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Summary Justice Reform: Undertakings Evaluation

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This paper presents the findings from the Summary Justice Reform: Undertakings Evaluation. The research formed part of a wider package of work to evaluate Summary Justice Reform (SJR) in Scotland as a whole. The aim of the research was to evaluate how far the reforms to undertakings had met both the specific policy objectives as well as the overarching aims and objectives of SJR; that is to be fair to victims, witnesses and the accused; effective in deterring, punishing and helping to rehabilitate offenders; efficient in the use of time and resources; and quick and simple in delivery.

Main Findings

- There was generally good understanding of undertakings practices and the reforms, as well as support for the principles of speeding up the justice process by increasing their use.
- The data shows mixed messages about whether there has been an increase in the number of accused who appear at court on undertakings post-reform. Qualitative data suggests that the police are making concerted efforts to increase their use of undertakings while numeric data suggests no real increase in use post-reform. Gaps in the data mean that it is not possible to say what happened in the period immediately following their introduction.
- Numeric data supports the notion that a large number of cases are coming to court within the 28 day target, although some areas have a greater success rate than others in meeting this goal. The average time for case marking by Fiscals is also well within the 28 day target and, overall, the objective of getting cases to court quickly does seem to be being met.
- There may be some unintended churn as a result of cases coming to court quickly, with professionals reporting problems with preparing quickly enough for pleading diets in the time given. This may indicate a reduction in the effectiveness of court hearings at this stage in the summary justice journey, as reflected in the increasing average number of diets per case for undertakings and a reduction in the conclusion of cases at first calling in court. Some of this may also be accounted for, however, by the increased use of undertakings for more complex cases post-reform.
- Numeric data shows that, although end-to-end targets are currently being met, and are better than for cited cases, the percentage of undertakings cases being dealt with within 26 weeks has progressively declined over time with a corresponding upward trend in average time taken from caution and charge to verdict, both of which are unique to undertakings cases.
- Compliance with undertakings seems to be good, with few breach of conditions, including special conditions where applied, and few arrests on this basis. Where breach does occur, there is evidence to suggest that sentencers are making use of their increased sentencing powers under the reforms.
- Further efficiencies may be achieved with flexible timescales for the scheduling of undertakings cases in court and better communication between all parties concerned.

The Scottish Government

Introduction

In December 2009, the Scottish Government commissioned an independent evaluation of reforms to undertakings. The research was part of a wider package of work to evaluate summary justice reforms (SJR) in Scotland as a whole.

The main aim of the research was to evaluate how far the reforms to undertakings had met both the overarching aims and objectives of SJR, as well as a number of specific policy objectives for the reforms to undertakings.

Reforms to Undertakings

Undertakings are issued by the police, and involve the liberation of an accused on an undertaking to appear in court within 28 days of their release.

The reforms set out an ambition to increase the use of undertakings as a means of improving the speed and efficiency of the summary justice system and to assist in making sure that cases come to court more quickly, compared to citations.

Changes to undertakings were introduced as part of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 and were implemented from December 2007. The main changes to the use of undertakings include:

- widening of eligibility to issue undertakings. Any Constable may do so post-reform, and not necessarily the arresting officer. In contrast to pre-reform undertakings can also be made without authority from an officer in charge1;
- persons arrested on a warrant can also now be released on an undertaking, instead of the pre-reform necessity for remand; and
- the police may impose new conditions when issuing an undertaking, similar to those issued with bail orders.

Methodology

A mixed methods approach was used that combined analysis of secondary data with collection of primary qualitative data from interviews with professionals and questionnaires from accused. A limited cost-benefit exercise was also attempted but there was a lack of available data to inform its execution.

[1] Although special conditions attached to an undertaking have to be made by an authorising officer of the rank of at least Inspector.

The research findings presented here are based on data generated from four case study areas and so no national conclusions are presented. There were also a number of gaps in the data that were available, including data on the number of undertakings issued pre-reform, data regarding the use of mandatory, standard and special conditions and data on the number of standard prosecution reports submitted to COPFS pre-reform. It was also not possible to compare failure to appear rates for undertakings with failure to appear on citation. Finally, although representatives from various stakeholder groups were interviewed, it was not possible to recruit equal numbers of participants from each agency in each of the four selected areas. This means that the findings cannot be generalised.

Main Findings

The evaluation uncovered mixed messages about whether there has been an increase in the number of accused who appear at court on undertakings post-reform. The KPI data suggests no real increase in use post-reform, although gaps in the data mean that it is not possible to say what happened in the period immediately following their introduction.

The data shows that undertakings are being used for a wider range of offences, including more complex cases such as simple assault, shoplifting and drugs offences, since the reforms.

Qualitative data also suggests that the police are making concerted efforts to increase their use of undertakings. That said, police interviews suggest some police reluctance to use undertakings for fear of being challenged by supervising officers regarding their decisions. This may be contributing to lower numbers of undertakings being used in some areas. It does not seem from the evaluation that awareness of undertakings practices or the undertakings reforms is a barrier to their use.

Views from police, Fiscals and Defence Agents suggest that officers are making use of national guidance as well as using discretion and adopting local protocols that best meet the local circumstances.

The KPI data supports the notion that a large number of cases are coming to court within the 28 day target, although some areas have a greater success rate than others in meeting this goal. Overall, the objective of getting cases to court quickly does, however, seem to be being met.

While data is positive in regards to the 28 day target being met, in interviews it was suggested that

there may have been some unintended churn as a result of cases coming to court quickly, with police, Defence Agents and Fiscal interviewees all reporting difficulties in preparing quickly enough for pleading diets in the time given. KPI data also shows a lower proportion of undertakings cases concluded at first calling in court in the period since the reforms, compared to an increase in the percentage of cited and custodial cases concluding at this stage over time. One explanation for this may be the shift in use of undertakings towards more complex cases post-reform which require more diets than the cases where undertakings were traditionally used (for example, drink/drug driving cases of which there are now fewer cases in the courts).

An alternative explanation may be that the speed of getting accused to court on undertakings leaves less opportunity for agents to advise their clients to plead guilty (where appropriate). As a result, and given concurrent reforms to legal aid, greater use may be being made of continued pleading diets to allow later guilty pleas to be tendered.

KPI data also shows that, pre-reform, undertakings cases usually proceeded through court with fewer diets per case on average than cited and custody cases, however, post-reform, there has been a notable increase in the average number of appearances for undertakings cases. This is all the more notable since there has been a corresponding drop in the average number of diets for the other two case types, suggesting that the rise is isolated to undertakings cases and may be a direct consequence of reforms in this particular area. This may indicate a reduction in the effectiveness of court hearings for undertakings cases at this stage in the summary justice journey.

Although end-to-end targets are currently being met, the evaluation has shown that the percentage of undertakings cases being dealt with within 26 weeks has progressively declined over time since the start of 2009 with a corresponding upward trend in average time taken from caution and charge to verdict, both of which are unique to undertakings cases.

In sum, while undertakings do seem to be getting people to court quickly, with some areas showing good compliance with the 28 day target, case marking among fiscals is taking slightly longer over time, and there appear to be more diets and overall lengthier times required to conclude cases once they are at court. The end-to-end time for undertakings is, however, still faster than for cited cases, but the difference in time for the two has reduced in recent years. Thus getting people to court may be occurring at the expense of the other intended outcomes of SJR – in particular the early, effective preparation of cases and more effective court hearings, as well as cases being dealt with at the earliest stage of proceedings and achieving faster case conclusions overall.

There was consensus that most people do appear at court on first calling if released on an undertaking. Interviewees perceived that there were few breaches of conditions, including special conditions where applied, based on there being few arrests for this crime. Where conviction for breach of undertakings does occur, there is evidence to suggest that sentencers are making use of their increased sentencing powers under the reforms.

Undertakings were seen by interviewees to be largely fair to victims, witnesses and accused. In particular, one of the main benefits of undertakings was seen to be the certainty of knowing where and when to attend court. Findings from the victim, witnesses and public perceptions evaluation, published separately as part of the SJR evaluation series, also show that members of the public support the rationale and principles for undertakings, as do victims and witnesses. This, however, does not hold for cases involving repeat offenders and those with a history of breach of bail or undertakings for whom custody seems to be what the public would prefer.

Responses from accused seem to show reasonably good levels of awareness of the reasons for undertakings and the conditions of their use. There seemed to be support for their use for lesser offences and accused agreed with the principles that, for some more serious offences, their use was not appropriate. Those accused who took part also showed support for the serious treatment of breach of undertakings and conditions, especially given that the standard conditions were not difficult to comply with and allowed the privilege of liberation. Most of those who took part welcomed their freedom and also seemed to welcome a quick turnaround in getting to court. Data from the accused who took part in the evaluation also suggests that they considered they had been treated fairly in cases where an undertaking had been used.

Although not a specific focus of the evaluation, qualitative interview data shows that there may be some issues around communication between both Fiscals and the accused, and between Defence Agents and their clients, which are linked to undertakings use. The first problem reported by interviewees was that Fiscals were marking some undertakings cases as Fiscal direct measures or no proceedings, but were failing to alert accused of this decision. This can mean wasted time for some accused attending court only to be notified that the case has been dropped or is being dealt with by a non-court disposal.

Secondly, interviewees reported that some accused were failing to liaise with their Defence Agents ahead of appearing in court on an undertaking which exacerbated the lack of time to prepare. The absence of a written copy complaint[2] before the court appearance was often coupled with failure by the accused to provide sufficient details to Defence Agents of the nature of the charge. Whilst this may not be unique to undertakings, the short time between arrest and pleading diet may be compounding the problem in undertakings cases. Overall, it seems that more effective communication between Fiscals, Defence Agents and accused may be needed.

Messages for Policy

Some of the main messages from the evaluation appear to be that:

- Greater flexibility in the terms of the Lord Advocate's guidelines is perceived as being necessary by all key stakeholder groups (police, Defence Agents and Fiscals) in order to ensure the optimum use and effectiveness of undertakings. In particular, greater flexibility in the time taken from release to appearance in court may mean that problems with gathering evidence and preparing quality reports may be overcome. This may also help to alleviate some of the communication problems that are occurring.
- There may be a need to review the communication strategy between Fiscals, Defence Agents and the accused. This is especially true in cases where alternative, non-court disposals are decided by Fiscals after undertakings have been issued, and in cases where no proceedings are marked. Ensuring that all relevant parties are aware of these decisions as soon as possible may reduce inconvenience in the system.
- A focus on getting people to court needs to be carefully balanced with getting cases through court since it seems that, in some cases, a lack of communication and preparation is leading to ineffective first court hearings and continued churn with undertakings cases not being dealt with at the earliest possible stage in some instances.

[2] The 'complaint' is a paper document that includes the charge(s) libelled, the disclosable summary of evidence from the police report and information on the accused's previous convictions.

Conclusions

Overall, police targets for getting undertakings cases to court, as well as Fiscal marking targets, are being met, as are the end-to-end targets for undertakings cases progressing through court. The speed of undertakings cases through court is also still faster than cited cases. Disappointingly, gaps in the data mean that it is not possible to say conclusively if undertakings are being used more post-reform, as was expected, or how compliance with undertakings compares to cited cases.

Despite some positive findings, there is also clear evidence of churn still occurring at the front end of the court journey for undertakings cases, though this may be in part due to a change in the types of cases for which undertakings are being used. The evaluation perhaps, therefore, suggests a need to revisit some of the core principles of undertakings, and to consider further if speed at the early stages of the justice process has the desired impact on end-to-end summary justice performance overall. A key to the future success of undertakings, which will minimise negative impacts at later stages in the system, seems to be a more flexible timescale for the scheduling of undertakings cases in court and better communication between all parties concerned.

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.

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