social research

Crime and Justice

Social Research
Research Findings
No. 39/2012

Impact of Bail Reforms on Summary Justice Reform

Kate Skellington Orr/Shirley McCoard/Elaine Wilson Smith/Jacqueline McKellar/Paul McCartney, MVA Consultancy

MVA Consultancy was commissioned by the Scottish Government to undertake an evaluation of the Impact of Bail Reforms on Summary Justice Reform (SJR). The research was part of a wider package of work to evaluate SJR in Scotland. Although changes to bail were not originally part of SJR, they occurred at around the same time, and their aims and objectives were regarded as having the potential to impact on the achievement of the objectives of SJR. With this in mind, the purpose of the research was not to evaluate the bail reforms directly, but to determine the impact of the bail reforms on SJR as well as on the summary justice system more generally.

Main Findings

- The number of bail orders made by the Scottish courts has fallen year on year since 2006/07. This drop mirrors an overall drop in the numbers of persons proceeded against in court, which was also at its lowest in 2010/11 since 2002/03 (although it is not possible to say if the proportionate use of bail orders has changed over time).
- Overall, the numbers of convictions for breach of bail have increased over time. When looking at breaches for failure to appear (FTA) separately from other types of breach, however, it shows that there has been a slight drop in the numbers of people failing to appear at the intermediate, trial and sentencing diet in summary courts since the reforms were implemented. This may again reflect the downward trend in numbers of people proceeded against.
- While professional interviewees anecdotally reported an increase in the number of special conditions being granted, the quantitative data show that there has been little variance over the three year period post-reform. Special conditions, however, are used in over half of bail orders imposed, highlighting the value the judiciary attach to being able to impose specific conditions in certain cases in addition to standard conditions of bail.
- Quantitative and qualitative data both show that breach of bail is being treated more seriously post-reform with increased custodial sentences being applied (especially for non-FTA breaches), and an attitude of non-tolerance of repeat breaches of bail among the judiciary.
- Interviewees considered that ordinary language explanations and reasons behind bail decisions were more frequently given by the judiciary when imposing bail and special conditions than pre-reform.
- While habitual offenders reported that they fully understood the reasons for bail decisions and the consequences of breach, a number of accused reported that they did not fully understand what they were being told in court.
- Overall, there seems to be no change in the consistency of bail decisions, with almost all professional groups, as well as accused, suggesting that decisions do still vary among members of the judiciary.

The Scottish Government

Introduction

In December 2009, the Scottish Government commissioned independent research to explore the impact of bail reforms on summary justice reform (SJR), the findings of which are presented here.

Although changes to bail were not originally part of SJR, they occurred at around the same time, and their aims and objectives were regarded as having the potential to impact on the achievement of the objectives of SJR. With this in mind, the purpose of this research was not to evaluate the bail reforms directly, but to determine the impact of the bail reforms on SJR as well as on the summary justice system more generally.

Aims and Objectives

Specifically, the evaluation sought to explore if the reforms to bail had contributed to:

- reduced instances of breach of bail conditions (especially failure to appear) from pre-reform levels[1];
- making bail decisions more transparent and consistent; and
- ensuring that accused are given an ordinary language explanation of the conditions of bail and the consequences of breaching bail.

It was against these three specific criteria that the evaluation of the impact of the bail reforms on summary justice reform was carried out.

Methodology

A combination of methods were used to collect data to inform the evaluation including analysis of performance data, collection of primary qualitative data from interviews with a number of stakeholders and direct systematic court observations. Interviewees included Judges, Sheriffs, Justices of the Peace (JPs), Procurators Fiscal, Defence Agents and the police. A short face-to-face survey of accused who had previously been given bail orders was also carried out at a number of court sites. Additionally, attempts were made to canvass the views of a small number of victims in solemn cases who had been involved in (now closed) cases where the accused had been given bail.

[1] While the bail reforms had a specific objective to reduce breach of bail overall, the focus on failure to appear was a specific objective of this evaluation since it was considered most relevant to the SJR objective of effective court hearings.

Main Findings

The number of bail orders made by the Scottish courts has fallen year on year since 2006/07. This drop mirrors an overall drop in the numbers of persons proceeded against in court, which was also at its lowest in 2010/11 since 2002/03. It may also be influenced by wider summary justice changes which sought to remove a significant number of appropriate summary cases from the court.

The main offences for which bail orders have been granted are crimes of dishonesty, common assault and breach of the peace. There has been no real change in the types of charge for which orders are granted post-reform which is perhaps not surprising, since this was not something that the reforms sought to change.

On average, just over half of all bail orders had special conditions attached. The lack of pre-reform data, however, means that it is not possible to say if there was an immediate impact of the reforms on use of special conditions. Interview data suggested that the judiciary is making noticeably more use of special conditions over time, and this is something that the Procurators Fiscal who were interviewed welcomed.

The overall numbers of convictions for breach of bail have increased quite notably over time[2]. Possible reasons for this include the use of special conditions, police and the courts having a 'tougher' attitude to breach, or a core of accused not taking bail seriously. With the numbers of bail orders falling overall, and breaches not showing a corresponding downward trend, it appears that proportionately bail breaches have gone up. Due to differences in data recording for these two measures, it was not possible to say conclusively if this was the case.

The police, defence agents and Procurators Fiscal who were interviewed generally perceived that there had been no real decrease in the numbers of bail breaches that they were witnessing, in particular for orders with a curfew attached. This point was also made by a number of the accused who were interviewed.

When looking at breaches for FTA separately from other types of breach (for summary cases only), it shows that there has been a drop in the numbers of people failing to appear at the intermediate, trial and sentencing diet since the reforms were implemented although, again, it is not possible to say if this drop is proportional.

The data show that most failures to appear are dealt with by way of a monetary penalty (i.e. a fine) with fewer attracting community or custodial sentences.

[2] When looking at both summary and solemn cases combined

Fiscals and Defence Agents, however, were of the view that harsher sentencing was being applied to breach of bail orders and conditions, both perceiving that custodial sentences were being used more often for breach of bail post-reform.

Quantitative data showed that there was considerable fluctuation in the number of bail appeals over time. The data also show that the majority of bail appeal applications are refused, and there has been no real change in that situation in recent years.

On ordinary language explanations, most members of the judiciary commented that this was something they had always provided, although there was perhaps a greater awareness of the need to ensure that their explanations were given consistently.

While most accused who were surveyed generally understood why they had received a bail order, those who were less habitual offenders commented that they found the system as whole, including the explanation of bail and its conditions, difficult to understand and often had to rely heavily on their Defence Agent to explain where they were supposed to go and what they were supposed to do and when (both at court and after their court appearance on bail).

Accused found some conditions (e.g. curfews) more challenging to comply with than other conditions (such as not to approach a particular person) and considered that they would be more likely to breach the former.

For the most part, accused were aware of the severity with which breach of bail was treated and considered this to be important in their decision not to breach their order. This was mostly the case for those who were not repeat offenders. For others, although they were aware that a stiff penalty for breach of bail may result, it did not seem to deter them.

Impact on workloads and overlaps with wider SJR

For the police, the reforms to bail were seen to have had negligible impact on their operational role. On practice in court, Fiscals noted that post-reform, more Sheriffs were asking Fiscals to explain further, or to clarify, their reasons for opposing bail, as required by the reforms.

Professional interviewees were of the view that, as the bail procedures are set out in a more standardised way post-reform, this brings about fairness to all those involved in the justice system, with bail decisions based on evidence and justified in an open courtroom. In this way, the specific policy objective of increased transparency and consistency that applied to bail may have contributed to the wider SJR objective of a system that is perceived as fair to all those involved.

Evidence from the evaluation seems to suggest that bail orders are not being taken any more seriously by accused post-reform. With a core of accused receiving two or more bail orders in the course of a year (around 1 in 4) and with breach rates increasing over time, this suggests that reforms are not necessarily contributing to reduced re-offending.

One of the issues emerging from this evaluation is that, while it was always known that the time required in court for Sheriffs to offer a full explanation of the bail order and conditions would be time consuming, the actual time was even greater than originally anticipated among those interviewed. Sheriffs and Defence Agents alike commented that it can be very time consuming, especially if there are special conditions attached. This said, it was accepted that it was necessary as part of the legislation and that it was valuable in cases where the accused heard and understood what was expected of them.

Meeting the objectives

The first specific objective of this evaluation was to explore if there had been a reduction in instances of breach of bail conditions (especially FTA) from pre-reform levels. While there has been an increase in breach overall, FTA has reduced, and so this objective has, in part, been met.

The second objective of the evaluation was to explore whether and to what extent bail decisions are more transparent and consistent post-reform. Although there was no specific KPI data that could be used to measure progress against the objective, interviews with the judiciary suggest that they are accepting of the need to provide more detailed written reports regarding bail decisions but that there may be room for further consistency in decision making.

The third specific objective for this evaluation was to explore whether the reforms had ensured that accused are given an ordinary language explanation of the conditions of bail and the consequences of breaching bail. Again, there was no quantitative data available with which to measure progress against this objective, but feedback from interviews does suggest that explanations are being given. That being said, interview data also shows that while some habitual offenders are clear on their conditions of bail, some first time offenders report not fully understanding their conditions of bail. This perhaps suggests that more can be done to improve the quality and clarity

of these explanations.

Messages for policy

Some Defence Agents are still undertaking a notable role in providing explanations to accused regarding their bail and bail conditions. Although this complements the work of the judiciary, the extent to which accused are relying on Defence Agents instead of listening to and understanding the judiciary in court may suggest that there is some scope to further improve the way in which explanations are communicated in court.

Many repeat attendees at court are familiar with bail conditions and the consequences of breach, however, the current system of providing 'ordinary language' explanations in court does not seem to be offering the level of clarity required for those who have not had previous involvement in the court system. These accused welcomed the prospect of more targeted information, which may also make the system more efficient and effective. This information seems to be required on the system as a whole, not just on bail.

Although, procedurally, changes to the bail appeal system were welcomed, there may be scope to further improve this specific component of the bail system by ensuring that members of the judiciary receive feedback on the quality and usefulness of the reports that they prepare.

Interviewees shared a view that, for some, bail conditions would always be breached and would never be taken seriously (and, indeed, rising breach rates may suggest that bail conditions are not being taken seriously). They suggested that there may be a need for different strategies for dealing with repeat offenders other than those already set out.

Finally, it seems that, in some cases, the use of special conditions attached to bail may not be working to improve system efficiencies. Recognising that the use of special bail conditions affords a greater degree of control over the behaviour of accused, and provide a valuable public and victim and witness protection and reassurance tool, in cases where special conditions are ignored or prove too challenging, it may be generating an increased court workload which might otherwise have been avoided had alternative decisions to bail been used (including custody, standard conditions, supervised bail, or being released without bail conditions to await citation). It seems, therefore, that the use of special conditions in some cases may be causing tension between efficiency and public protection. The overriding message appears to be that special conditions need to be carefully considered and be relevant and proportionate to the specific case.

Conclusion

In sum, the research has shown that the reforms to bail have not impacted greatly on its use. Although there have been fewer orders granted, that may reflect wider summary justice system changes as well as a drop in court workloads *per se.* Convictions for breach have increased overall, contrary to the aim of the reforms to reduce breach. This perhaps suggests that bail is not being taken seriously by accused, though it may also reflect a tougher approach to breach on the part of justice professionals. There has, however, been some reduction in FTA in summary courts, though it is unclear if this numerical drop represents a proportional drop.

Overall, while almost all of those interviewed viewed the current system of bail as fair, they questioned its effectiveness, especially in terms of deterring future breach amongst repeat offenders.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: http://www.scotland.gov.uk/socialresearch. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.

ISBN: 978-1-78045-713-0

APS Group Scotland
DPPAS12739 (03/12)

GSR
GOVERNMENT SOCIAL RESEARCH
Social Science in Government