



# **Pre-charge bail and released under investigation**

## **Striking a balance**

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# Foreword

The Policing and Crime Act 2017 introduced several changes to policing. One of the main elements of the legislation made changes to bail. In particular, it introduced the presumption of release without bail (although bail can still be applied if the police consider it “necessary and proportionate in all the circumstances”). This change allowed for the principle of releasing suspects under investigation, although the legislation does not cover how this should operate. The changes were intended to remedy the problem of suspects being on bail for long periods of time, which caused concerns and uncertainty for both victims and suspects.

We have found that the police have worked hard to implement the new legislation. But the legislation that brought in these changes was introduced very quickly. So quickly that police forces couldn’t implement the changes effectively in the time they had. And not enough thought was given by the Home Office to how the changes would affect victims. Both these problems were made worse by a lack of clear guidance to police forces on how to implement the new legislation.

Investigations involving suspects released under investigation (RUI) tend to take longer and are subject to less scrutiny than ones involving bail. Some victims of domestic abuse do not receive any of the protections which can be provided by bail conditions when their abusers are RUI. And for suspects who are RUI, the justice process can take months or years. The scrutiny that is applied to bail cases is lacking in RUI cases, leaving suspects in limbo for months and in some cases over a year. We think this is unacceptable.

We found a lack of accurate data because some police forces don’t accurately record rates of suspects RUI. This means that in RUI cases they can’t properly measure what is happening in their own force, nor can they adequately compare their own data with other similar forces. They have insufficient ways of spotting trends and patterns which might help identify problems in RUI cases. And it means they can’t use this knowledge to improve victim safety.

Since the publication of National Police Chiefs’ Council guidance in 2019, the police have made renewed efforts to redress the balance between protecting victims and the rights of suspects. This has resulted in some notable improvements.

But we think there is much more that should and must be done to keep victims who are most at risk safe. These problems are widely recognised, and the Home Office has recently completed a public consultation on changes to the legislation. We must make sure that lessons are learned, and this inspection report will contribute to this process.

# Summary of our main findings

We inspected how six forces used bail and released under investigation (RUI) in 2019. Over this period, we found that most forces had worked hard to adapt to the rapid legislative changes to bail in 2017.

We have seen some evidence of improvements to risk assessment processes. Most forces are good at making and recording risk assessments for suspects while they are in custody, for example.

However, while we found excellent work in some forces, this was not the case in other forces. There are several areas where further progress is needed. To address this situation, the Home Office, College of Policing and police forces should:

- put in place effective data monitoring and reporting for bail and RUI;
- develop clear and detailed guidance for officers so that vulnerable victims of domestic abuse and other serious crimes are protected; and
- make sure that any changes to the legislation lead to improvements for victims of crime as well as suspects.

## Protecting the victim

### **Too little consideration has been given to how bail legislation changes would affect victims**

Forces have worked hard to adapt to the 2017 changes in the legislation for bail. But the changes were introduced extremely quickly and without enough consideration of how these changes would affect victims.<sup>1</sup> This speed of change denied police forces the time they needed fully to implement the legislation straight away.

Forces had little guidance, and this led to a range of interpretations of the legislation throughout England and Wales.

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<sup>1</sup> In this report, when we refer to victims we mean people who are either complainants or who are considered by others to be possible victims. The essence of RUI cases is that there is an investigation being conducted. Investigations may conclude that no crime has been committed, or the suspect is not the true offender. There must be no suggestion that the fundamental criminal justice principle of the presumption of innocence of a suspect or accused person is being disregarded. The use of the term 'victim' in this report should be seen in that light.

## **RUI leaves too many victims without the reassurance and protection that bail conditions can provide**

In many cases of domestic abuse and stalking, suspects are RUI instead of being bailed with conditions. This is worrying because of the high harm and risk associated with these types of crime.

Research from BritainThinks<sup>2</sup> found that victims of these crimes feel that the crime hasn't been taken seriously when suspects are RUI.

## **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 frequently don't consider the victim's statement when deciding whether to apply bail conditions. This means that risks to the victim are sometimes overlooked.

Even when a victim has said they are afraid of a suspect, we found limited or no evidence that this had been properly considered. RUI has been used without the conditions that could provide extra protection to the victim.

## **The police don't always inform the Crown Prosecution Service that a suspect has been RUI**

The police don't always tell the Crown Prosecution Service (CPS) that a suspect has been RUI when requesting charging advice. In some cases, the CPS may not know that the suspect has no bail conditions in place. This has the potential to undermine requests at court for conditional bail and restraining orders. If the information is provided by the police at the outset, the lawyer at the CPS making a charging decision can provide better instructions to the court advocate about how to approach bail, and also provide feedback to the police about their bailing decision.

We found some worrying examples of the victim being left at risk of further harm in this way, and include case studies later in this report.

## **The effect on suspects**

### **Suspects who are RUI are rarely told about progress in the investigation**

People who are RUI tend to have little or no subsequent contact with the police, sometimes for very many months. And some suspects aren't even told when the investigation has ended.

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<sup>2</sup> [\*Research into victim and suspect experiences of changes to the Police and Crime Act 2017\*](#), BritainThinks and HMICFRS, 8 December 2020.

## Delays in investigation

### **The police often give RUI cases less priority than bail cases, meaning investigations take much longer than they should**

When suspects are RUI, there is often less impetus to complete the investigation quickly. Bail cases have milestones to meet, which means that there are regular prompts for action. RUI cases have no such prompts and, as a result, many RUI investigations take much longer than they should to complete.

Some offences must be prosecuted within a certain period of time of them having taken place. Worryingly, we found that in some cases, the investigation takes so long that, by the time it is concluded, it is no longer possible to prosecute the suspect. The case is therefore dropped as a result.

### **In too many cases, the decision to release a suspect under investigation rather than bail happens because of delays in digital forensic analysis**

In many of the cases we examined, a suspect was RUI without bail conditions simply because digital forensic analysis was expected to take too long. If getting back critical evidence from phones or computers takes more than three months, bail must be extended at a magistrates' court.

### **Suspects often move from bail conditions to RUI after 28 days**

In most forces, a suspect's status defaults to RUI after the 28-day initial bail period ends. Any bail conditions that had been imposed are no longer in place.

There are several possible reasons for a default. Sometimes it is due to an oversight that results in bail not being extended. In other cases, the police decide not to extend bail conditions because they expect long delays in forensic analysis. But, most worryingly, we found some cases with no recorded rationale to explain why the bail conditions were no longer considered necessary.

### **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**

In all forces we saw that the national arrangements with the CPS mean that the police must bail suspects or release under investigation rather than charge them straight away if they do not meet certain criteria, even if the investigation is complete. This means that some cases that could be dealt with quickly are taking much longer.

## The national picture

### **There is no accurate local or national picture of bail and RUI**

There is no accurate data published on the numbers of suspects who have been released on bail or under investigation. This means that neither police forces nor the general public can properly understand how each police force deals with suspects after they are released from custody. And neither the general public nor the police and crime commissioner can fully scrutinise this area of policing.

It also means that police forces can't easily compare their own performance against other similar forces. We found that when the legislation was introduced, not enough consideration was given to how forces could implement the changes effectively with the resources available.

### **Few forces comply with national guidance in relation to RUI**

National guidance published in January 2019<sup>3</sup> outlines what forces should do and what they should consider when releasing suspects under investigation or on bail. We found that some forces don't follow this guidance and few officers knew of its existence or where to find it.

### **Next steps**

Many of the problems set out in this report about the use of pre-charge bail and RUI are well known. The Home Office has recently completed a public consultation on changes to the legislation to help resolve them. We have passed findings from our inspection into this process, which offers a real opportunity to improve practice.

However, our inspection found that policing was not fully prepared to put into practice the changes made in the 2017 legislation. Guidance was not in place, for instance, and some IT systems had not been updated to allow for proper recording of (for example) the numbers of suspects who were RUI as opposed to on bail. It is critical that the Home Office, policing and the College of Policing work closely together to ensure that time and resources are in place before additional changes are enacted.

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<sup>3</sup> [\*Operational Guidance for Pre-Charge Bail and Released under Investigation\*](#), NPCC, updated January 2019.

## Recommendations

- The Home Office should work with police and the College of Policing to review the legislation for bail and RUI. The bail consultation completed in 2020 should provide evidence for reviewing who must authorise bail and time frames for bail extensions. The learning from this report should inform this work.
- The Home Office should work with police and the College of Policing to make sure forces have enough time and adequate resources to prepare for any future changes to the legislation which arise from the bail consultation. They should also provide police forces with comprehensive guidance and protocols on the changes.
- The Home Office and the National Police Chiefs' Council (NPCC) should work together to develop and put in place data collection processes to give an accurate national picture of RUI and pre-charge bail.
- The Home Office should work with police forces and the College of Policing to develop and implement monitoring arrangements to make sure that changes resulting from the bail consultation are effective.
- The Home Office should work with the NPCC, the CPS and the College of Policing to make sure that any changes to the legislation secure improvements for victims of crime.
- The College of Policing should work with the NPCC to ensure that clear guidance is developed for officers in relation to updating suspects who are RUI on the progression of their cases.
- The College of Policing and NPCC should work together to develop clear guidance for police forces so that all cases involving serious harm and risk, such as domestic abuse and stalking, are subject to bail with conditions to protect victims and require a new risk assessment before a suspect's bail status changes.
- 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 CPS and NPCC should work together to review their service level agreements and make sure that cases can be charged at the earliest opportunity.

# About this report

Police powers to release suspects on bail changed with the enactment of the Policing and Crime Act 2017. Before then, there was no limit to the amount of time bail could apply. But in April 2017, the new legislation significantly changed how bail could be used.

Jointly with Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI), we inspected police and CPS responses to the pre-charge bail changes and the use of released under investigation (RUI) between October 2019 and February 2020. This report sets out our findings and makes a series of recommendations aimed at improving police and CPS practice and making victims and communities safer.

Alongside our inspection, we commissioned research from BritainThinks to explore victims' and suspects' experiences of the changes to bail and RUI. Some of the quotes used in this report are from people who participated in this research and include victims of crime. We are deeply grateful to them and to those who supported them.

## Why did bail need to change?

The Home Secretary in 2014 began a consultation to review pre-charge bail. Many cases – some of them high profile – had involved suspects being on bail for many months, and even years, only to then have their cases dropped without being charged.

The consultation stated that:

“A balance needs to be struck between the rights of those on police bail, and securing justice for victims of crime.”<sup>4</sup>

## What has happened since 2017?

In most cases now, police expect to release a suspect without bail. This is known as RUI.

Bail may still be used when it is considered necessary and proportionate.<sup>5</sup> But one of the main changes brought in by the Policing and Crime Act 2017 was to introduce very specific time limits for how long someone can be bailed.

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<sup>4</sup> [Public consultation: Use of Pre-Charge Bail: Improving standards for the Police Forces of England and Wales](#), College of Policing, March 2014.

<sup>5</sup> Details of the considerations that should be made for bail are given in [Operational Guidance for Pre-Charge Bail and Released under Investigation](#), NPCC, updated January 2019.

The bail must be authorised by an inspector for the first 28 days. After this, a superintendent must authorise a bail extension to three months. Any further extensions of bail must be authorised by a magistrates' court. Previously, bail had no time limits and was authorised and managed by custody sergeants.

## What are the problems with bail and RUI now?

In 2019, we received a super-complaint from the Centre for Women's Justice.<sup>6</sup> They identified some worrying cases of police failures to apply appropriate bail conditions in cases of domestic abuse and stalking offences.

The same year, separately, we published our inspection on domestic abuse, which highlighted some of the unintended consequences of the legislation.<sup>7</sup>

We reported that:

"In more and more cases of domestic abuse, bail conditions are not being used to safeguard victims, with forces opting to release suspects under investigation. This potentially leaves victims feeling unprotected and vulnerable. ... We found that the number of people being released on bail for domestic abuse crimes has dropped by 65 percent."

[In 2020, the Home Office consulted on further proposed changes to the bail system.](#)

The consultation asked a series of questions and proposed three potential models for changes to bail.<sup>8</sup>

The National Police Chiefs' Council (NPCC) lead for bail management, Darren Martland, stated in response to the consultation:

"In the years since the bail legislation was amended, the police service has worked hard to implement the changes in the spirit they were introduced. What has become clear in that time is that several unintended consequences have followed, presenting fresh challenges for the police service and the wider criminal justice system".<sup>9</sup>

## What is the difference between bail and RUI?

"I am not sure if he had to report to the police station, but he was told he wasn't allowed near me and he was moved from where he was living. I think he was released on bail ... I don't know the difference between that and being released under investigation."

*(Victim of physical assault)*

In research from BritainThinks, victims and suspects say they don't always understand the difference between bail and RUI.

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<sup>6</sup> [Police super-complaints: Guidance on submitting a super-complaint about policing](#), HMICFRS, the College of Policing and the Independent Office for Police Conduct, updated April 2019.

<sup>7</sup> [The police response to domestic abuse: An update report](#), HMICFRS, February 2019.

<sup>8</sup> [Police Powers: Pre-charge Bail: Government consultation](#), Home Office, February 2020.

<sup>9</sup> [Government launches consultation on pre-charge bail](#), Home Office and The Rt Hon Priti Patel MP, 5 February 2020.

In about one third of cases, after someone is arrested and before they can be charged the CPS must advise the police on the correct charges. This begins the prosecution process. But usually not enough evidence is gathered while a suspect is in custody for the police or CPS to charge.

Suspects can, in most cases, only be detained for 24 hours without charge. If the police need to make further enquiries before a charging decision can be made, the police must decide whether the suspect is remanded in custody, or released on bail or under investigation. The Policing and Crime Act 2017 introduced the presumption that suspects should be released without bail. Exceptions apply if bail is deemed both “necessary and proportionate in all the circumstances”. But when the police are considering whether to apply bail, they must look at all the circumstances of the case. They should consider whether the victim and any witnesses need support and protection. This is especially important for victims who are vulnerable and at risk of serious harm.

Suspects who are RUI don’t have to return to the police station, and have no restrictions placed on them. They wait for the investigation to finish and a decision to be made on whether to prosecute. But we found in this inspection that the police don’t always tell suspects what is happening in the investigation.

Most suspects released on bail must report to a police station at a given time and date. They may have other restrictions placed on them until then. For example, they may have to hand in their passport or may have restrictions on where they can go or who they can contact.

Having bail conditions in place for a suspect in a crime can help the victim to feel safe. This is particularly important in crimes such as domestic abuse or harassment and stalking. It is important that victims know what is in place to protect them, but they aren’t always told.

“My sister knew that if he went up the street that he wasn’t allowed to do that, and I think he wasn’t allowed any contact with us and wasn’t allowed to come to the area. I think for me, I felt safe enough knowing that, and also because I have my husband here at home.”

*(Victim of assault)*

# Our findings: Looking after victims

People who encounter the criminal justice system as a victim can expect to get a certain level of service from the system. The [Code of Practice for Victims of Crime](#) is the statutory document that sets out the minimum level of service for victims. And in most of the cases we examined, the police were good at keeping the victim informed throughout the investigation.

**Table 1: Was the victim updated in line with the Code of Practice for Victims of Crime in charged cases?**

<b>Response</b>	<b>Number of cases</b>
Yes – victim and interested parties	22
Yes – victim only	68
Yes – interested parties only	5
Neither were updated (in these cases, victims had said that they didn't want to be updated)	18
N/A	27
<b>Total</b>	<b>140</b>

## The victim personal statement

One of the ways that the police can find out what effect a crime has had on a victim is to use a victim personal statement.<sup>10</sup> This gives victims an important opportunity to describe how they have been affected by the crime and to share this information with the police and courts. Police should take this statement as early as possible as it can provide good information about the risks to the victim.

All too often, though, we learned that the police didn't consider the views of the victim when deciding whether to bail a suspect and impose conditions.

<sup>10</sup> As well as providing an opportunity for victims to explain in their own words how a crime has affected them, a victim personal statement can be used when a case goes to court and a person pleads guilty or is found guilty.

**Table 2: Was the victim’s personal statement considered?**

<b>Response</b>	<b>Number of cases</b>
Yes	10
No	88
N/A	42
<b>Total</b>	<b>140</b>

College of Policing guidance says:

“Officers should make every effort to consult victims prior to making the bail decision. Custody officers should refer to victim statements, interview records and any available [victim personal statements](#) before making decisions relating to conditional bail. They should ensure that bail conditions help to protect victims, children and witnesses from intimidation and abuse and do not conflict with existing court orders.”<sup>11</sup>

Often, a victim’s personal statement isn’t completed before the suspect is released. This means that any decision about whether to impose bail conditions on a suspect is made without a full understanding of the risks to the victim.

We found that, many times, suspects who we thought should have been bailed were instead RUI.

In 62 of the 140 charged cases we looked at, we found that RUI had been used when our inspectors judged that bail with conditions should have been used to offer more protection for the victim. These cases included domestic abuse, sexual offences and offences against children – serious crimes. This is extremely worrying, especially for the victims in these cases, who had no bail conditions in place to keep them safe.

<sup>11</sup> [Authorised Professional Practice: Major investigation and public protection: Post-arrest management of suspect and casefile](#), College of Policing.

## Case study

A victim reported harassment from her ex-partner, who subjected her to a series of messages and phone calls. Some of the messages included threats to kill her new partner. In one day alone, the victim received 98 messages and 23 voicemail messages.

The suspect was arrested and RUI. The reason given for not bailing the suspect was that the victim had seemed calm when she reported it to the police and was therefore not in fear. But an entry on the police crime recording system stated that the victim wanted to pursue a non-molestation order as she was afraid of him.

This meant that there were no bail conditions in place until the case went to court several months later. Only after the trial did the court grant a restraining order against the offender.

## Recording the reasons for a decision

Investigators are usually good at recording a clear rationale for deciding to use pre-charge bail. But this wasn't so in many RUI cases we looked at. Frequently, neither the investigator nor the custody sergeant had recorded the reason for the decision not to use bail.

When we spoke to officers about this, some of them told us that they don't need to justify why they haven't bailed a suspect since RUI is the default position. We think that, on the contrary, all decisions should be recorded with a clear rationale.

For domestic abuse and cases where the risk of serious harm to the victim is present, the NPCC guidance states:

“If a suspect has been arrested in connection with an offence involving vulnerable people or domestic abuse, there should be documented decision-making why pre-charge bail has not been used and serious consideration given to the imposition of bail with conditions in order to safeguard the victim”.<sup>12</sup>

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<sup>12</sup> [Operational Guidance for Pre-Charge Bail and Released under Investigation](#), NPCC, updated January 2019.

## Case study

A victim of domestic abuse reported to police that her ex-partner's behaviour had recently escalated, and that he was now contacting her every day. She told the police that in the latest incident he rang her doorbell repeatedly and called for her. He had been arrested for common assault for a previous incident and released under investigation. Police had not recorded an explanation for not bailing him with conditions to protect the victim.

At court, he pleaded guilty and a restraining order was put in place. But during those months between his arrest and going to court there were no conditions in place to help protect the victim. There was nothing to stop the suspect from contacting his ex-partner.

For cases where bail is used, forces have different approaches to applying bail conditions. And there is even a similar inconsistency within forces. Some cases we examined included very stringent conditions for suspects while others hadn't considered the risks to the victim and no conditions were in place.

A common sequence of events seems to be that a suspect is bailed for the first 28 days, with clear reasons recorded for bail conditions. Then, after the 28-day limit is reached, bail conditions are dropped and the suspect becomes RUI, without any reasons for this being recorded. We saw too many examples where bail simply ended, and a suspect had their status changed to RUI. This seems to happen with no new risk assessment being completed for the victim or wider community, and with no apparent record of the reasons for the change.

## Recommendations

- The Home Office should work with the NPCC, the CPS and the College of Policing to make sure that any changes to the legislation secure improvements for victims of crime.
- The College of Policing and NPCC should work together to develop clear guidance for police forces so that all cases involving serious harm and risk, such as domestic abuse and stalking, are subject to bail with conditions and require a new risk assessment before a suspect's bail status changes.

Other than for very straightforward crimes, the first bail of 28 days isn't long enough for an investigation to be completed. Bail may be applied for the first 28 days, but when that time is up many forces don't bother to apply for an extension because they know the investigation is likely to take more than three months. The process for obtaining magistrates' court authority to extend bail beyond three months can be onerous, with the result that bail conditions often end at that early point in the investigation.

## Assessing risk to the victim

When someone reports a crime, an initial risk assessment and a secondary risk assessment are usually completed for the victim. Risk assessments are used by the police to keep people safe.

The first assessment is usually completed by call centre staff who receive the initial report. This helps the police to determine what priority to give the investigation and how the victim should be contacted. The second assessment is usually carried out by the investigating officer and is used to establish what protection needs to be in place for the victim. This second assessment should be completed before the suspect is released from custody so that the right bail conditions to protect the victim can be considered properly.

We were concerned to find that in many cases the second risk assessment for the victim hadn't been done before releasing the suspect from custody.

**Table 3: Was a risk assessment completed for the victim before the suspect's release from custody (charged cases)?**

<b>Response</b>	<b>Number of cases</b>
Yes	60
No	49
N/A	31
<b>Total</b>	<b>140</b>

# Looking after suspects

One of the main purposes of the changes to bail was to make the process fairer and justice swifter for suspects.

In the foreword to the summary of consultation responses in March 2015, the then Home Secretary, Theresa May said:

“Pre-charge bail, or police bail as it is often referred to, remains of particular public interest as a significant number of individuals have either not been charged or have been acquitted after spending months, and in some case years, on pre-charge bail. While the complexity of some investigations means that it can rightly take the police a significant period of time to assemble and analyse evidence and present it to the Crown Prosecution Service, it can be extremely stressful for individuals to be under suspicion for extended periods of time, particularly if onerous conditions are attached to their bail”.<sup>13</sup>

## Contact with the police

We found that suspects on bail have regular contact with the police throughout the investigation. Suspects are updated when their bail is reviewed. But when suspects are RUI there is often little or no contact from the police. We found worrying examples of suspects who had been RUI for many months and sometimes years without hearing anything from the police.

### Case study

A two-year-old child was found wandering in the street. Police arranged for the child to go into protective care. The mother and another woman who was supposed to be looking after the child were both arrested. The mother was correctly released under investigation. Her children were placed by social services with their father on the condition that he would not allow the mother to see the children unaccompanied. However, the case took more than two years to come to court. The investigation was delayed in part by officer absences in the child abuse investigation unit.

It is usually only in cases where the suspect or their legal representative has contacted the police for information that they are told anything about the progress in the investigation. In many cases, the suspect only learned what was happening

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<sup>13</sup> [Pre-Charge Bail: Summary of Consultation Responses and Proposals for Legislation](#), Home Office, March 2015.

when they received a letter advising them of their court date, often several months after their arrest.

We were concerned to hear from officers we spoke with that they don't consider it their responsibility to update the suspect at all. Some officers told us, "Why should we have to tell them anything about the investigation?"

In some forces there is confusion between custody officers and investigators about who is responsible for updating the suspect.

This lack of contact means that many people who are RUI are left not knowing for very long periods whether they will be charged. Research conducted by BritainThinks confirms this.

"Before the change, [suspects were] always released on bail with a return date. So, from a suspect perspective, you would have some sort of deadline that you knew your case was working towards. Now, there's just complete limbo."

*Comment from a legal representative for suspects*

### Recommendation

- The College of Policing should work with the NPCC to ensure that clear guidance is developed for officers in relation to updating suspects who are RUI on the progression of their cases.

## Assessing risk for suspects

After a suspect's arrest, police almost always carry out a risk assessment for them in custody. And these assessments are usually clearly recorded. This is good practice.

For suspects of serious crimes, such as sexual offences, we were pleased to see that risk assessments for suspects, including suicide risk assessments, are almost always completed while the suspect is in custody. These risk assessments were carried out for both bail and RUI cases.

**Table 4: Was a risk assessment completed for the suspect before their release?**

Response	Number of cases
Yes	129
No	9
N/A	2
<b>Total</b>	<b>140</b>

# The impact of delays on victims and suspects

Delays in investigations can have an enormous impact on both victims and suspects in cases that involve bail and RUI. Delays also increase the likelihood of a case failing to result in the successful prosecution of the offender.

Delays in investigations also make it more likely that victims will lose confidence and withdraw from the process. We saw several cases where the investigation took so long that victims had moved on with their lives and no longer wanted to re-live the trauma by going to court.

## Case study

The victim was assaulted by five door staff, resulting in serious head injuries and liver damage. There were delays owing to the officer in charge being involved in a court case for several months and being absent on a training course. After 12 months the victim left the country and the case was finalised as 'no further action'.

And, for suspects, having an investigation going on for many months, and in some cases years, can place a great strain on them and their families.

We spoke to senior leaders in each of the four forces we inspected. They told us that when the legislation was introduced, not enough consideration was given to how forces could implement the changes effectively with the resources available. This has meant that forces have had to make difficult decisions about where to prioritise resources.

## Supervision

Not all investigations are supervised as well as they should be. While we found some cases involving regular supervision and clear guidance, this wasn't always the case. All too often we found that supervision was sporadic, and that the investigator had no guidance or direction from their supervisors.

Supervisors told us they don't always have enough time to be as thorough as they would like. Many supervisors told us of high workloads and a lack of resources. Some supervisors told us about individuals who had been "broken" by not being able to meet their targets because of high workloads.

## Delays in obtaining evidence

There are many reasons why an investigation can take a long time to complete. Cases can be very complex, with many witnesses and multiple lines of enquiry to follow. However, some investigations take much longer than they should because of delays in getting evidence.

We found examples of investigations taking far too long because of difficulties in getting evidence from other agencies, such as healthcare providers or social care services. Police officers sometimes expend a great deal of time and energy chasing up information that hasn't been provided. In some cases, this can cause delays of several months.

But the biggest single factor for delays in investigations is collating digital forensic evidence.<sup>14</sup>

Many investigations have evidence involving digital devices such as phones and computers. These devices usually must be analysed by a digital forensic laboratory. All police forces either do this work in house or have service level agreements in place with a specialist contractor.

In most forces, the demand for forensic analysis means that waiting times can be many months. We saw delays of up to eight months caused by forces waiting for the analysis of phones or computers. These delays happen equally in both bail and RUI cases.

### Case study

The suspect had communicated with what he thought was a 15-year-old girl online. The victim was really a paedophile hunter group who were pretending to be a young girl. The suspect sent the girl numerous images of himself and made attempts to meet. The paedophile hunters alerted the police and the suspect was arrested.

At first, he was released with pre-charge bail conditions. But once the three-month bail period had expired, the police didn't apply to the magistrates' court to extend his bail conditions. The reason given by the officer for this decision was that the delays in obtaining the digital evidence would mean that the threshold to extend pre-charge bail wouldn't be met.

When the downloads were received, indecent images of children were recovered from the suspect's laptop and he was re-arrested. This resulted in further new offences being identified of making indecent images of children and inciting a child to engage in sexual activity. During the period between the bail expiring and his re-arrest he was found to have committed further offences. At court, he pleaded guilty and was sentenced to five years in prison.

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<sup>14</sup> Evidence downloaded from devices such as computers and mobile phones.

We were concerned to find that in far too many cases the decision to release a suspect under investigation rather than on bail was because of digital forensic delays.

In most forces, investigators expect that digital forensic evidence will take at least two or three months. This means that officers know in advance that they will need to seek a magistrate's extension after the three months' extension to bail has elapsed. It is easier for the police to release the suspect under investigation.

### Case study

The victim reported a rape by her partner. The suspect was arrested and released with pre-charge bail conditions. Bail was extended by the superintendent after 28 days. The decision was then changed, and bail was cancelled.

The reason given for this was that there would be a likely long delay in downloading digital forensic evidence and that there were no safeguarding issues as the victim was not in fear of the suspect. This rationale was not supported by the statement provided by the victim. In it, she stated that she was suffering from increased anxiety since the incident and that, as a result, her medication had been increased. The victim was left without the protection of pre-charge bail conditions until the case was heard at the Crown Court.

Our inspection showed that the time limits associated with pre-charge bail have had a considerable influence on the increased use of RUI. For most investigations, we found that the initial 28-day period was too short for an effective investigation to take place. This was particularly noticeable in cases involving digital forensic evidence or evidence from third parties. The result of this is that most forces avoid using bail where possible, even where the protection to the victim provided by bail is needed.

On average, the time between arrest and charge is 128 days for pre-charge bail and 201 days for RUI.

### Recommendation

- The Home Office should work with police and the College of Policing to review the legislation for bail and RUI. The bail consultation completed in 2020 should provide evidence for reviewing who must authorise bail and time frames for bail extensions. The learning from this report should inform this work.

## Getting a magistrate's order

Decisions about bail are often based on a pragmatic view that the investigation is likely to take much longer than the three months' bail that can be authorised without a magistrate's order.<sup>15</sup>

Even if a superintendent extends bail to three months, bail often lapses or is rescinded at the end of that period to avoid having to obtain a magistrate's order.

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<sup>15</sup> Once someone has been on bail for three months, it can only be extended if the officer seeks an extension at a magistrates' court.

In one force, we heard that most officers had never completed an application for a magistrate's order. It was considered that it wasn't worth taking the time to complete as it would not be granted.

## Getting to court

"The biggest change I've noticed [as a result of the Policing and Crime Act 2017] is the length of time it takes to get cases to court. Previously, lots of cases were charged immediately but these same kinds of cases are now taking 12 months to charge. I've seen sexual offence cases taking 1.5–2 years to come to court. The increase is partly due to cuts but also due to a lack of deadlines when suspects are released under investigation. When people were on bail, the police were moving more quickly."

*Comment from a legal representative for suspects*

The CPS is the agency responsible for prosecuting cases. Once the police have gathered enough evidence, they submit a file containing the evidence to the CPS for a charging decision in most serious cases. If any information is missing or incorrect, the CPS sends the files back to the police to correct. Files can be sent between police and CPS many times in some cases.

To improve the quality of the files, some forces have set up special teams to prepare and check files before they are sent to the CPS.

We found that there were often delays in this process for both RUI and bail cases.

In one force, file preparation teams returned up to 65 percent of files to officers for more work before submitting the files to the CPS.

Some offences must be prosecuted within a certain period of time of them having taken place. One force told us that files can take so long for these specialist teams to prepare that time runs out and the case doesn't go to court.

## Delays in notifying a suspect

Once the police or the CPS decides to charge a suspect who has been RUI for an offence, the police send them a letter summoning them to court. The letter is usually sent to the suspect by post but can be delivered by hand by a police officer. This letter tells the suspect what they have been charged with and the date and time they should attend the first court hearing. This is called postal requisition.

We found that once the CPS advises police of the charge, there can be delays in the police sending the letter to the suspect. In some forces, we found this is because of a lack of staffing in the teams responsible for this.

Elsewhere, delays in the investigations meant that by the time the postal requisition had been sent to the suspect, they no longer lived at the address. The letter never reached them and so they were unaware that they had been summonsed to court. We heard that it is common for suspects not to attend court because they hadn't received the postal requisition.

“They’ll get a postal requisition two years later and the suspect can’t recall everything, and this makes defending them in court much more difficult. ... Witnesses are also losing interest when the case comes to court two years later.”

*Comment from a legal representative for suspects*

A report by Her Majesty’s Courts and Tribunal Service in 2018 found that the number of postal requisitions issued rose by 13 percent between April 2017 and March 2018 and that this corresponded with a decrease in the use of bail.<sup>16</sup>

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<sup>16</sup> Analysis of postal requisitions: April 2017 to March 2018.

# The national picture

## Recording and data

Before the Policing and Crime Act 2017, the police measured and reported on the number of custody records involving a suspect released on pre-charge bail (including unconditional bail). Since 2017, there hasn't been any reliable nationally published police data on the numbers of suspects RUI.<sup>17</sup>

There are several reasons why the data isn't accurate. Forces measure bail and RUI cases in different ways. For example, some forces count one offender RUI as one while other forces count each offence RUI. This makes it difficult to aggregate and analyse the data. Some forces can't identify cases involving RUI because their IT systems can't flag these cases.

Our inspection found that most forces have well-established recording systems for bail and have a clearer picture of the numbers of people on bail. However, we found that the systems for recording RUI in most forces are underdeveloped and some forces have no accurate information on RUI cases at all. So not all forces know for certain how many people are RUI, nor do they have systems in place to identify any emerging trends and patterns.

While we saw that some forces are now starting to develop better recording systems to measure and report on RUI and bail, these systems have only recently been introduced. We were unable to judge how effective they were because it was too early to measure this. In one force, a new system had been introduced to record RUI the day before our inspection started in early 2020 – three years after the legislation had been introduced. It is not clear why it had taken so long to introduce this.

### Recommendation

- 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.

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<sup>17</sup> [Pre-charge bail data](#), College of Policing, September 2017.

## National guidance

The NPCC issued updated interim guidance for forces on pre-charge bail and RUI in January 2019.<sup>18</sup> The guidance was published as an interim measure while the broader effects of the changes to bail were still being explored by forces. It advises forces what they should do when they release suspects under investigation or on bail. We were surprised that the NPCC published this guidance as this is normally undertaken by the College of Policing. Few forces comply with the guidance.

We found that few officers were aware of this guidance or where to find it.

### Recommendations

- The Home Office should work with police and the College of Policing to make sure forces have enough time and adequate resources to prepare for any future changes to the legislation which arise from the bail consultation. They should also provide police forces with comprehensive guidance and protocols on the changes.
- The Home Office should work with police forces and the College of Policing to develop and implement monitoring arrangements to make sure that changes resulting from the bail consultation are effective.

After the NPCC guidance was issued in January 2019, some forces recognised that improvements were needed and developed frameworks to work towards achieving the recommended practice. Other forces had only recently begun to address this problem at the time of our inspection.

After a suspect is released, a supervisor should review and document the investigation at least every 30 days until it finishes. But in many of the cases we saw, there hadn't been a single supervisor's review recorded during those time periods. And in a few cases, there was no evidence at all that there had been a review of the case.

Guidance also says that at each review the investigating officer should make sure that the victim, suspect or their legal adviser is given an update on the progress of the investigation. We found that many suspects weren't told about progress. We even found that, in some cases, the suspect hadn't been told that the case had been finalised and that no further action was being taken.

It was troubling to hear from officers in some forces that they considered they had no responsibility to update suspects. This finding was confirmed by research by BritainThinks, which found that both suspects and their representatives faced barriers in getting updates on investigations.

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<sup>18</sup> [Operational Guidance for Pre-Charge Bail and Released under Investigation](#), NPCC, updated January 2019.

## Working with the Crown Prosecution Service

### Passing on information

It is important that all relevant information about a case is included in the file to the CPS so that a charging decision can be made. The process for doing this is usually for the police to submit a form, called an MG3, to the CPS. This form should contain all the information about the case that the CPS needs to provide charging advice. We found that in most cases the police don't record that the suspect is RUI on the MG3 form.

This means that when the case has the first hearing, the CPS lawyer has not been provided information about the bail status. In some cases, this made it difficult to add any conditions at court to protect the victim.

In some CPS areas we were told that some prosecutors were reluctant to make applications for conditions to be added because they believed they would be unsuccessful, as the suspect had previously had no restrictions.

When there are no bail conditions in place for a suspect, it also makes it more difficult to persuade courts to issue restraining orders when the case is finalised.

We saw one example where the suspect had been RUI throughout the investigation, appeared at court without any conditions, had no conditions applied and the case was sent to the Crown Court. The judge expressed grave concern that the case had made it that far without any conditions to protect the victim. We were told that this was not unusual.

Several cases involving domestic abuse caused us concern because the suspects had been RUI without bail conditions in place to protect the victims. When the cases were finalised in court, restraining orders were imposed to prevent the suspects from contacting the victims. However, in many cases the victim had been left without the protection that can be provided by bail conditions, sometimes for several months.

It is essential that victims are properly protected in cases of domestic abuse or stalking. These crimes can often result in tragic outcomes if the victim is not protected.

We found that there is little guidance provided to officers on the need to pass on information to the CPS about whether the suspect has been bailed or is RUI. We consider this should be made much clearer in future guidance.

### Recommendation

- 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 information changes in bail or RUI provided to the CPS. The CPS should work with the police to ensure this information is provided.

## Charging decisions

After the police arrest a suspect, they have a responsibility to deal with that person in good time. Suspects should be released as soon as there is no longer a need for them to be detained. Investigations should carry on while the suspect is in custody. In most cases, officers should aim to complete the investigation in this time and reduce the need for suspects to be released before being charged.

However, we heard from all the forces we inspected, that there were some cases where suspects were not charged while in custody, even though, in the view of the police force, the case met the test used by the CPS in deciding whether to bring a prosecution (known as the full code test).<sup>19</sup> In all forces we saw that the arrangements with the CPS currently mean that in some categories of cases, police bail suspects or release under investigation rather than charge them while in custody, even when the investigation is complete. This is the right course of action in order to prioritise certain categories of cases. However, we found that the subsequent 5 or 28-day target for the CPS to respond with a charging decision is not always met. This adds delay to the progress of cases through the criminal justice system.

### Recommendation

- The CPS and NPCC should work together to review service level agreements and make sure that cases can be charged at the earliest opportunity.

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<sup>19</sup> The Full Code Test is a two-stage test which must be applied each time a charging decision is made, whether it is made by the police or the CPS – the evidential stage and the public interest stage. The evidential stage must be met before the public interest stage can be considered.

# Acknowledgements

We would like to express our thanks to members of our external reference group for the support and guidance provided throughout the inspection process.

We would also like to thank all the victims of crime who participated in the BritainThinks research.

# Annex: Inspection methodology

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 (HMCPsi).

The inspection assessed:

- the effectiveness of leadership and governance in supporting the implementation of the legislation on pre-charge bail/RUI;
- the effectiveness of police forces in identifying and managing the vulnerability and risk associated with victims of crime where the suspect has been RUI;
- the effectiveness of police forces and the CPS in prosecuting cases where pre-charge bail/RUI is used;
- the impact of pre-charge bail/RUI on the timescales of the justice process from investigation to conclusion;
- the effectiveness of understanding at a strategic level of the use of pre-charge bail/RUI; and
- good practice and areas for improvement.

## Inspection process

The inspection was conducted in four phases.

### Phase 1: Pilot – September 2019

We carried out a pilot inspection to test the methodology. Twenty cases were selected from the CPS Case Management System (CMS), and 20 cases from the police crime management system where the police had made the decision to take no further action without referring the case to the CPS. Inspectors assessed the cases from both a CPS and police perspective.

The selection process specified that all cases must have been finalised in September 2019 (although with the option of including cases finalised in August 2019, if needed to reach the required numbers). The CMS cases ensured an even balance of cases tried in the magistrates' court and Crown Court, and of successful and unsuccessful outcomes.

To ensure that the sample contained as wide a range of elements as possible, the case sample included a selection of crime types:

- domestic abuse (including offences of assault with injury, coercion and control and harassment and stalking);

- offences against children (including offences of possession/distribution of indecent images, assault and child criminal/sexual exploitation);
- rape and serious sexual offences; and
- other serious violence (including knife crime, serious assault and wounding).

### **Phase 2: Case file review in six forces – November–December 2019**

Following the pilot inspection, HMICFRS and HMCPSI inspectors spent up to five days in six forces, reviewing case files which had been finalised by CPS. Forces were chosen to represent a mix of geography and demand.

As in the pilot, we assessed 20 cases in each force. However, for the larger force area we looked at 40 cases. Across all six forces we assessed 140 cases in total.

### **Phase 3: Fieldwork – February–March 2020**

Building on the findings of the case file review, inspectors intended to revisit the six forces to conduct:

- further case file reviews – 20 cases (40 in the metropolitan force) from the police crime management system. These were cases where the police had made the decision to take no further action without referring the case to the CPS. Forces were asked to provide a list of cases from which HMICFRS inspection officers selected cases to be examined. These cases had been finalised no earlier than December 2019;
- interviews with the force strategic and operational leads for bail/RUI, and with the custody lead;
- focus groups with frontline officers and supervisors;
- an interview with the CPS lead;
- a focus group with CPS prosecutors; and
- an interview with HM Courts and Tribunal Service (HMCTS).

However, on 13 March 2020, HMICFRS paused appreciable inspection activity, to allow inspected sectors to focus on their response to COVID-19. Four forces had been inspected at this point. Based on a review of the strength of the evidence collected to date, the decision was made to write this report and recommendations based on the inspection activity completed at that point.

### **Phase 4: National interviews – April 2020**

- HMICFRS and HMCPSI inspectors also conducted joint interviews with:
- the NPCC national lead for bail/RUI;
- the Home Office policy lead;
- the Chief Crown Prosecutor national lead;
- the CPS policy lead; and
- defence lawyers.

## External reference group

In line with our methodology for such inspections, HMICFRS established an external reference group to act in an advisory capacity for informing the continuing development and implementation of the inspection. Membership of the group is detailed below.

Manuel Modupe	Home Office
Anthony Rogers	HMCPST
Jeetinder Sarmotta	HMCPST
Mark Bishop	CPS
Mark Trolley	CPS
Darren Martland	NPCC
Louisa Rolfe	NPCC
Libby Potten	College of Policing
Will Naylor	Association of PCCs
Dr Elaine Wedlock	Victims' Commissioner for England and Wales
Helen Measures	HM Courts & Tribunals Service (HMCTS)
Janet Arkinstall	The Law Society
Sarah Morley	Independent Office for Police Conduct

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