

CRIME AND JUSTICE

Occasional Paper: Remand and bail outcomes at first bail decision points in Sheriff Courts

1 Introduction

When someone in Scotland is accused of criminal charges and prosecuted in court, the court case may take some weeks or months to conclude. The court must decide what should happen to the person during the period the case proceeds. In particular, whether the person should lose their liberty by being put in custody or should they remain in the community either with or without conditions. The court may:

- Decide that the accused person should be remanded in prison.
- Impose bail conditions that the accused person is subject to while they remain in the community.
- Allow the accused person to remain in the community without being subject to bail conditions throughout the duration of their criminal case – in this case the person is generally referred to as being “ordained” to appear in court at a later date.

A number of factors are considered in the decision on which of these options should be deployed. In the case of whether bail should be granted¹, all decisions are made with the public interest in mind, including considerations of public safety. There are specific grounds that the court may account for, including:

- The risk of the person absconding or failing to appear in court on the case,
- The risk of the person committing further offences while on bail.
- The risk of the person interfering with witnesses or otherwise obstructing the course of justice.

Individuals that pose a substantial risk on one of the above grounds may not be granted bail and instead could be held on remand. There are also restrictions on

¹ [Part III, Section 23C of the Criminal Procedure \(Scotland\) Act 1995](#)

bail in certain solemn cases² that would result in the use of remand. A range of information must be considered by the courts in reaching this decision.

This paper uses a new dataset prepared by Scottish Courts and Tribunals Services covering hearings in Sheriff courts from April 2016 to March 2021, to help illustrate some of the key trends in bail and remand decisions, as well as factors that are associated with the decision. The paper presents data on the numbers and likelihoods of accused individuals being remanded, bailed, ordained or subject to some other outcome at the first point in time when such a decision is made for each individual (from here on this is referred to as the “first bail decision point”). A discussion is provided on some of the factors that are associated with particular outcomes for the accused (such as remand), and the impact of the Covid-19 pandemic is also explored.

Key messages in this publication are:

- Sheriff Solemn (more serious) proceedings are more likely to result in an individual being remanded and are less likely to involve an individual being ordained than Sheriff Summary proceedings.
- The manner in which an individual appears in court (e.g., from police custody) is strongly correlated with likelihood of bail and remand outcomes.
- Individuals that have previously breached the terms of their bail are far more likely to be remanded than those who have not.
- There is evidence of a change in the trend of court callings and outcomes for the accused in the first year of the Covid-19 pandemic, with a notable fall in the use of remand, especially for sheriff summary complaints.
- There was an increase in the number of decisions to remand in Solemn – which was driven by an increase in the total number of solemn petitions rather than the likelihood of being remanded.
- Both the rise in solemn petitions and the rise in remand decisions for those on solemn petitions is strongly associated with breach of bail conditions.

For simplicity, only first bail decision points of criminal cases in Sheriff courts are explored in this paper. Further publications may focus on other hearing types, for example exploring transitions for the accused person between remand and bail during their criminal case.

² [Part III, Section 23D of the Criminal Procedure \(Scotland\) Act 1995](#)

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2 Background information about criminal cases and their first appearance in criminal courts

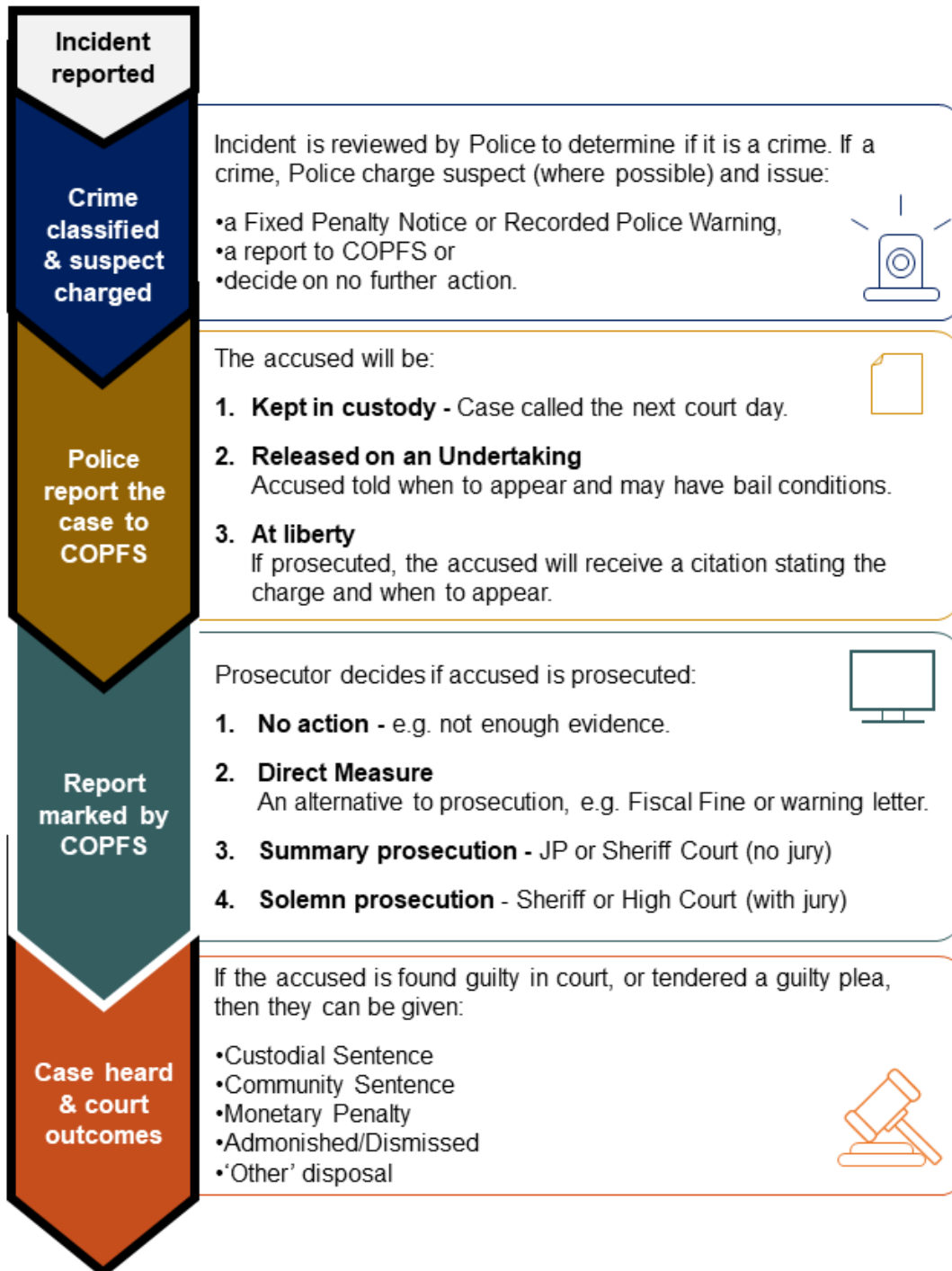
In order to explain the results in this publication, it is important to begin first by providing context on what happens when someone is accused of a crime and a criminal case is called.

2.1 How criminal cases progress

Figure 1 shows how crimes progress through the criminal justice system in Scotland, from the point of the incident being reported all the way through to a possible conclusion of the case in criminal courts.

Not all cases proceed to court - some conclude at the police stage without being reported to the Crown Office and Procurator Fiscal Service (COPFS), and, for some cases that are reported to COPFS, a decision may be taken not to prosecute in criminal courts. If cases are prosecuted in court, this will be either a summary prosecution (starting with a new case calling in the Sheriff or Justice of the Peace court) or a solemn prosecution, which begins with a new "Solemn Petition" case calling in the sheriff court. Solemn prosecutions are for more serious criminal charges and would involve a jury if heard at trial.

Figure 1 - How crime flows through the Justice System



2.2 How cases begin in criminal courts

When a criminal case is called for the first time in court the accused may or may not be present in court. If the accused is present, the circumstances of their appearance in court is usually one of the following:

- **Appearance from police custody:** This means the accused has been brought to court directly from being detained in police custody,
- **Appearance on an Undertaking:** This means the accused was previously released by the police on an Undertaking to appear in court at a later date,

and in the time up to their court appearance they have been required to adhere to certain conditions in the community.

- **Appearance after an Initiating Warrant:** This means that the court has issued an initiating warrant in order for the police to bring the accused before the court. However, appearances after an initiating warrant have been excluded from this analysis due to the differing ways in which warrants are executed.
- **Another type of appearance:** The accused may have been previously “cited” to appear in court, and in the time up to their court calling remained in the community without having to adhere to specific undertaking conditions.

An accused can also appear from prison custody, for example if they are remanded on another case, or they are serving a prison sentence for another case and are brought to court from prison to answer a new case that has been commenced by the COPFS.

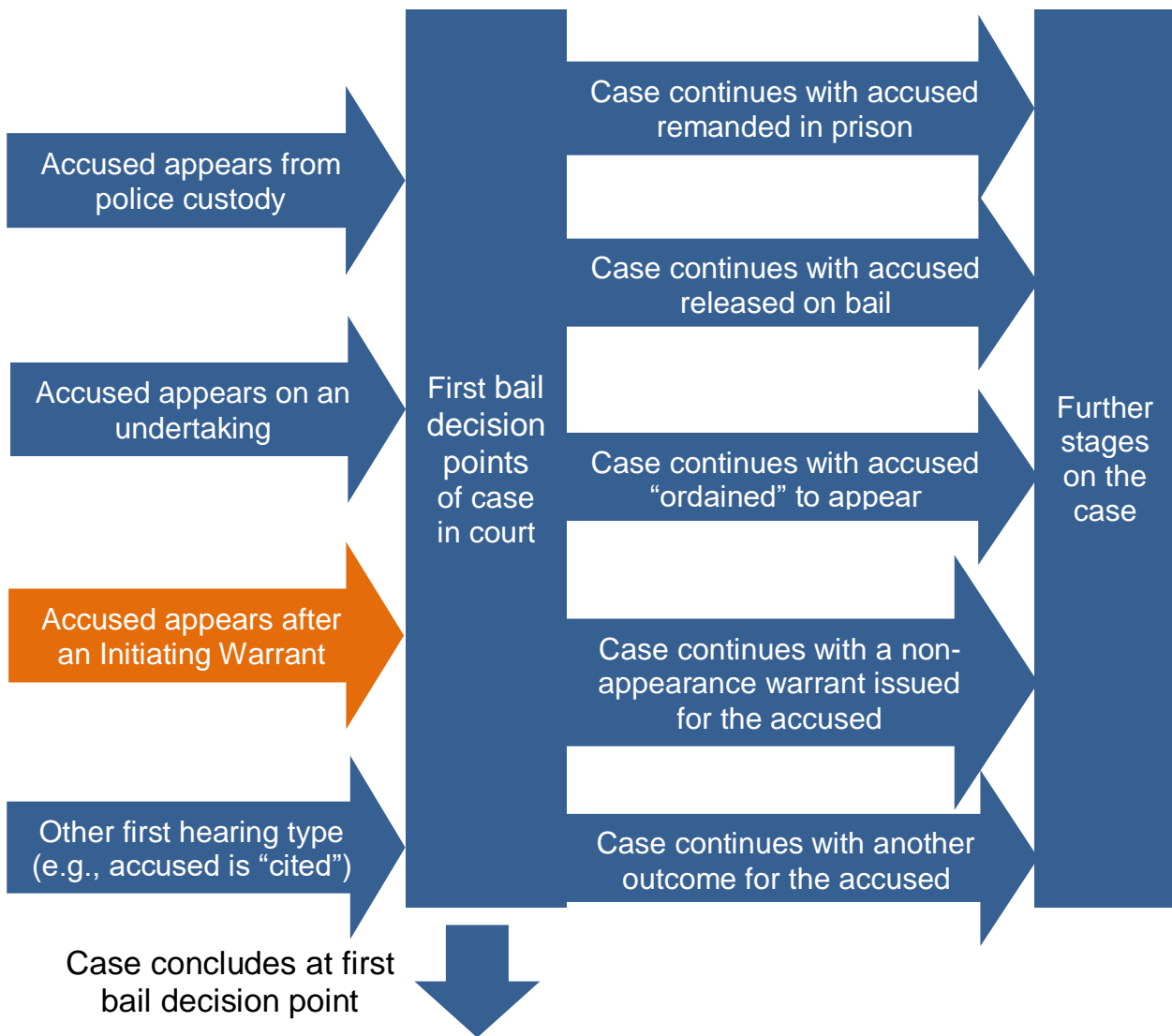
These appearance types are illustrated on the left hand side of Figure 2.

At the first bail decision point the case may conclude immediately (for example via guilty plea). If not, and the case is continued, a decision is made on whether the accused should be:

- Remanded in custody in a Scottish prison,
- Released to the community subject to bail conditions,
- “Ordained to appear” at a later date (i.e., at liberty in the community and not subject to any bail conditions),
- Some other outcome.

This can be seen on the right hand side of Figure 2, and this publication is focussed on these outcomes.

Figure 2 - First bail decision points of cases in sheriff courts and decisions about remand and bail (orange indicates cases excluded from this analysis).



2.3 Remand

Remand means that accused individuals are held in prison custody while awaiting trial. Scotland’s remand population has risen dramatically over the pandemic and accounts for an increasingly large proportion of Scotland’s prison population. Currently, around 30 per cent of the total prison population – i.e. over 1 in 4 people in prison have either not been convicted or sentenced, which compares to around 20 per cent on remand pre-pandemic.

In part, the current level of remand has been driven by the pandemic and the constraints on court activity which have caused a backlog in proceeding cases. However, Scotland’s remand population was rising pre-pandemic despite a reduction in the number of arrivals since 2009-10. The remand population is influenced both by the number of people being remanded by courts and by the amount of time they then spend on remand. The paper examines the number of people being remanded while awaiting Sheriff and High court trials.

2.4 Release into the community

The accused individual may instead be released into the community, with or without conditions. If no conditions are attached, this is known as being ordained to appear at a future hearing. If conditions are attached to the release, this is known as bail.

Bail conditions include appearing at all future court hearings and not committing further offences.

3 Results

3.1 Likelihoods of particular outcomes for the accused

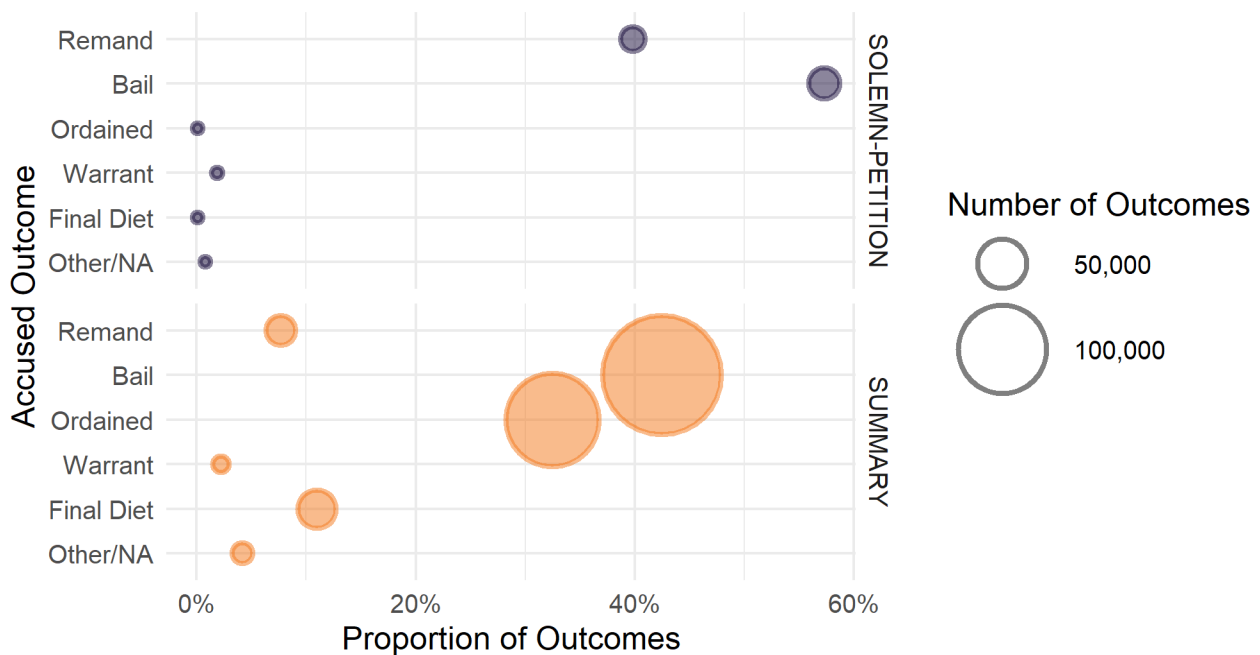
Across the five years of hearings data from April 2016 to March 2021 analysed, the most likely outcome for the accused when their case calls for the first time in sheriff court is that they will be bailed (45%). The next most likely outcome is that they will be ordained (27%), followed by being remanded in prison (12%). Other possible recorded outcomes are that there was no further calling for that case-accused (9.4%)³; that a warrant was issued for arrest (2.1%)⁴; or some other outcome (such as the person being in care) or no outcome recorded (3.7%).

The likelihoods of different outcomes are shown for the two different procedure types (solemn or summary) in Figure 3. This shows that accused persons on solemn cases are far more likely to be remanded and far less likely to be ordained than accused persons on summary cases. The result that accused individuals on solemn cases are more likely to be remanded than those on summary cases is unsurprising in that solemn cases tend to involve more serious offences where public safety risks may be more likely. For example, [Part III, Section 23C of the Criminal Procedure \(Scotland\) Act 1995](#) specifies that the “nature (including level of seriousness) of the offences before the court” is one of the factors to be considered by the court in their decision about bail.

³ As outlined in the method section, this outcome was recorded in the data for instances where the accused’s case did not call again in court after the initial court hearing and the current accused status was not recorded as “active” in the data.

⁴ As outlined in the method section, this outcome was determined by whether the accused next appeared on their case at an “after warrant” hearing in court.

Figure 3 - Likelihoods of each outcome for the accused for new solemn petitions and summary complaints in Sheriff courts, during the period of April 2016 to March 2021. The width of the bubbles indicates the number of outcomes, and the horizontal position indicates the likelihood.



As well as the case procedure type (solemn or summary), the likelihood of particular outcomes for the accused varies by other factors, such as the appearance court type (custody/undertaking/other); and factors associated with the offence (such as the accused having a bail aggravator marking, meaning they breached bail on a previous case). Below, it is shown how the likelihood of an accused person being remanded varies for each of these:

Likelihood of remand

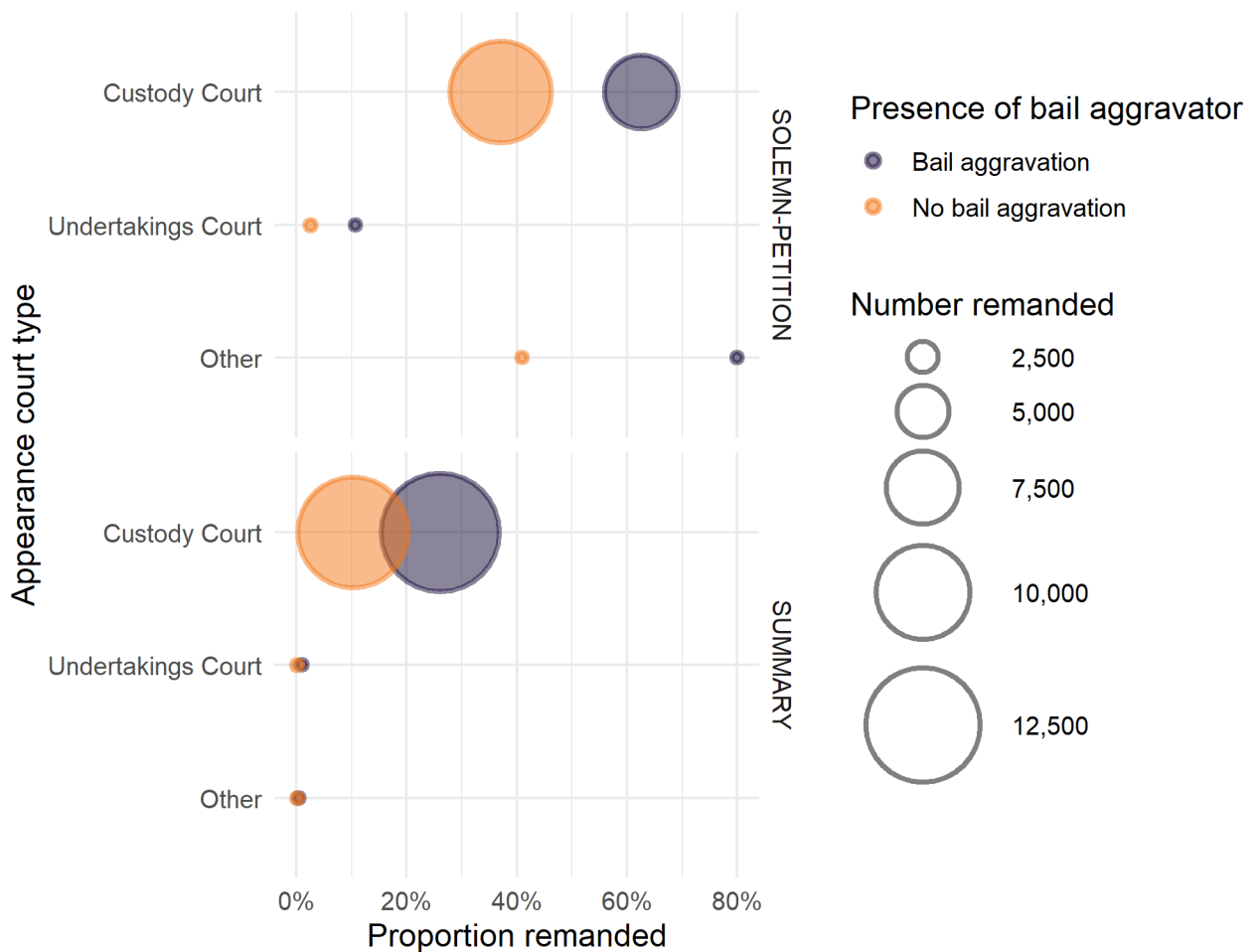
- by procedure type:
 - sheriff summary complaint 7.7%
 - solemn petition 40%
- by appearance court type:
 - custody court 21%
 - undertakings court 0.5%
 - other court 0.2%
- by whether the accused has a bail aggravator marking (e.g. the accused was on bail at the time of the alleged offence):
 - with bail aggravator 25%
 - without bail aggravator 7.9%

It should be noted that these factors are not independent – for example, the high percentage of remand when the accused appears from custody is affected by

custody cases being more common in solemn petition proceedings than in summary proceedings. This also does not mean these factors have a direct impact on the decision on whether to remand the accused individual

Different combinations of the factors above result in different likelihoods of particular outcomes, as shown in figure 4. Considering the combination of the three factors above, the case type with the highest likelihood of remand (63%) is a solemn petition case called in custody court where the accused has a bail aggravator marking⁵.

Figure 4 - Likelihoods of remand for new solemn petitions and summary complaints in Sheriff courts, during the period of April 2016 to March 2021, depending on the appearance type and whether the case involved bail aggravation. The width of the bubbles indicates the number of outcomes, and the horizontal position indicates the likelihood.



It should be noted that this paper does not consider any relationships between outcomes for the accused and:

- crime type
- different characteristics of the accused such as age or gender

These may be further explored in a future publication.

⁵ "Other" appearances with bail aggravation in Solemn-Petition cases had a higher likelihood of remand, but in total these made up fewer than 0.1% of the total cases analysed.

3.2 Trends in numbers and likelihoods of particular outcomes for the accused

This section explores trends in numbers and likelihoods of particular outcomes for accused persons over five years from 2016-17 up to and including 2020-21 (the first pandemic year).

3.2.1 Important context on system changes since the start of the pandemic

The data covers a five year period, but it is important to first note that there were a number of significant changes to the justice landscape in the final year of the data period during 2020-21, as the system was affected by the pandemic. The HM Inspectorate of Prosecution reported in September 2020⁶ on the impacts made by the changes in the response to the pandemic, such as an update to Lord Advocate's Guidelines⁷ on liberation from police custody. As well as these changes, case law, as set out by the Appeal Court on the 3rd of April 2020⁸, provided confirmation of how courts should approach their decision making regarding the consideration of bail that has been applied by the courts⁹.

3.2.2 Trend in the numbers of first bail decision points in courts

Figure 5 shows the trend in the total number of accused first bail decision points for criminal cases over the five years to 2020-21 (see Methodology Annex for a description of which data have been included for first bail decision points in this analysis). Overall, the number of first bail decision points fell in Summary and increased in Solemn between April 2016 and March 2021. The reduction in the number of Summary diets outweighs the fall in Solemn ones, leading to an overall decline in the number of first bail decision points.

This trend continued in the first year of the Covid-19 pandemic (2020-21), with the total number of first bail decision points falling by 15% from the previous financial year. It is known that the pandemic reduced court capacity and court business, especially during the two lockdown periods. However, it is unclear whether this contributed to the fall in first bail decision points in 2020-21, or whether its impact was largely restricted to later court diets.

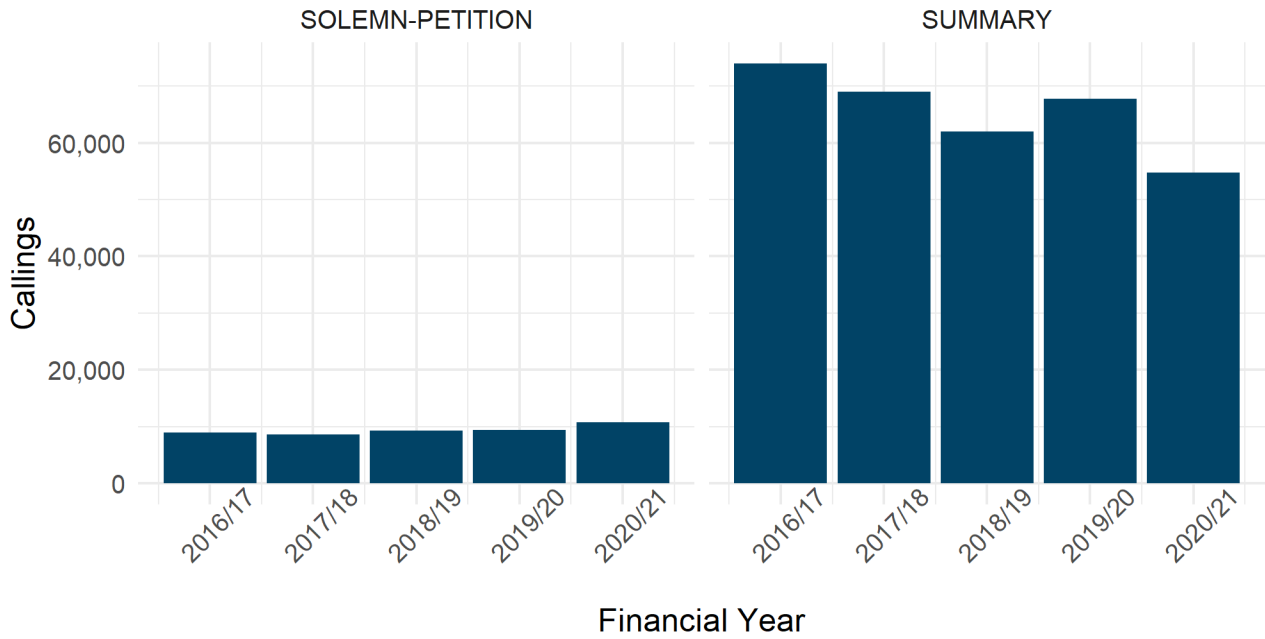
⁶ [Emergency criminal justice provisions: joint inspection - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/emergency-criminal-justice-provisions-joint-inspection/pages/1-10.aspx)

⁷ [Lord Advocate's Guidelines - Page 5 \(copfs.gov.uk\)](https://www.copfs.gov.uk/2020/09/03/lord-advocate-s-guidelines-page-5/)

⁸ [2020hcjac15.pdf \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/2020hcjac15.pdf)

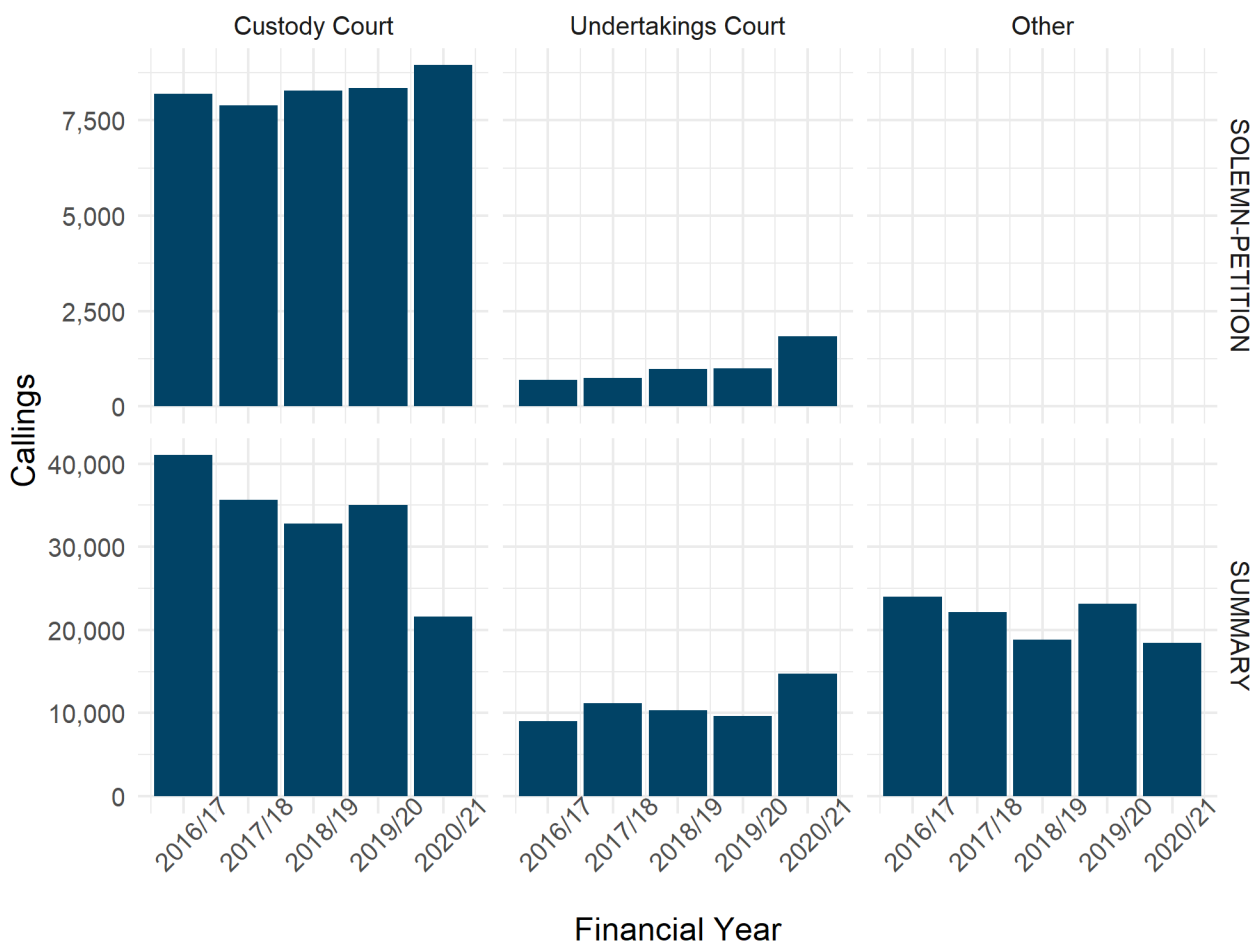
⁹ The Appeal Court stated that, in relation to bail, "the primary question is whether the accused, if at liberty, will pose a substantial risk of committing further offences; particularly violent (including sexual and domestic abuse) offences. If there is no such risk, the accused ought to be granted bail in the ordinary case."

Figure 5 - Number of first bail decision points in Sheriff courts over time, by procedure type.



Section 3.1 of this report showed that procedure type and appearance court type are associated with different likelihoods of outcomes for the accused, so the changing profile of these callings in the pandemic year is important context for any changes in remand and bail volumes during the pandemic. Figure 6 shows that appearances from undertaking at first bail decision points rose from 2019-20 to 2020-21. This was the case for both Summary and Solemn procedures. However, while historically appearances from an undertaking are less likely to result in remand than appearances from custody (figure 4), it is not known whether this shift from custody appearances to undertaking had an impact on the overall likelihood of remand.

Figure 6 - Number of first bail decision points in Sheriff courts over time, by procedure type and appearance court type. The scales of charts are different for summary and solemn calling volumes.

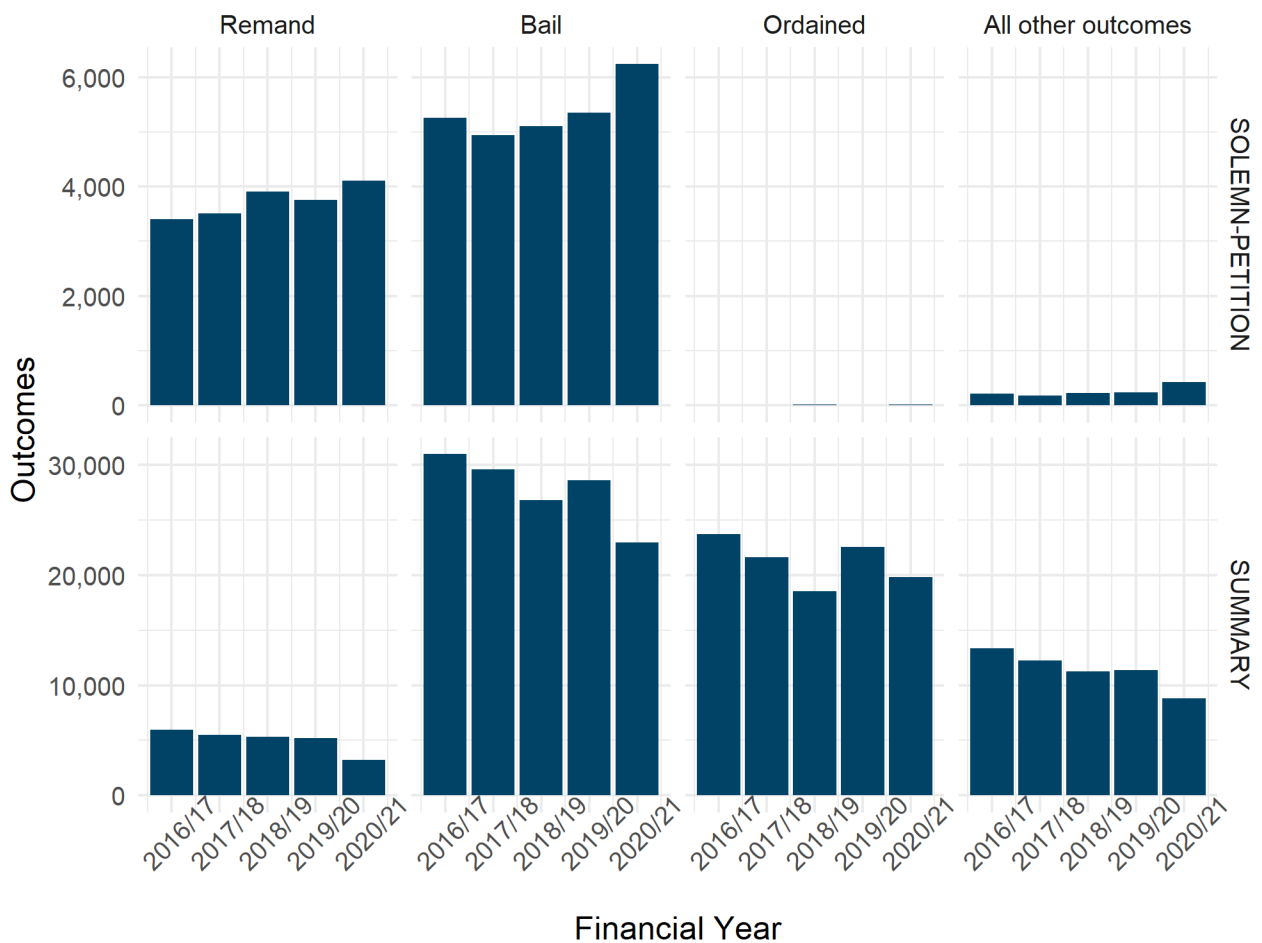


3.3 Accused outcome likelihoods for summary and solemn cases

Figure 7 shows the trends of different outcomes for accused on summary or solemn petition cases separately. Due to the much higher number of first bail decision points in summary cases, the overall trend matches that of summary cases, with all outcomes (e.g., remand, bail) falling in number in the first pandemic year (2020-21). The greatest relative fall of these was in cases resulting in an outcome other than remand, bail or ordained (21%), followed by numbers with an outcome of remand, an 18% fall from the previous year, and a notable change from the relatively stable level of remand arrivals over 2016-17 to 2019-20.

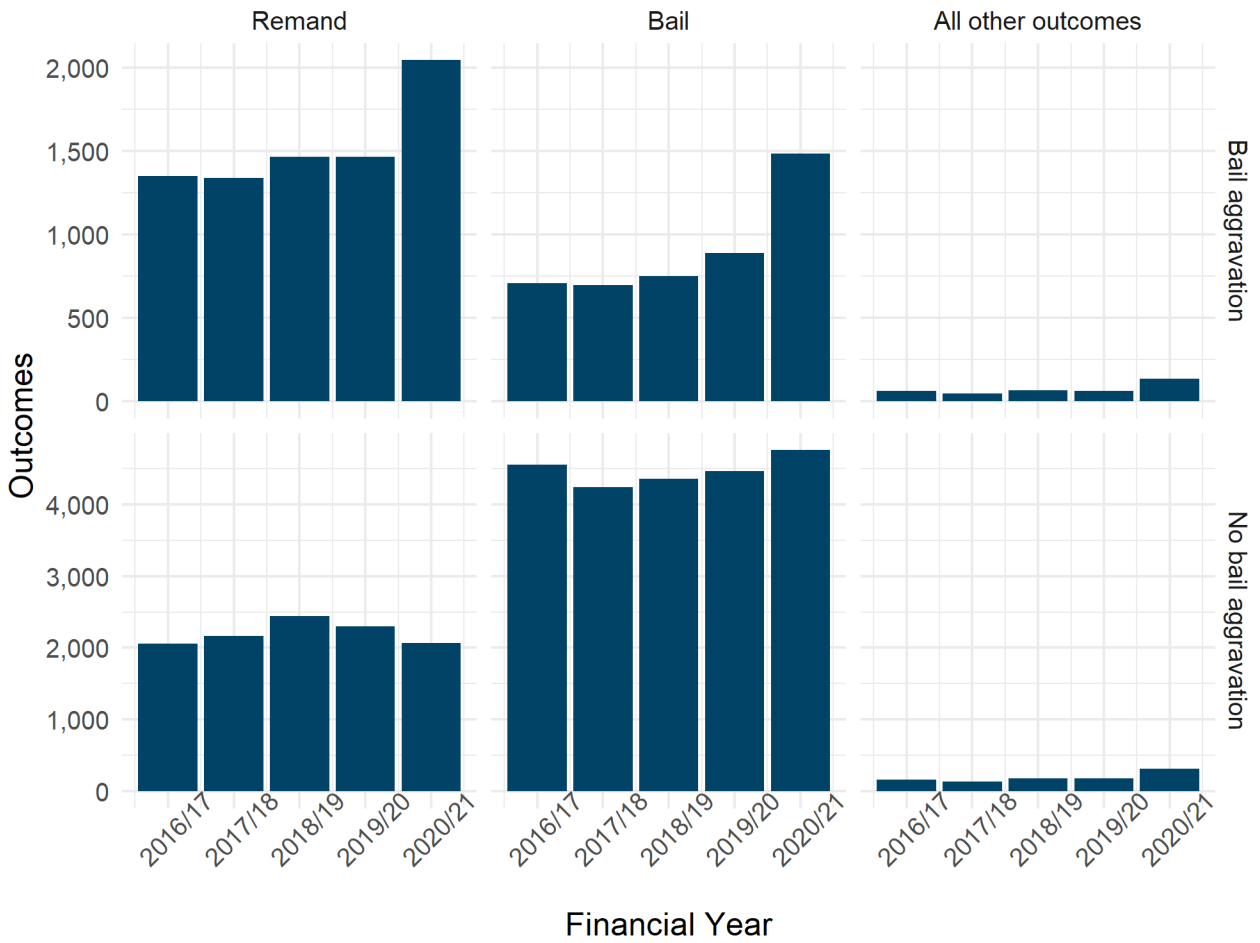
However, this trend in remand outcomes from Summary diets, which fell by more than one-third (38%), was in contrast to Solemn remand outcomes, which were in fact higher in 2020-21 than in 2019-20. Bail outcomes for Solemn first bail decision points also increased in 2020-21 by 17% from 2019-20.

Figure 7 - Outcomes of first bail decision points in Sheriff courts over time, by procedure type. The scales of charts are different for summary and solemn outcome volumes.



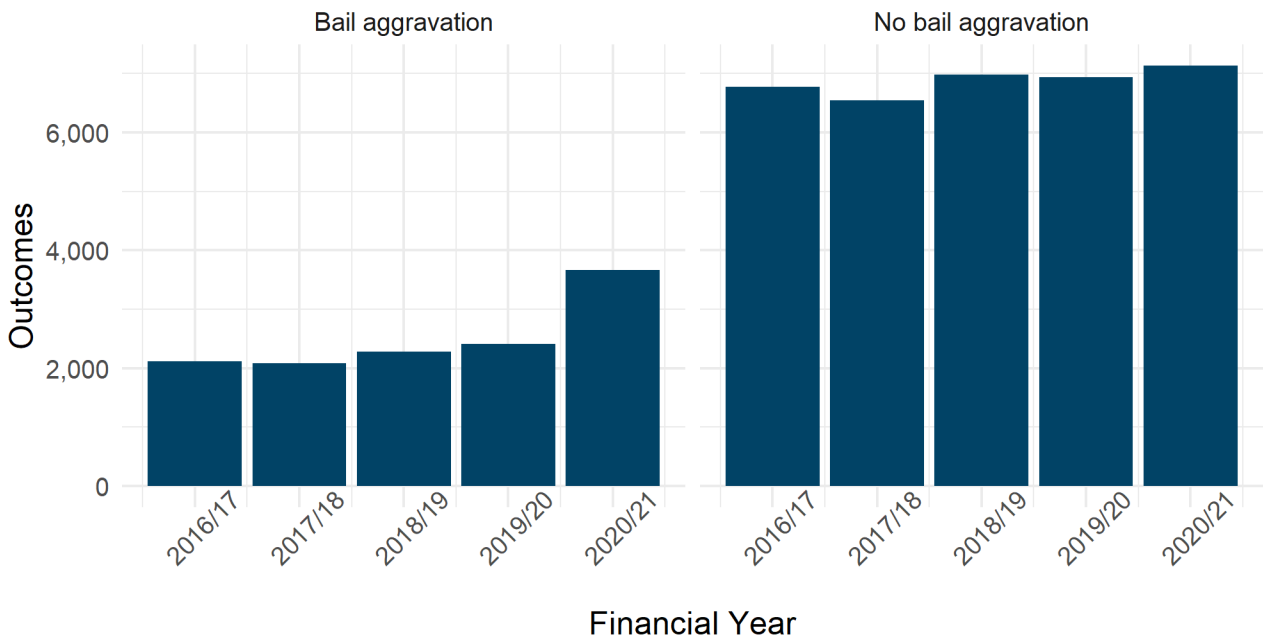
One of the factors associated with an increased likelihood of remand is whether the accused person has a bail aggravator marking (the accused was on bail at the time of the alleged offence). As figure 4 shows, a previous bail breach increases the likelihood of remand. Focussing specifically on Solemn first bail decision points, figure 8 shows that most of the increase in bail outcomes, and all of the increase in remand outcomes, during the first pandemic year (2020/21), came from cases with bail aggravations.

Figure 8 - Outcomes of first bail decision points for solemn petitions in Sheriff courts over time, by bail aggravation. The scales of charts are different for with and without bail aggravation.



The increase in bail and remand outcomes for bail aggravation cases during the pandemic resulted in part from a sharp increase in such cases. Figure 9 shows a 51% increase in the volume of bail aggravation cases. In contrast, cases without any bail aggravation increased by only a small amount (3%) in line with the existing trend during 2020/21.

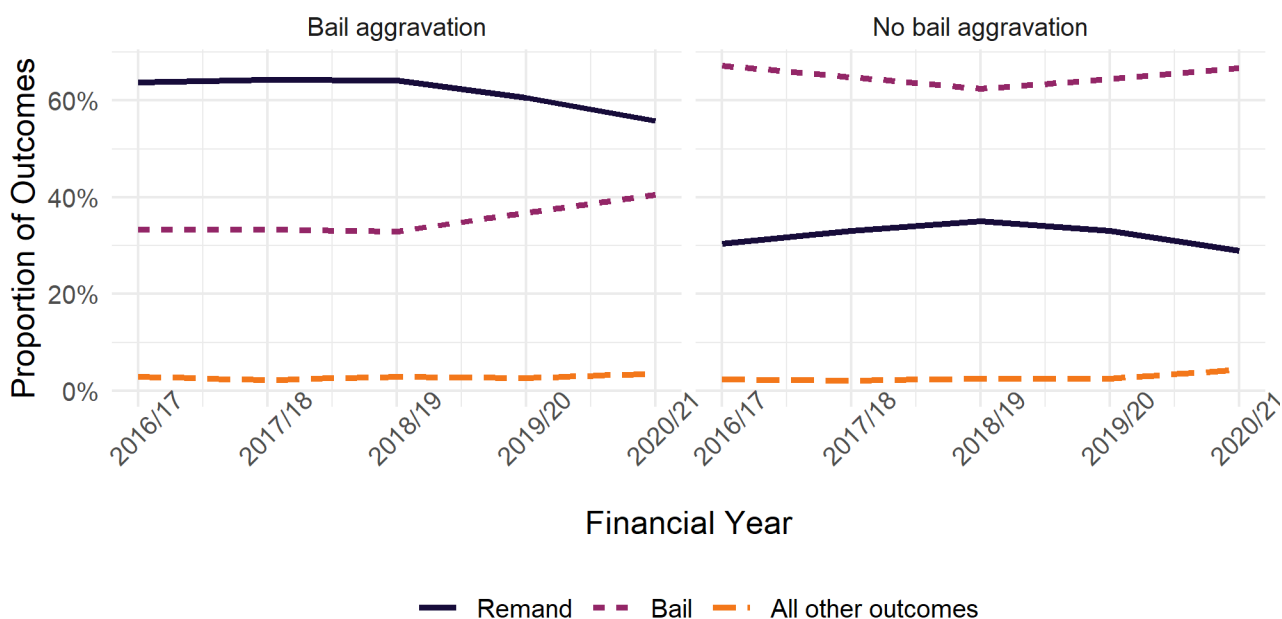
Figure 9 - Number of first bail decision points for solemn petitions in Sheriff courts over time, by bail aggravation.



While out of the scope of this paper, this begs the question of why there has been such a significant increase in bail aggravations. It is expected that the number of bail aggravations will be in some way related to the number of people on bail and their length on bail. Therefore, delays in hearings resulting from the pandemic, which potentially increased the number of people on bail and extended the period of time that people spent on bail, could have contributed to the increased number of bail aggravations.

As figure 10 shows, cases with and without bail aggravations both saw a small reduction in the proportion of cases resulting in remand during 2020/21, with a corresponding increase in bail. This continues a trend that began a year earlier. Therefore, the pandemic year increase in remand outcomes resulted in large part from an increase in bail aggravation cases more than counter-acting a reduction in remand likelihood. The increase in bail outcomes in the same period resulted from both an increase in overall cases and an increase in bail likelihood.

Figure 10 – Outcome likelihood of first bail decision points for solemn petitions in Sheriff courts over time, by bail aggravation.



This increasing likelihood of bail outcomes for solemn first bail decision points is another factor leading to an increased bail population. This may be a contributory factor to the increase in bail aggravations discussed previously in figure 9, though it is unlikely to be the only factor given bail likelihood began increasing well before the sharp increase in bail aggravations.

4 Summary

The analysis shows that overall there were fewer remand decisions made from sheriff courts in the first pandemic year (2020/21) than in previous years. The fall in remand decisions was due to the decrease in volume of summary case decisions (decisions to remand increased slightly for solemn cases in 2020/21). Although the total number of remands at first bail decision points fell in the first pandemic year, the overall number of remands for new solemn petition (more serious) cases rose.

The fall in summary remand outcomes is in line with far fewer first bail decision points of summary cases in general. Without this drop in callings, it is likely the remand population would have been even higher. It is known that the pandemic reduced court capacity and court business especially during the two lockdown periods. However, it is unclear whether this contributed to the fall in first bail decision points in 2020-21, or whether its impact was largely restricted to later court diets.

The rise in decisions to remand for solemn new petition callings was due to the much higher volume of solemn petition registrations (many of these with bail aggravations), and not an increased likelihood of the accused being remanded at a solemn petition first bail decision point. Indeed, for cases with and without bail aggravations, the likelihood of the accused being remanded fell compared to the previous year.

This is important context for the discussion of Scotland's remand population, which has risen dramatically over the pandemic. The conclusions of this paper (that the total volume of decisions to remand have fallen, but that makeup of the remand population is changing) suggests that the driving factor for increased remand populations in the pandemic is increased time on remand, which has more than offset the fall in remand arrivals.

This occasional paper is the first to be published by Justice Analytical Services specifically on the theme of remand and bail court decisions. Further publications may consider other factors about the case and the accused in terms of remand and bail outcomes, as well as exploring other important considerations about remand and bail such as the final outcomes in court (e.g. non-conviction or conviction with custodial sentence) for accused persons who have been on remand or bail during their case.

Methodology Annex

SCTS Hearings data for sheriff summary and sheriff solemn courts were gathered and subject to usual initial preparation processes (e.g. data cleaning, converting to formats required for analysis).

Data cleaning

Some entries were identified where the appearance date predated the case registration date, and these were removed from the analysis. Hearings where there was no identifier for the accused recorded (<1% of all hearings) or where there was no court type recorded (e.g. Custody Court) (<1% of all hearings) were removed from the analysis.

The analysis was restricted to cases heard on summary complaint or solemn petition (i.e., not solemn indictment) and then to “New” or “After Warrant” diet types, as in the vast majority (97%) of summary complaint or solemn petition cases the first diet on the case is a New or After Warrant diet. Appearances after an initiating warrant are excluded.

The analysis is concerned with the first bail decision points of summary complaints or solemn petitions in sheriff courts and the outcomes for the accused in terms of their continuation status (e.g. remand/bail). The first bail decision point was simply identified as the court record with the earliest diet date for a particular case-accused (e.g. case number 50, accused number 1).

There are occurrences in the data in which the same accused in the same case has two diets on the same date. We have excluded these occurrences from the analysis, rather than trying to identify which is the first. Such occurrences make up less than one in 2,000 first bail decision points.

In all, analysis has been restricted to:

- the first meaningful calling of case-accused,
- on a New or After Warrant diet,
- in sheriff court,
- on complaint or petition

After these restrictions, the data set contained a relatively high proportion of hearings where no Continuation Status was recorded (15%). Without further processing this would be an unacceptably high level for meaningful analysis. It was observed that in many of these instances the next hearing type for the accused on that case was an “After Warrant” diet (which could mean that the accused had failed to appear at the original diet and a warrant issued for their arrest). In these cases, the Continuation Status was recorded as “Warrant”. For other instances where no Continuation Status was recorded but a) the hearing was the final hearing for that case-accused, b) the hearing date matched the recorded verdict date, and c) the case was no longer recorded as “active” in the database, this was recoded as “Final Diet” for that case-accused. After this process, the proportion of hearings with no recorded Continuation Status was

reduced to an acceptable level for analysis (4%). Finally, these cases with no Continuation Status were grouped with the “Other” continuation status outcome into a new “Other / NA” grouping.

The dataset contains data on information about all cases registered from 2015-16. To ensure no issues with lags between case registration date and the hearing date, hearings from financial year 2015-16 were excluded and results reported for hearings from 2016-17 through to the latest full financial year 2020-21. (Financial year here taken as 1st April to 31st March).

Aggregation

The accused “Continuation Status” at the end of each hearing (e.g. Remand, Bail) were grouped into high level groupings (Remand, Bail, Ordained, Other/NA). The “Other/NA” group includes non-prison remand (e.g. Child Remand, Hospital Remands) as well as Reported cases. These groupings are shown in table 1.

Table 1 - High level groupings of continuation status.

Continuation status	Grouped continuation status
Bail	Bail
Bail Continued	Bail
Bail - Witness	Bail
Bail Continued - Witness	Bail
Bail Refused	Custody
Bail Rev - Custody	Custody
Custody	Custody
Hospital Remands	Custody
Bail Refused - Witness	Custody
Custody - Witness	Custody
Bail Rev - Ordained	Ordained
Ordained	Ordained
Child Remand - Place of Safety	Other
Child Remand - Secure Accommodation	Other
In Care	Other
Warrant	Warrant
Reported	

The appearance type of the accused was taken from the “Court type” data, with the court types grouped into high level groupings (Custody court, Undertakings court, Initiating Warrant, Other), as shown in table 2.

Court type	Grouped court type
Custody	Custody Court
Undertakings	Undertakings Court
Initiating Warrant	Initiating Warrant
Pleading Diet	Other
Reduction to Summary	Other
High Court	Other
Preliminary Hearing	Other
Full Committal	Other
Sheriff & Jury	Other
Section 76	Other
Diet	Other
Summary	Other
Stipendiary Custody	Custody Court
Judicial Examination	Other
Trials	Other
Intermediate Diet	Other
Indictment Deferred	Other
Further Examination	Other

Analysis

Data on counts and frequencies (or “likelihoods”) of particular continuation status outcome were then analysed by financial year, by prosecution forum (e.g. summary or solemn) and by appearance court type (e.g. Custody court or Undertakings court). Lastly, for solemn petition appearances the counts and likelihoods of outcomes were assessed by financial year and whether the accused had a bail aggravator on their case.



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