**Pre-charge bail and release under investigation (RUI): an urgent case for reform**

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**Abstract**

Pre-charge bail has existed for decades but the current legal powers are enshrined in the Police and Criminal Evidence Act (PACE) 1984. It is a mechanism for the police to release suspects under an obligation to return to police stations and, where necessary, comply with conditions whilst investigations are concluded. After several high profile cases and concerns about both the number of suspects on bail and the length of time spent on bail, the law was changed in 2017. The Policing and Crime Act 2017 introduced a presumption against bail; enshrined a duty to use bail only when it is both necessary and proportionate; and, introduced a review procedure which involves judicial oversight. Since the Act came into force the use of bail has declined steeply and a new pseudo legal category of ‘release under investigation’ (RUI), which is entirely unregulated, is utilised extensively. As a result, the Government has signalled its intention to change the law to promote the use of bail, where appropriate, and regulate RUI. This is simply tinkering with the system which is unlikely to result in the wished for outcomes. Instead wholesale reform of the legal framework is required.

**Background**

Until relatively recently pre-charge bail was an unremarkable police power that had attracted very little attention from policy-makers and researchers alike. Two sets of events changed this position and attracted media and political attention which has continued. The first of these was the decision in *Hookway[[2]](#footnote-2)* in the summer of 2011. This case revolved around whether the time suspects spend on bail without charge counts as time in police detention which is limited to 36 hours by the PACE 1984 in most cases. The law was quickly amended to revert back to its original position, whereby time spent on bail was unlimited, but attention had been drawn to pre-charge bail. The second set of events was a series of high profile cases involving historical allegations of sexual abuse/assault which resulted in concerns about very long bail periods which ended with no charges being laid.[[3]](#footnote-3) These events led to calls for maximum time limits for pre-charge bail to be enshrined in law.[[4]](#footnote-4)

Prior to 2017, a large number of individuals were subject to pre-charge bail. It was estimated that around 85,000 suspects were on pre-charge bail at any one time[[5]](#footnote-5) in England and Wales and 300-400,000 in a twelve month period.[[6]](#footnote-6) Around a third of suspects brought into police custody were subsequently released on pre-charge bail.[[7]](#footnote-7) Concerns were also raised about the considerable time some suspects spent on bail. Although evidence suggested that less than a tenth of suspects were on bail for over six months, the absolute numbers were significant (around 26,000 per year).[[8]](#footnote-8) In addition, a small number of individuals were on bail for very lengthy periods of time.[[9]](#footnote-9) Research also found that managing the pre-charge bail process was not a policing priority.[[10]](#footnote-10) Most police forces were not monitoring the use of pre-charge bail and were unable to provide accurate figures of those on bail or the length of time spent on bail.[[11]](#footnote-11)

During the debates very little was said about outcomes of the investigations largely because data are not available. However, it is clear that a relatively high proportion of suspects subject to pre-charge bail are not charged or proceeded against in other ways. The Home Affairs Committee suggested that a third of cases ended in no further action.[[12]](#footnote-12) Hucklesby found that nearly half of cases were not proceeded and that outcomes varied by offence type and within forces. [[13]](#footnote-13) Of significance is that cases involving defendants from BAME backgrounds were more likely to result in no further action.

During the debates preceding the 2017 Act, the blame for the excessive use of pre-charge bail was firmly laid with the police. Whilst they are the decision makers, pre-charge bail is part of a process and changes and pressures elsewhere in the criminal justice process have contributed to its increasing use. Cape and Edwards identify the long-term trend for arrests to take place towards the beginning of investigations rather than the end as a clear driver for increased use.[[14]](#footnote-14) Hillier and Kodz highlight: the number of unplanned arrests; policies to arrest everyone suspected of specific offences such as domestic violence; target response times which limit the quality of initial investigations; and, Crown Prosecution Service (CPS) performance pressures.[[15]](#footnote-15) Police officers in Hucklesby’s study suggested that initiatives aimed at speeding up cases in courts, and dealing with cases at first appearance, had also contributed to the rise in its use.[[16]](#footnote-16) A step was also added to the process to enable the CPS to make charging decisions.

As a result of the focus on the excessive use of pre-charge bail, the law was changed to limit its use by the Policing and Crime Act 2017. It enshrined a presumption against the use of bail and introduced a review procedure when bail was imposed, including strict time limits. These changes were made despite widespread concerns from the police, CPS and others that the time limit was unrealistic.[[17]](#footnote-17) The legal change has had dramatic effects. The number of suspects released on pre-charge bail has dropped significantly with many suspects now being ‘released under investigation’ (RUI). Unlike suspects released on pre-charge bail, those RUI cannot be made subject to conditions. This has been raised as a major concern because bail conditions are used to add an element of control and provide a mechanism for safeguarding victims and witnesses whilst investigations are completed.[[18]](#footnote-18)

This paper will first examine the changes to the law demonstrating that the law is complex and difficult to navigate, before analysing the changes which have taken place in the investigation process as a result of the legislative changes. The paper concludes by examining possible futures for pre-charge bail law suggesting that a wholesale restructuring of the legal framework for pre-charge bail is required.

**Pre-charge bail law**

The Policing and Crime Act 2017 amended PACE 1984 is an attempt to limit the use of bail.[[19]](#footnote-19) S. 37(2) and s. 47(2) of PACE enshrine a presumption against bail when further investigations are necessary.[[20]](#footnote-20) The law requires that suspects must be released without bail unless the conditions for bail are satisfied. Three conditions need to be met before suspects can be bailed: one, further time is required to gather evidence to make a charging decision; two, the investigation is being carried out diligently and expeditiously; and three, bail is both necessary and proportionate. At the same time, s. 37(6c) was amended so that suspects can be prosecuted if new evidence comes to light, even if they have been told previously that no further action would be taken. S. 47(2) also allows for the rearrest of suspects following their release if new evidence comes to light or an examination of evidence which already existed, but which could not reasonably have been analysed, provides new evidence. This removes one of the obstacles to releasing suspects without bail highlighted in Hucklesby’s research.[[21]](#footnote-21) This research found one of the reasons why interviewees had a strong preference to impose bail, rather than simply releasing suspects pending further investigations, was that they were unclear about what constituted new evidence which would enable them to rearrest suspects.

The Policing and Crime Act 2017 also amended the PACE 1984 to introduce time limits for those released on bail by the police without charge.[[22]](#footnote-22) Suspects can be bailed to return to the police station to allow further investigations to be carried out for 28 days initially, which may be extended to three months by senior police officers and up to 12 months by magistrates’ courts.[[23]](#footnote-23) In standard cases,[[24]](#footnote-24) reviews by magistrates’ courts must take place at three and six months and may take place at nine months. The review process introduces judicial oversight and aims to provide assurances that bail remains necessary and proportionate and that investigations are being conducted expeditiously. Court reviews require investigating officers to make applications. The application forms are lengthy and complex, requiring officers to provide detailed information about the suspect and the case on a five page form with a further four pages of guidance notes.[[25]](#footnote-25) Applications for extensions are normally determined without oral hearings, unless an extension would take the bail period beyond 12 months when they become mandatory.[[26]](#footnote-26) Other exceptions are if the court decides that an oral hearing is necessary or if suspects request one.[[27]](#footnote-27) Police officers must attend oral hearings either in person or via live link. Whilst it is important that the extension process is not simply presentational, a balance must be struck. A process which is viewed as burdensome and bureaucratic is likely to be by-passed whenever possible, especially given the long history of antipathy of the police towards ‘bureaucratic’ accountability mechanisms which are viewed as taking the police away from their ‘real’ work.

RUI did not exist as a pseudo legal category before the 2017 Act and is completely unregulated. Although it was always possible to release suspects whilst investigations continued without bail it rarely happened.[[28]](#footnote-28) Suspects who are RUI are under no obligation and conditions cannot be imposed. The police are required to notify them when investigations are complete. If they are to be charged they are most likely to receive notification via the postal charging scheme which can cause problems if suspects have changed address.[[29]](#footnote-29) There is no legal obligation for the police to keep suspects informed of progress with the case thereby providing no mechanism for review. Despite National Police Chief’s Council (NPCC)[[30]](#footnote-30) guidance stressing that it is good practice to provide regular updates, this does not always happen in practice.[[31]](#footnote-31) As a result, suspects (and victims) are left in a legal limbo, potentially for long periods of time.[[32]](#footnote-32) The police themselves acknowledge that bail dates are important markers to ensure investigations progress and allow immediate supervisors to review progress. Without them, cases may be left incomplete mainly because of the pressure of dealing with the constant influx of new cases.[[33]](#footnote-33) The longer an investigation takes the more likely it is to be discontinued.[[34]](#footnote-34)

**Bail conditions**

Conditions may only be imposed on suspects who are on bail and not those on RUI. In many ways this is to be welcomed. The use of bail conditions throughout the remand process has been increasing, leading to important concerns about whether their use is always necessary, appropriate and proportionate as well as questions about their effectiveness. However, bail conditions, when used legitimately can assist with managing the risks of absconding, and offending and/or interfering with victims/witnesses and reduce the use of custodial remands. Historically, bail conditions have been used, *inter alia*, by the police as a safeguarding tool, primarily through the use of exclusion zones and prohibiting contact with particular individuals. However, the decreasing use of bail and the rise in RUI has removed this option in many cases. This has been a major cause for concern, particularly in relation domestic violence cases, and is one of the main reasons for calls to change the law.[[35]](#footnote-35) One possibility, however, is that the perceived need for conditions is what distinguishes cases in which suspects are released on bail or RUI. Making any further legal changes without a full appreciation of how and why conditions are currently being used may have serious and unforeseen consequences and is unwise.

No data are available on when and which conditions are used but interviewees reported that ‘banning’ conditions i.e. those which require suspects to keep away from people and places were most likely to be used,[[36]](#footnote-36) mirroring the use of conditions for police bail after charge.[[37]](#footnote-37) In Hucklesby’s research the policy in one force was not to impose conditions but officers disapproved of this policy and worked around it when they felt it was necessary by utilising different sections of PACE 1984 to bail suspects.[[38]](#footnote-38) In the other force, they were used frequently, in two thirds (67%) of cases. In this force, conditions were regarded by officers as an integral part of pre-charge bail and using them was one of the major reported reasons for bailing suspects. They were most frequently used to control suspects and were inexorably linked to safeguarding i.e. with the aim of providing some protection for victims and witnesses. However, their effectiveness is limited. Firstly, because breaches are unlikely to be discovered as it requires either random checks by officers which has workload implications, luck that officers see and can identify suspects who are somewhere they should not be or for breaches to be reported by victims, witnesses or other members of the public.[[39]](#footnote-39) Secondly, by the limited options available when breaches become known. The police have the power to arrest suspects who they have reasonable grounds for believing have breached their conditions and bring them into custody. By doing so the original detention clock restarts using up valuable time which may be needed to conduct interviews at a later stage in the investigation. However, unless cases are ready to proceed or the breach leads to a view that the Threshold test for a custodial remand has now been reached, the only option legally is to re-release suspects with the same conditions.[[40]](#footnote-40) As a result, bail conditions were referred to by officers as ‘toothless tigers’.[[41]](#footnote-41) They suggested that the only advantage of arresting suspects for breaches of pre-charge bail was that it could lead to the case meeting the Threshold test for a custodial remand and/or bolster custodial remand applications if suspects were charged.[[42]](#footnote-42) Yet, officers also had a strong belief that custodial remand applications made as a result of breaches of post-charge or court bail conditions resulted in suspects being re-released on bail.

**The changing landscape of pre-charge bail**

This section analyses the available evidence on the use of bail/RUI since the 2017 Act was enacted. It first examines the evidence relating to the number and proportion of suspects on pre-charge bail and RUI before exploring time spent on bail and extensions to bail.

*Use of bail*

The evidence suggests that the use of pre-charge bail has declined sharply and the use of RUI has become common since the Policing and Crime Act 2017 came into force. However, any attempt to assess the impact of the legal changes made in 2017 is hampered by a lack of data. No official data were published on the use of pre-charge bail before the legal changes. The Home Office published data on pre-charge bail for the first time in 2018/19.[[43]](#footnote-43) The data are labelled as ‘experimental’ because their accuracy cannot be assessed and they are incomplete, having been collected by 41 police forces on a voluntary basis. According to these data, around 86,000 suspects were released on pre-charge bail in the year ending March 2019, suggesting a significant decline from the pre-2017 estimates of around 80,000 at any one time. No official data are published on the use of RUI.

Data collected from freedom of information requests to 31 police forces also suggest a shift away from the use of bail.[[44]](#footnote-44) According to these figures the number of suspects bailed between 2016/17 and 2017/18 declined by around three-quarters from 186,917 to 43,923. The use of bail dropped in every force except two. The number of individuals RUI in the same forces was 115,148 in 2017/18. These data seem to suggest that forces may be using RUI instead of bail. However, even if RUI is directly replacing pre-charge bail, the total number of individuals under investigation has declined by nearly 28,000. This is progress, given concerns about the overuse of pre-charge bail historically.

Worryingly, the move away from bail may have increased rather than decreased the total number of suspects RUI and on bail. Data show that in some forces the number of suspects on bail and RUI combined is greater in 2017/8 than the number on bail in 2016/7. In nearly half (n=14) of the 31 forces the total number of suspects released under police investigation had increased. Increases ranged from 10 per cent or under in two forces (Cheshire and Cumbria) to well over double in five forces. For example, Merseyside had 3,874 suspects on bail in 2016/17 compared with over 16,000 RUI and on bail in 2017/18. Similarly, Lancashire had 843 suspects on bail in 2016/17 compared with over 6,000 RUI and on bail in 2017/18. It is possible that these data are an artefact of different/better recording and/or that less suspects are being detained whilst investigations are undertaken.[[45]](#footnote-45) However, they suggest that the police may be readily releasing suspects under investigation who would not have been bailed in the past, increasing the total number of suspects in the system.

Hucklesby’s research provides an indication of why the drop in pre-charge bail may have occurred and why the number of suspects on bail and RUI combined may have increased.[[46]](#footnote-46) Interviewed police officers suggested that they would bail suspects even if the chances of collecting sufficient evidence to charge were slim. As long as there was a chance that the investigation would uncover evidence they would bail them ‘just in case’. Given that the level of scrutiny of decisions to RUI is likely to be lower, its use fits into this ‘just in case’ culture. Within this culture, police officers are unlikely to decide to take no further action when they can RUI without scrutiny, leaving the potential, however remote, of a ‘successful’ case outcome. Whilst this is a plausible explanation detailed data on trends in the use of no further action prior to either RUI or on bail pre- and post- implementation of the new law would need to be scrutinised in order to assess its accuracy. This point does, however, highlight again the importance of looking at pre-charge bail as part of a process and not in isolation.

A second cultural reason for using RUI in a broader range of cases, is that it provides the police with a hassle free way to ensure that suspects attend the police station for further questioning or to be charged. From a police perspective, some of the benefits of bail are that it ensures that suspects are under an obligation to return to the police station and provides a way for officers to keep tabs on suspects during investigations and a reason to visit them. Whilst RUI does not provide the same level of control over suspects, it does retain most of the benefits of bail for the police i.e. that they have a reason to seek suspects out and that suspects may feel and/or believe that they are under an obligation to cooperate, for example by attending a police interview voluntarily, without the deadlines, scrutiny and regulation associated with bail.

The knock-on effects of changes in the use of bail and RUI seem to have been far-reaching. Pre-charge bail is only the first decision point in the bail process. Once suspects are charged the police take a second decision whether to detain, bail or release suspects whilst awaiting their first court appearance.[[47]](#footnote-47) This decision will take account of any previous bail/RUI decision. For example, the necessity of bailing suspects who have been RUI without any problems would be, rightly, difficult to justify. Official data show that the use of post-charge bail has declined since 2017.[[48]](#footnote-48) The proportion of defendants appearing in court on bail dropped from 26 per cent in 2015 to 15 per cent in 2019. This has coincided with an increase in defendants appearing in magistrates’ courts having not been remanded on bail or detained by the police from 64 per cent in 2015 to 77 per cent by 2019. Of concern, is that the reduction in the use of post-charge bail has been greater in cases involving more serious offences. For indictable offences, the proportion not remanded by the police increased from 9 per cent in 2015 to 33 per cent in 2019. By contrast, the proportion bailed by the police post-charge dropped from 39 per cent to 17 per cent.[[49]](#footnote-49) These data suggest that the concerns about the decline in the use of bail should not be restricted to pre-charge bail.

The decreasing use of pre-charge bail may also be a factor in the decline in prosecutions and the number of cases resulting in a charge or summons.[[50]](#footnote-50) Cuts to police budgets etc. have been identified as probable causes of the decline but there has been little awareness of the potential role played by changes to pre-charge bail.[[51]](#footnote-51) Investigations when suspects are RUI may be pursued less thoroughly or expeditiously because the police do not have the pressure of bail dates. Bail dates and, particularly, reminders of when they are coming up, have been identified as important prompts for officers to complete or chase up outstanding investigations. Cases in which suspects were released without bail whilst investigations were carried out pre-2017 were reported to lose momentum and languish unfinished on IT systems.[[52]](#footnote-52) This is a problem which has also been reported post 2017.[[53]](#footnote-53)

*Time on bail*

No official data are available on the length of time suspects spent on pre-charge bail prior to legislative change. The initial bail period of 28 days mandated by the Policing and Crime Act 2017 seems to have been set arbitrarily and is significantly shorter than the time that research and stakeholders suggested was needed for a rigorous investigation to be completed. Prior to 2017, evidence suggests that the median time spent on bail was around 46-47 days, equating to between five and six weeks.[[54]](#footnote-54) This research also suggested that most suspects were on bail for relatively short periods with the majority on bail for less than two months.[[55]](#footnote-55) This trend appears to have continued with Home Office experimental data for 2019 suggesting that the majority of suspects spent 28 days or less on bail (57%, n=49014).[[56]](#footnote-56) A relatively small number of suspects spent over six months (11%, n=9318) on bail with a further tenth on bail for between three and six months (11%, n=9403).[[57]](#footnote-57) These data also provide an indication of the workload involved in the review process, indicating that at least one extension application was required in over 37,500 cases during 2019.

Knowledge of the reasons for bailing suspects is crucial to determining how long is too long spent on bail. A complex mix of cultural, organisational and practical factors play a part in initial and subsequent decisions about the length of bail periods. For example, officers’ shift patterns play a part in setting bail dates.[[58]](#footnote-58) The increasing sophistication of forensic techniques is often mentioned as one of the causes of the rise in pre-charge bail prior to 2017. It is certainly true that the types and complexity of evidence which needs to be examined has changed resulting in more lengthy timescales for completion.[[59]](#footnote-59) But, this rather simplistic explanation belies the complexity of the relationship between police behaviour and the need for forensic examination of evidence. The availability of ever more sophisticated forensic tests leads officers to believe that it is worth testing as much of the available evidence contributing to the ‘just in case’ culture described above. Furthermore, significant delays in receiving the results of forensic tests have been reported because of their complexity, a lack of capacity in forensic services and delays in other agencies and the CPS.[[60]](#footnote-60) This challenges the simplistic explanation underpinning the changes in law relating to pre-charge bail that the delays are exclusively or primarily explained by police practices. As nearly all interviewees in Hucklesby’s study pointed out, the police are often reliant on other individuals and agencies for the timely return of forensic test results as well as other evidence.

*Extending bail periods*

Setting a bail period at the start of an investigation will always be an (best) estimate given that investigations are dynamic. Extending bail periods (rebailing) is inconvenient for suspects and increases uncertainty but was common practice before 2017. Research suggests that around two fifths of suspects were ‘rebailed’.[[61]](#footnote-61) There is a clear tension between setting short bail periods and the potential need to extend bail periods which leads to differentially practices and rebailing rates in and between forces.[[62]](#footnote-62) Various workarounds are used by the police to avoid the need to book suspects into custody to rebail them to reduce the resource burden.[[63]](#footnote-63) As a result, cases were not routinely reviewed and no fresh assessment of whether bail, and any bail conditions, remained proportionate and necessary or the likelihood of prosecution took place.

Since 2017, RUI appears to have been utilised as a workaround to avoid the ‘bureaucratic’ review process associated with the use of bail. The likelihood of cases being concluded within the initial bail period of 28 days is slim so it is simpler and easier for the police to use RUI. This line of reasoning provides an explanation of why suspects in cases involving allegations of serious offences may be more likely to be RUI – it is a mechanism for the police to avoid adding to their workloads and managing their time when resources are limited and investigations likely to be lengthy.[[64]](#footnote-64) RUI fits into the trend for more informal police practices during the investigation stage including the rise in the use of ‘voluntary attendance’, which largely bypass the strict regulations provided by PACE 1984[[65]](#footnote-65) by avoiding the use of arrest and detention wherever possible.[[66]](#footnote-66)

**Current proposals for reform**

The history of workarounds in this area of the police work (and others) demonstrates the need for caution in proposing any further legal changes. The Home Office has undertaken a consultation in which it states its intention to amend the current pre-charge bail framework.[[67]](#footnote-67) It sets out a number of options for consideration. It proposes removing the presumption against bail brought in by the 2017 Act and replacing it with a requirement that bail must be necessary and proportionate. It also adds a requirement for certain factors to be considered when deciding if bail is appropriate. These are: severity of the alleged offence; a need to safeguard victims and witnesses; to prevent offending; to manage risks of absconding; and to manage the risk to the public. Whilst the repeal of the presumption against bail and creating legal criteria on which decisions should be based will be welcomed by some, the devil is in the detail. Some of the criteria (e.g. managing risks to the public) are so broad as to be meaningless and would enable the police to justify the use of bail on nearly every occasion they deem necessary. They also do not map onto the grounds in the Bail Act 1976 resulting in inconsistency at different stages of the remand process.

The consultation also proposes a number of new models of review. These include initial reviews being conducted by custody officers and taking place later (at either two or three months) than currently (28 days) and subsequent reviews being undertaken initially by senior police officers and latterly by magistrates. Judicial oversight would begin at somewhere between six and nine months compared with the current three months. The aim of these changes is to reduce the number of cases requiring review by both the police and the courts. The initial time which can be spent on bail before a review is required will be at least 60 days. A two month initial bail period is a pragmatic and sensible compromise which would ensure that the majority of cases are completed within the initial bail period. It might also reduce the current disincentive to use bail because of the unrealistic time limit of 28 days whilst continuing to incentivise the completion of cases expeditiously.

The consultation recognises the need for guidance to manage the use of RUI. It proposes a system of review for RUI which mirrors that for bail but which is set out in a code of practice rather than in legislation and carried out solely by the police with no judicial oversight. Consequently, the code would be a form of guidance which has no legal status and is not legally enforceable. Unless RUI is given a legal status and enshrined in PACE 1984 or similar legislation it is not possible to have a legally enforceable system of review or for it to be regulated by the PACE codes of practice. As a result, the proposed review process adds little to the existing NPCC’s guidance and is unlikely to provide effective oversight of decisions or act as an incentive to use bail instead of RUI. In short, the problem created by the 2017 Act would remain.

Without putting RUI on a statutory footing, the alternative is to enshrine a presumption of bail with exceptions into law. [[68]](#footnote-68) Whilst this does not exclude the use of RUI it would send a clear message that bail was the preferred option. It would also ensure consistency of approach to bail across the different stages of pre- and trial processes. However, this alone will not incentivise the use of bail unless the review process is both effective, in the sense of protecting suspects’ and victims’ rights, and efficient and workable for the police, courts and suspects and their representatives. To facilitate an effective and workable review process for the additional numbers on bail, a system of full and light touch review points could be created. Full reviews would take place at two, four, six and 12 months and at four monthly intervals thereafter. They would involve a rigorous examination of cases with all parties present in court. This would ensure that the process is transparent, procedurally just and not simply presentational. Light touch reviews would take place at two monthly intervals when full reviews are not required. The right for suspects to be legally represented and for victims to be updated about the bail status of suspects should be enshrined in law. For parity, a similar review process would be required for RUI but this cannot be left to the police to oversee because the research evidence shows that police officers, whether they are custody officers or senior leaders, invariably confirm the decisions of investigating teams.[[69]](#footnote-69)

Whilst this proposal should increase the use of bail and decrease the use of RUI, like the Home Office’s proposal, it only tinkers with the system rather than overhauls it. The different legal status of bail and its accompanying legally enforceable review process will always make it more onerous for the police to use than RUI, thereby acting as a disincentive. In such circumstances the danger is that the police find different workarounds to circumvent any new regulatory procedures which will create new and different problems. For example, mandating the use of bail in all cases or prohibiting the use of RUI by law may result in a rise in the number of suspects released with no further action and rightly lead to a public outcry. Making bail compulsory in some cases, for example those involving alleged domestic violence, might work but the perverse incentives would remain.

Whilst limiting the time available for investigations might appear to be a silver bullet, the danger is that it would also lead to investigations being dropped prematurely, some avenues for investigation not being pursued rigorously and no further action becoming the default option. There is also a risk that the police begin to apply for more extensions to detain suspects in custody for investigations to be completed. The Home Office proposal is also based on flawed view that delays in investigations are always avoidable. Investigations take as long as they do for a complex set of reasons which include a lack of capacity in forensic science services, officers’ shift patterns, availability of witnesses, priority being given to live cases in custody, new linked cases being uncovered as well as the time taken for the CPS to make a charging decision.[[70]](#footnote-70) Police culture plays its part and limiting the time available for investigations may be part of the solution but only alongside other measures including increasing the capacity of forensic sciences services. Setting time limits is also not straightforward and raises some complex questions. These include whether one time limit would be set for all investigations or different time limits for investigations into different types of offences and how would these be decided. Any time limit which was set would be arbitrary – too long and it would risk being meaningless, presentational and lengthening rather than shorten investigation times. If it was to short the risks discussed above might play out. In common with other time limit procedures there would need to be a mechanism for dealing with exceptional circumstances which required longer investigation times. These would put additional pressure on the courts, particularly if the procedure is to be rigorous and meaningful rather than presentational. Another consideration is that such procedures often lead to applications being routinely approved.

A third section of the Home Office consultation addresses questions about the effectiveness of bail conditions and asks specifically, whether a solution might be to make breaches of conditions criminal offences. There are several reasons why this is not desirable and/or feasible, some of which mirror discussions in the 1990s about whether offending on bail should a criminal offence.[[71]](#footnote-71) The main argument against such a proposal is that suspects may end up with a criminal conviction for breaching a condition of pre-charge bail related to an investigation which ended in no further action or no conviction for the substantive offence(s). Given that around half of all suspects subject to pre-charge bail are not proceeded against, the likelihood of this situation arising is high. The second argument is the substantial gap between reasonable suspicion, the legal threshold for arresting suspects who have alleged breached conditions, and beyond reasonable doubt required for criminal convictions. One result of this gap may be that the incidence of proven breaches of bail conditions is much lower than alleged breaches as was found to be the case with offending on bail.[[72]](#footnote-72) The third issue is the significant investment of police, CPS and court time and resources required to ensure that suspects have a fair hearing which complies with the standards of criminal procedure and evidence. It is also likely that the time suspects spend on pre-charge bail will increase militating against the intention of the 2017 legislative changes. The fourth argument is one of sentencing. Even if a breach of a condition was proven, the actual sentence is likely to be swept up into a concurrent sentence for the substantive offence(s), thereby limiting any supposed incapacitate or deterrent value. Fifthly, many breaches are minor and may be unintentional and this is likely to be one reason why the police may not take action when they are uncovered. In these circumstances, making breaches a criminal offence not only raises issues of proportionality but if suspects believe that they have been treated unfairly they may be less likely to comply with conditions and/or any sentence in the future.[[73]](#footnote-73) As outlined above, the police already have the power to arrest suspects and apply for a custodial remand if the alleged breaches are serious and/or involve other alleged offences. Finally, the current procedure echoes that for post-charge bail and court bail so any change would result in inconsistencies between different types of bail.

All current proposals fail to deal with the systemic and long-standing problems with the legal framework for, and use of, pre-charge bail. The remainder of this section will briefly examine a number of fundamental issues with the law governing pre-charge bail which points to the need for a wholesale review and subsequent reform of this area of law and procedure.

Legally, there are two different stages during the pre-charge process when bail may be granted. The first is when the police do not have sufficient evidence to charge and require additional time for investigations (legislated for by the legal framework outlined above). The second is when the police have sufficient evidence to charge but the CPS has yet to make a charging decision. This part of the process is regulated by s. 37(7) of PACE 1984. Similar changes were made to this stage in the bail process by the 2017 Act. In debates about pre-charge bail no distinction is usually made between the two stages and this mirrors police practice. Hucklesby found that the two stages were viewed as synonymous and treated as one continuous pre-trial bail period.[[74]](#footnote-74) However, the point at which the police decide that there is sufficient evidence to charge suspects is an opportune and, arguably required, moment to reconsider whether bail and any conditions are necessary and proportionate but this is not what happens in practice. Suspects remain on their original bail and there is no evidence that suspects or their legal representatives are made aware that the case has been passed to the CPS for a charging decision.[[75]](#footnote-75) The reasons for this are a complicated set of legal provisions. For example, if the process worked according to the letter of the law, suspects would be RUI or bailed under s. 37(7) once a case had been passed to the CPS for a charging decision. If the CPS require additional enquiries to be carried out, the legal status of the suspect should revert back to one requiring further inquiries i.e. (s. 37(2) or s. 47ZL). It would then need to change back to s. 37(7) once the further inquiries were completed and the evidence passed back to the CPS by the police. This process is so technically complicated that it requires a myriad of exceptions to be set out in PACE 1984.[[76]](#footnote-76) In addition, officers suggested that they did not use s. 37(7) because it would prohibit them from re-interviewing suspects or collecting additional evidence.[[77]](#footnote-77) There were also practical obstacles including IT systems which were not able to accommodate changes to the legal status of suspects. These anomalies have arisen because s. 37(7) was added to existing legalisation without clear guidance or foresight when the CPS took over responsibility for most charging decisions from the police.

Further complications and anomalies occur as a result of the number of different sections which govern decisions whether or not to release suspects and, if so, whether bail is necessary and proportionate.[[78]](#footnote-78) In PACE 1984 now, and prior to the Policing and Crime Act 2017, there are four separate sections which deal with pre-charge bail.[[79]](#footnote-79) Prior to 2017, these allowed forces to use different sections of the Act for similar purposes and to select sections according to habit, custom and/or force policy and whether conditions were deemed necessary.[[80]](#footnote-80) The fact that conditions can now be imposed on nearly any PACE provision may have removed some of the differential use of relevant sections however, other reasons for varied use of PACE sections have been reported. [[81]](#footnote-81) Research has not been undertaken to understand how the myriad of sections relating to pre-charge bail are being used since the 2017 Act came into force.

**Concluding comments**

The current legal framework was ill-conceived which is demonstrated by the level of engagement with the recent Government consultation which has reportedly received over 1000 responses.[[82]](#footnote-82) Although the number of suspects on bail has declined since 2017, it is particularly noteworthy that the 2017 legal changes seem to have increased the total number of suspects on bail and RUI. As a result, many more suspects and victims are waiting for outcomes of investigations in the unregulated liminal space of RUI. The rise in bail/RUI combined is likely to continue given the increasing sophistication of forensic techniques which will improve the outcomes of evidence analysis overtime and fuel the ‘just in case’ culture within the police which favours continuing investigations even if the chances of collecting sufficient evidence to charge is slim.

The current Home Office proposals are likely to be no more than a sticking plaster and create as many problems as they solve. They do not tackle the fundamental issues which have led to the extensive use of RUI, namely the incentive to use RUI because it involves far less bureaucracy, work and independent oversight than bail. A process which relies on a code of practice overseen by the police as proposed by the Home Office is inevitably going to be preferable for the police to the more strictly regulated bail process. This will result in further unforeseen consequences and potential failure. The proposals also lack a strong evidence base. No official data on the use of pre-charge bail are available pre-2017 and very limited data have been published on bail and none on RUI since 2017. The limited research evidence, as well as the experience since 2017, suggests that there is no quick fix. In common with other police powers, the use of pre-charge bail/RUI is a function of a complex mix of legal, procedural, organisational and cultural factors. It is also not a discrete legal process and works within the broader legal framework and cultural environment of the criminal justice system and policing. As a result, it does not necessarily operate in the way it is intended by the legislature or police leaders. To ignore this reality will result in any new framework, including limiting the time available for investigations, having unintended and potentially unwanted outcomes.

The aim of any new legal and regulatory framework should be to find a workable system which enables suspects to remain at liberty whilst at the same time ensuring sufficient time for thorough investigations of alleged offences and that investigations, witnesses and victims are safeguarded. It is critical to remember that suspects are just that, at the time they are RUI or bailed there is insufficient evidence to charge them with any offence and also that bail/RUI is a mechanism to release suspects from police detention. However, the alleged offences may be serious and there might be on-going risks to victims and/or witnesses. For all of these reasons it is important to take a considered approach to designing a legal framework which provides the best possible outcomes for all concerned. Ideas have been put forward by many different organisations and individuals at various points during the debates and reconciling these differing views will be challenging. Agreeing a set of principles to guide decision-making is a start. These should include that suspects should not be on bail or RUI unless there is a realistic prospect that investigations will lead to sufficient evidence to charge them with an offence. An important issue remains that only around half of those on bail are subsequently charged or dealt with in another way.[[83]](#footnote-83) Bail/RUI must be necessary to carry out the outstanding investigations. Bail conditions should be used only when necessary for specific purposes and be kept to a minimum. Bail/RUI should be for the minimum time possible and suspects should not be on bail or RUI for lengthy periods of time without thorough and independent reviews of the investigation as well as the proportionality and necessity of bail and each and every condition. However, thresholds for review must be realistic and take account of available evidence about how long investigations take to conclude.

Bail is preferable to RUI because it is legally regulated and provides a mechanism for conditions to be imposed, thereby assisting with safeguarding victims and witnesses. Consequently, a presumption of bail should be enshrined into any new pre-charge bail framework with the aim of limiting the use of RUI. However, before embarking on more change, a much more comprehensive review of pre-charge bail/RUI is required. This should be done alongside a commitment to reduce the necessity of lengthy periods of time spent on pre-charge bail/RUI through *inter alia* the provision of extra resources to speed up the analysis of forensic evidence and reorganise the way in which investigations are conducted. In short, a comprehensive review of pre-charge bail/RUI law and practice is required to provide workable and transparent process which is viewed as credible and legitimate by all parties.

1. Professor of Criminal Justice, School of Social Policy, University of Birmingham (e-mail A.Hucklesby@bham.ac.uk). [↑](#footnote-ref-1)
2. Greater Manchester Police v (1) Hookway, (2) Salford Magistrates' Court, AC, 19 May 2011 [↑](#footnote-ref-2)
3. E. Cape “What if police bail was abolished” (Howard League for Penal Reform, 2016) at <https://howardleague.org/wp-content/uploads/2016/03/What-if-police-bail-was-abolished-web.pdf> [accessed 10.07.2020] [↑](#footnote-ref-3)
4. Liberty “Liberty’s response to the College of Policing consultation on pre-charge bail” (Liberty, 2014) at [https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20response%20to%20College%20of%20Policing%20Consultation%20on%20Police%20Bail%20(June%202014).pdf](https://www.liberty-human-rights.org.uk/sites/default/files/Liberty%27s%20response%20to%20College%20of%20Policing%20Consultation%20on%20Police%20Bail%20%28June%202014%29.pdf) [accessed 10.07.2020] [↑](#footnote-ref-4)
5. Mail on-line 30.06.2012 [accessed 30.05.2018] [↑](#footnote-ref-5)
6. Home Office Pre-charge bail: summary of consultation responses and proposals for legislation (London, Home Office, 2015); House of Commons Home Affairs Committee “Police Bail, Seventeenth Report Session 2014-15” (March 2015) House of Commons paper No. 962 [↑](#footnote-ref-6)
7. J. Hillier and J. Kodz “The police use of pre-charge bail: an exploratory study” (London: National Policing Improvement Agency, 2012) [↑](#footnote-ref-7)
8. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). This research was conducted in two large police forces prior to 2017 and involved observations in custody suites, analysis of data on 14,173 cases in which suspects were released on pre-charge bail, 38 interviews with police officers and a survey of 297 police officers. The reports are unpublished. The research was part funded by the Socio-legal Studies Association. [↑](#footnote-ref-8)
9. E. Cape ‘The police bail provisions of the Policing and Crime Act: the pressure for change’ (2017), CLR 8: 587; J. Hillier and J. Kodz, 2012 [↑](#footnote-ref-9)
10. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-10)
11. J. Hillier and J. Kodz “The police use of pre-charge bail: an exploratory study” (London: National Policing Improvement Agency, 2012); A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-11)
12. House of Commons Home Affairs Select Committee “Police Bail, Seventeenth Report Session 2014-15” (House of Commons paper No. 962, March 2015,) at: <https://publications.parliament.uk/pa/cm201415/cmselect/cmhaff/962/962.pdf> [accessed 10.07.2020] [↑](#footnote-ref-12)
13. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020); and also take longer to conclude. [↑](#footnote-ref-13)
14. E. Cape and R. Edwards “Police bail without charge: the human rights implications”, (2010) Cambridge Law Journal 69(3): 529. [↑](#footnote-ref-14)
15. J. Hillier and J. Kodz “The police use of pre-charge bail: an exploratory study” (London: National Policing Improvement Agency, 2012) [↑](#footnote-ref-15)
16. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-16)
17. House of Commons Home Affairs Committee “Police Bail, Seventeenth Report Session 2014-15” (House of Commons paper No. 962, March 2015) [↑](#footnote-ref-17)
18. Home Office “Police powers: pre-charge bail: Government consultation” (Home Office, 2020 at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879759/20191127_ConDoc_PCB_May.pdf> [accessed 10.07.2020] [↑](#footnote-ref-18)
19. See E. Cape “The police bail provisions of the Policing and Crime Act 2017” (2017) CLR8: 587 [↑](#footnote-ref-19)
20. For a full account of PACE 1984 provisions prior to the Policing and Crime Act 2017 see E. Cape and R. Edwards “Police bail without charge: the human rights implications”, (2010) Cambridge Law Journal 69(3): 529. [↑](#footnote-ref-20)
21. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-21)
22. ss. 47ZA and 47ZB [↑](#footnote-ref-22)
23. ss. 47ZC and 47ZD [↑](#footnote-ref-23)
24. The review process for ‘complex cases’ differs from standard cases. Complex cases are those being investigated by the Serious Fraud Office or Financial Conduct Authority (s.47ZB) [↑](#footnote-ref-24)
25. Ministry of Justice “Application for extension of pre-charge bail” at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/forms> [accessed 08.07.2020] [↑](#footnote-ref-25)
26. S. 47ZI [↑](#footnote-ref-26)
27. S. 47ZI(2)(3) [↑](#footnote-ref-27)
28. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-28)
29. Law Society “Release under investigation” (London, Law Society, 2019) [↑](#footnote-ref-29)
30. National Police Chief’s Council (NPCC) “Operational guidance for pre-charge bail and released under investigation – updated January 2019” (NPCC, 2019) [↑](#footnote-ref-30)
31. Law Society “Release under investigation” (London, Law Society, 2019) [↑](#footnote-ref-31)
32. E. Cape “Police bail without charge – leaving suspects in limbo” (Centre for Crime and Justice Studies, 16 October, 2019) at <https://www.crimeandjustice.org.uk/resources/police-bail-without-charge-leaving-suspects-limbo> [↑](#footnote-ref-32)
33. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-33)
34. Hucklesby found that cases were more likely to be discontinued if suspects were on bail for over three months. [↑](#footnote-ref-34)
35. Law Society “Release under investigation” (London, Law Society, 2019) [↑](#footnote-ref-35)
36. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-36)
37. A. Hucklesby “Police bail and the use of conditions” (2001) Criminology and Criminal Justice 1(4): 441; J.W. Raine and J. Willson “The imposition of conditions on bail decisions: from summary punishment to better behaviour on remand” (1996) Howard Journal 35(3): 256 [↑](#footnote-ref-37)
38. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-38)
39. A. Hucklesby “The use and abuse of bail conditions”, (1994) Howard Journal 33(3): 258 [↑](#footnote-ref-39)
40. Crown Prosecution Service ‘Bail’ at <https://www.cps.gov.uk/legal-guidance/bail#:~:text=Breach%20of%20pre%2Dcharge%20bail,bail%20have%20been%20breached%20(s.&text=Section%2037C(4)%20states%20that,released%20on%20bail%20under%20s>. [accessed 17.08.2020] [↑](#footnote-ref-40)
41. J. Hillier and J. Kodz “The police use of pre-charge bail: an exploratory study” (London: National Policing Improvement Agency, 2012); A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020]. [↑](#footnote-ref-41)
42. J. Hillier and J. Kodz “The police use of pre-charge bail: an exploratory study” (London: National Policing Improvement Agency, 2012); Hucklesby, 2015 [↑](#footnote-ref-42)
43. Home Office “Police powers and procedures England and Wales, year ending 31 March 2019” (Home Office, 2019) at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841408/police-powers-procedures-mar19-hosb2519.pdf> [accessed 10.07.2020] [↑](#footnote-ref-43)
44. Law Society, “Release Under Investigation” (2019) at <https://www.lawsociety.org.uk/en/campaigns/criminal-justice/release-under-investigation>, [accessed 08.07.2020] [↑](#footnote-ref-44)
45. Data on the number of suspects detained in police custody for less than 24 hours are not published. Only a relatively small number of suspects are detained for more than 24 hours (Home Office “Police Powers and Procedures England and Wales, year ending 31 March 2019”, Table D.01 at <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2019> [↑](#footnote-ref-45)
46. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-46)
47. A. Hucklesby “Police bail and the use of conditions” (2001) Criminology and Criminal Justice 1(4): 441; J.W. Raine and J. Willson “The imposition of conditions on bail decisions: from summary punishment to better behaviour on remand” (1996) Howard Journal 35(3): 256 [↑](#footnote-ref-47)
48. Ministry of Justice, “Criminal Justice Quarterly England and Wales, year ending 2019” (Ministry of Justice, 2020) at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888301/criminal-justice-statistics-quarterly-december-2019.pdf> [accessed 10.07.2020] [↑](#footnote-ref-48)
49. Ministry of Justice, “Criminal Justice Quarterly England and Wales, year ending 2019” (Ministry of Justice, 2020) at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888301/criminal-justice-statistics-quarterly-december-2019.pdf> [accessed 10.07.2020] [↑](#footnote-ref-49)
50. Home Office “Crime outcomes in England and Wales: year ending March 2019”, Statistical Bulletin HOSB 12/19 (London, Home Office, 2019) at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817769/crime-outcomes-hosb1219.pdf> [accessed 10.07.2020] [↑](#footnote-ref-50)
51. Home Office “Crime outcomes in England and Wales: year ending March 2019”, Statistical Bulletin HOSB 12/19 (London, Home Office, 2019) at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817769/crime-outcomes-hosb1219.pdf> [accessed 10.07.2020] [↑](#footnote-ref-51)
52. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-52)
53. E. Cape “Police bail without charge – leaving suspects in limbo” (Centre for Crime and Justice Studies, 16 October, 2019) at <https://www.crimeandjustice.org.uk/resources/police-bail-without-charge-leaving-suspects-limbo>; Law Society “Release under investigation” (London, Law Society, 2019); [↑](#footnote-ref-53)
54. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020); House of Commons Home Affairs Committee “Police Bail, Seventeenth Report Session 2014-15” (March 2015) House of Commons paper No. 962 [↑](#footnote-ref-54)
55. 59% in Force A and 75% in Force B [↑](#footnote-ref-55)
56. Home Office “Police Powers and Procedures England and Wales, year ending 31 March 2019”, at <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2019> [↑](#footnote-ref-56)
57. Home Office “Police Powers and Procedures England and Wales, year ending 31 March 2019”, at <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2019> [↑](#footnote-ref-57)
58. J. Hillier and J. Kodz “The police use of pre-charge bail: an exploratory study” (London: National Policing Improvement Agency, 2012); A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020).. [↑](#footnote-ref-58)
59. G. Horsman and A. King “Policing and Crime Act 2017: changes to pre-charge bail and the impact on digital forensic analysis”, (2018) Computer Law and Security Review 34(5): 1139 [↑](#footnote-ref-59)
60. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-60)
61. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-61)
62. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-62)
63. Including ‘varying’ bail by post and rebailing at police station receptions. [↑](#footnote-ref-63)
64. Hucklesby found that individuals suspected of sexual and drug-related offences spent longer on bail than those charged with other types of offences. [↑](#footnote-ref-64)
65. Although it is acknowledged that steps have been taken to regulate some aspects of voluntary attendance. For example, enshrining in the PACE codes of practice that suspects must be informed of their procedural rights. [↑](#footnote-ref-65)
66. Home Office “Police powers: pre-charge bail: Government consultation” (Home Office, 2020 at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879759/20191127_ConDoc_PCB_May.pdf> [accessed 10.07.2020] [↑](#footnote-ref-66)
67. Home Office “Police powers: pre-charge bail: Government consultation” (Home Office, 2020 at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879759/20191127_ConDoc_PCB_May.pdf> [accessed 10.07.2020] [↑](#footnote-ref-67)
68. What the exceptions to bail might be would need careful thought and consultation but may include very low level offences, low risk of interference with victims or witnesses and/or suspects’ characteristics or circumstances such as age and disability. [↑](#footnote-ref-68)
69. A. Hucklesby “Police bail and the use of conditions” (2001) Criminology and Criminal Justice 1(4) 441 [↑](#footnote-ref-69)
70. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-70)
71. See A. Hucklesby “The Problems with Bail Bandits” (1992) New Law Journal 142(6549): 558; A. Hucklesby “Unnecessary Legislative changes” (1993) New Law Journal 143(6588): 233. [↑](#footnote-ref-71)
72. See A. Hucklesby “The Problems with Bail Bandits” (1992) New Law Journal 142(6549): 558 [↑](#footnote-ref-72)
73. T. Tyler *Why People Obey the Law*, (New Haven: Yale University Press, 1990); A.E. Bottoms “Compliance and community penalties” in A.E. Bottoms, L. Gelsthorpe and S. Rex, *Community Penalties: change or challenges* (Cullompton: Willan Publishing, 2001) [↑](#footnote-ref-73)
74. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-74)
75. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-75)
76. For example, see section 47ZL. [↑](#footnote-ref-76)
77. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-77)
78. See E. Cape and R. Edwards “Police bail without charge: the human rights implications”, (2010) Cambridge Law Journal 69(3): 529. [↑](#footnote-ref-78)
79. Sections 34(5); 37(2); 37(7) and 47(3) of PACE1984 [↑](#footnote-ref-79)
80. For example, in Hucklesby’s study one force primarily bailed suspects under s 34(5) whereas the other force used s. 37(2). [↑](#footnote-ref-80)
81. Conditions cannot be imposed on bail granted under PACE s37C(2)(b) and s37CA(2)(b). A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-81)
82. Law Society Gazette “Hundreds respond to pre-charge bail review” (06.07.2020) at <https://www.lawgazette.co.uk/news/hundreds-respond-to-pre-charge-bail-review/5104892.article> [accessed 09.07.2020]. [↑](#footnote-ref-82)
83. A. Hucklesby “Pre-charge bail: an investigation into its use in two police forces” (2015) at <https://essl.leeds.ac.uk/law-research-expertise/dir-record/research-projects/771/pre-charge-bail> [accessed 10.07.2020). [↑](#footnote-ref-83)