Conditional bail in England and Wales

Why data gaps matter, and how to fill them

1. What is conditional bail?

Police and courts can impose conditions on defendants on bail who pose a risk of offending, harming witnesses, or absconding. These conditions vary in severity, from reporting to a police station to electronic tagging and curfews.

Conditional bail can reduce the burden on overcrowded prisons, by reducing the need for custodial remand. It is however more expensive and resource intensive for police forces than unconditional bail, as conditions must be monitored and enforced. Reports suggest that some magistrates are not using all the conditions available to them because of the difficulties that police forces would have monitoring them.[1]

Experts report that conditional bail is fast becoming the norm, implying that tens of thousands of people are affected each year.[2] However, little is known about how conditional bail is used, or how well it works as an alternative to remand - we do not even know how many people are given conditional bail each year.

Better data would help us understand whether conditional bail keeps the public safe and deter offending on bail, and ensure conditions are used as effectively as possible, reducing costs and burdens for the police and courts.

2. Why we need more data on conditional bail

Currently, no data is collected or published on how often conditional bail is used, the conditions imposed, or subsequent behaviour or offending on bail. This causes two problems:

1. **We don't know if conditional bail is effective or safe.** When used well, conditional bail can reduce the burdens on the court system and keep witnesses safe. However,

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[1] Criminal Justice Alliance, ['Written evidence to the Justice Select Committee'](#) (2022)
[2] Anthea Hucklesby, ['Written evidence to the Justice Select Committee'](#) (2022)

the lack of evidence on how well it works means that police and courts have less confidence in using it as an alternative to custodial remand.

2. **We don't understand how widely conditions are used or the impact on defendants**. Conditions can be restrictive and expensive to monitor, but there is little data recorded on how they are used or who is being given them.

We have identified five questions about conditional bail gaps that are regularly highlighted by stakeholders,[3] and that cannot currently be answered:

1. **How many people are given conditional bail?** No data is published on the number of people on conditional bail, or how often police and courts use it. Stakeholders have called for data to understand how rapidly this population is growing.

2. **What conditions are imposed - and why?** The legislative framework for conditional bail, the Bail Act 1976, has faced recent criticism for being ill-defined and overly subjective.[4] The Act provides no guidance on what types of conditions can be imposed, or when they could or should be used.[5] In practice, only a few conditions tend to be imposed - electronic tagging, reporting to police stations, exclusion zones, residing at specific addresses, not contacting witnesses or victims. But no data is published on which is used most often, for which alleged offences, and on what grounds the conditions are applied.[6]

3. **Who is given conditional bail?** Research suggests that some groups receive more severe outcomes throughout the criminal justice system[7] - e.g. people from ethnic minorities are disproportionately remanded in custody.[8] However, we do not have any data on disproportionalities in the use of conditional bail, or disparities across the country. Data on disparities are published for many areas of the CJS: there is no reason conditional bail should be exempt. Furthermore, children as young as 10 can be remanded on conditional bail, so more data is also needed to understand the impacts of conditions on children.[9]

4. **How long are people on conditional bail for?** There are no legal time limits for post-charge conditional bail and the sizable court backlog means that defendants are waiting increasingly long for their trials. The MoJ do not publish this data and have denied being able to do so when asked by MPs.[10] Longer periods of conditional bail increases the costs for police forces, who have to monitor

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[3] Transform Justice, 'Presumed innocent but behind bars – is remand overused in England and Wales?' (2018); HMICFRS, 'Pre-charge bail and released under investigation: Striking a balance' (2020); JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System' (2021); Anthea Hucklesby, 'Written evidence to the Justice Select Committee' (2022); Tom Smith, 'Written evidence to the Justice Select Committee' (2022); Mandeep K. Dhami and Yannick N. van den Brink, 'A Multi-disciplinary and Comparative Approach to Evaluating Pre-trial Detention Decisions: Towards Evidence-Based Reform' (2022)

[4] Mandeep Dhami, 'Written evidence to the Justice Select Committee' (2022)

[5] Justice Committee, 'https://committees.parliament.uk/publications/33530/documents/182421/default/' (2023)

[6] The one exception is electronic monitoring (tagging), where basic data is published - this suggests that the number of defendants subject to tagging is rising rapidly.
https://www.gov.uk/government/collections/electronic-monitoring-publication

[7] David Lammy, 'The Lammy Review' (2017); House of Commons Library, 'Ethnicity and the criminal justice system: What does recent data say on over-representation?' (2020).

[8] Liberty Investigates, 'Proportion of remand prisoners from ethnic minorities rises 17 percent in six years' (2022)

[9] Lorraine Gelsthrope and Nicola Padfield, 'Written evidence to the Justice Select Committee' (2022)

[10] UK Parliament, 'Written Question: Bail' (2023); UK Parliament, 'Written Question: Bail' (2023)

defendants for longer and deal with any breach of conditions. Robust data on the average length of conditional bail would help to reveal the impacts of the court backlog on defendants' experiences, and the pressures placed on police forces.

5. **How well does conditional bail work?** Police forces have reported that conditions are often difficult to monitor or unenforceable, and questions have been raised about their effectiveness.[11] Recent Parliamentary questions have revealed that the number of arrests made whilst on bail have dropped every year since 2010,[12] with less than 10% of those released on bail by magistrates' courts offending.[13] The data does not identify what proportion of these arrests were made for people on conditional data. Better data would help police and courts to understand which conditions are most effective in mitigating offending whilst on bail.

3. Practical ways to fill these data gaps

Our research suggests it is possible to fill these data gaps straightforwardly. Police forces and courts record information on conditional bail digitally, making it a simple technical task (with no marginal costs) to extract data into reporting databases. This can be used to produce management information or experimental statistics, appropriately caveated.

3.1. Short term: extend current bail statistics to include conditional bail

Our research suggests that there are two ways in which the MoJ could immediately start publishing better days on conditional bail.

1. Using the Court Proceedings Database to extract data from courts

The MoJ currently publishes statistics on the total number of defendants granted bail by crown and magistrates' courts each year.[14] The source is MoJ's Court Proceedings Database (CPD), which receives data from court case management system[15]. However, the MoJ's statistics do not distinguish between conditional and unconditional bail.

Legal practitioners have reported to us that Common Platform, a new digital case management system being rolled out across courts in England and Wales, records information on conditional bail, including conditions imposed. At a bare minimum, it should be possible to add to the data supplied to CPD from Common Platform a binary (yes/no) flag for whether conditions are recorded against bail.

We recommend that MoJ extend CPD and the statistics derived into CJSQ to distinguish between conditional and unconditional bail. This should be straightforward, and would at least answer question 1 above (the number of defendants given conditional bail). As CJSQ already allows data to be broken down by demographic characteristics, this

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[11] Anthea Hucklesby, '[Pre-charge bail: an investigation of its use in two police forces](#)' (2014)

[12] UK Parliament, '[Written Question: Bail](#)' (2022)

[13] UK Parliament, '[Written Question: Bail](#)' (2022)

[14] Ministry of Justice, '[Criminal Justice System statistics quarterly: June 2022](#)' (2022) [Overview Tables Q4.1 - 4.4]

[15] WhatDoTheyKnow, '[FoI request: Guide to the contents of the Court Proceedings Database](#)' (2022)

will also answer question 3 (who receives conditional bail), helping reveal disproportionalities.

2. Making use of the MoJ extract of the PNC

A Freedom of Information request that we submitted suggests that the MoJ collects reasonably detailed information on conditional bail via an extract it receives from the Police National Computer (PNC).[16] The FoI reveals the MoJ receives data on the date conditions are set for defendants, the conditions imposed by authorities and how and when a defendant may have breached their conditions.

The MoJ already uses the PNC extract for other published data, for example the Proven Reoffending Statistics.[17] **We urge the MoJ to consider using the PNC extract as a source for conditional bail data.** In particular, the extract could provide information on the types of conditions imposed and the how long conditions typically last.

3.2. Medium term: extract conditions from case files

Police and court forms record when bail and conditions are imposed. We recommend MoJ explore using the sources below to produce statistics on the reasons conditional bail is used, and how often offending occurs during unconditional vs conditional bail.

Currently, police officers use Manual of Guidance (MG) forms to send case files to the CPS and courts[18]. Form MG4A (bail grant/variation) includes tick boxes on bail type and the reason for imposing conditions, and a free text list of the conditions imposed, as below:[19]

More than 90% of forces provide case files digitally, which suggests that this information is held digitally in both police and court systems. **We recommend CPS/MoJ explore using**

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[16] WhatDoTheyKnow?, 'MoJ Extract of Police National Computer' (2023)
[17] Ministry of Justice, 'Proven reoffending statistics' (2023)
[18] ACPO, 'The Prosecution Team Manual of Guidance' (2011)
[19] Police Form MG4A

this current data as a source for information on bail grounds and conditions. This could be used to answer question 2 (conditions and the grounds applied).

Moving forward, we believe that more structured data could be recorded on conditions imposed, as a new Digital Case File (DCF) standard is set to replace existing MG forms with more structured digital information exchange.[20] **In future, we recommend MoJ should encourage the DCF standard to use structured rather than unstructured fields to record bail conditions.** This could help answer question 2 (type of conditions imposed).

3.3. Longer term: extend offending data to cover bail conditions

We know how many arrests there are for people on bail, via an MoJ data extract from the Police National Computer.[21] However, this data cannot be broken down by whether the offender was on conditional or unconditional bail, initial offence type or conditions imposed. The same data is used to create MoJ's reoffending statistics, which again provide little information on bail.[22] This is because the PNC does not record bail conditions or initial offence type, only the fact the arrest was made while on bail.[23]

The question of offending while on bail is of considerable public interest. In the past year, four Parliamentary questions have gone unanswered on the topic.[24] Moreover, better data can help to support the activities of bail decision-makers. The Criminal Justice Alliance report that there is a current lack of trust in conditional bail due to a lack of routine monitoring, making it more likely that police and courts will opt for the risk averse choice of custodial remand.[25] Better data can breed confidence in the use of conditional bail, improving outcomes for defendants and keeping fewer people in custody unnecessarily.

To better understand how well bail conditions prevent offending, we recommend that either (a) the PNC should be extended to record information about initial offence and any bail conditions, or (b) the MoJ should investigate the possibility of matching PNC and court records. This would help answer question 5 (how well conditional bail works).

About us and acknowledgements

The Centre for Public Data is a non-partisan, non-profit research and advocacy organisation that works to improve the quality of UK public data. We have a particular interest in data gaps - areas where questions of significant public interest cannot be answered due to a lack of public data or statistics.

This briefing was written by Gideon Leibowitz and Anna Powell-Smith. This is part of a series of publications on data gaps in the criminal justice system. Our work in this area is

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[20] CGI, 'Digital Case File Interface' (2019)
[21] UK Parliament, 'Written Question: Bail' (2022)
[22] Ministry of Justice, 'Proven reoffending statistics' (2023)
[23] PNC user manual v20.01, released via FOI (2020)
[24] TheyWorkForYou, 'Rape: Reoffenders' (2022); TheyWorkForYou, 'Burglary: Reoffenders' (2022); TheyWorkForYou, 'Fraud: Reoffenders' (2022); TheyWorkForYou, 'Dangerous Driving: Reoffenders' (2022)
[25] Criminal Justice Alliance, 'Written evidence to the Justice Select Committee' (2022)