and the College of Policing through legislative review and improved guidance and training, there are some changes that police forces are being asked to make now to enable them to better understand risk and protect victims.

The Commissioner says:

“Protecting vulnerable people and supporting victims should be at the heart of what we do in the criminal justice system, and as the PCC for Devon and Cornwall, I am concerned about the potential impact of the RUI presumption on victims, particularly vulnerable victims, who may be at left at greater risk without the protection offered by bail conditions. I am also concerned about the impact of delays in investigation on the delivery of justice, and the effect of delays on both victims and suspects.

While many of the necessary improvements require change at a legislative level, I am pleased to see that the Chief Constable has already made considerable progress towards achieving the recommendations aimed at police forces, namely putting in place systems and processes which clearly show whether suspects are on bail or RUI to better assess risk, and ensuring that bail or RUI information is routinely shared with the CPS.

In addition, I very much welcome the report's recommendations aimed at reviewing bail legislation and providing more robust guidance on the use of RUI, and I am pleased to see that this inspection report was passed to the Home Office as part of their recent consultation on pre-charge bail. The Government published their response to this consultation on 14th January which provides further assurance that these issues will be addressed through legislation in early 2021, and I look forward to seeing the impact of these changes on the ground”.