Keeping the Lid on the Prison Remand Population: The Experience in England and Wales

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Abstract

At a time when a number of countries including Australia and Canada have experienced increases in their prison remand populations it has remained stable in England and Wales. The situation in England and Wales creates an intriguing paradox. Significant changes have been made to the law on bail, tightening up the grant of bail especially for certain groups of defendants. These legal changes might have been expected to result in an increasing prison remand population. Yet, this has not happened. This article seeks to understand the factors that may have contributed to the containment of the prison remand population in England and Wales. In doing so, it examines the drivers present in England and Wales which have resulted in its remand population stabilising at the beginning of the 21st century.

The Law on Bail in England and Wales: A Brief Recent History

The *Bail Act* 1976 (England and Wales) (as amended) governs the grant of bail in England and Wales.[1] The Act introduced a legal framework for bail decisions. It brought in a legal presumption of bail so that all defendants have a right to be released whilst awaiting trial unless certain exceptions apply. The main exceptions included in the original Act were: risks that defendants might abscond; commit further offences; or interfere with witnesses. The Act was introduced at a time when human rights concerns were predominant and when evidence was emerging that custodial remands were being used unnecessarily in some cases and were having harmful effects upon defendants (Bottomley 1970; King 1971). Also at this time, the general climate in relation to bail and other aspects of the criminal justice system swayed towards due process concerns emphasising the rights of suspects and defendants. The importance of the climate in which remand decisions are made was demonstrated by the greater proportion of defendants who were bailed before both the *Criminal Justice Act* 1967 and the *Bail Act* 1976 were brought into force (Simon & Weatheritt 1974).

By the latter part of the 1980s the use of bail was causing increasing disquiet which has continued and arguably increased ever since. Periodically, events have catapulted bail into the spotlight both in the media and political circles. Such events usually result in calls to change the law on bail to restrict its use. In most instances, the common theme was that offences had been or had allegedly been committed on bail (see Morgan 1994; Hucklesby &

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1 The law relating to bail is different in Scotland and Northern Ireland and is not discussed in this article.

Marshall 2000). The problems ranged from serious offences such as murder to certain offenders persistently committing large numbers of relatively minor offences whilst on bail. Simultaneously, the context in which bail decisions were made changed in a number of important respects. These included: less emphasis on the human rights of defendants; the increasing importance of public protection and risk management; and the rise in awareness of victims' rights; amongst others. These and other factors coalesced, with the result that attitudes to the granting of bail generally hardened and some politicians argued that bail is misused and overused. All of which resulted in significant amendments to the law which have undermined the presumption of bail (see Hucklesby 2002).

There have been a number of incremental changes to the law on bail since it was first enacted in 1976. The first of these relates to defendants who have allegedly committed serious offences (murder, manslaughter, and rape, for example) and have a record of similar offences. In such cases courts are required to provide reasons for granting bail. In other words, they have to justify their decisions to release defendants on bail, arguably overturning the presumption of bail (Hucklesby 2002). The other set of changes resulted from the need to be seen to be tackling the problem of offending on bail. Alleged offending on bail was made an explicit exception to the right to bail. Other legal changes culminated in the *Criminal Justice Act* 2003 which reverses the presumption of bail for defendants who, it appears, are on bail at the time of the alleged offence, unless the court believes that there is no significant risk of offences being committed on bail. In theory, this provision makes it unlikely that bail will be granted in such cases. However, the Labour Government has held back from removing absolutely the right to bail in any case, preferring to indicate that bail should only be granted in exceptional circumstances. This was because it is likely that going any further would be challenged under the *Human Rights Act* 1998. This view was based on the experience after the complete withdrawal of the presumption of bail for certain categories of serious offenders by the *Criminal Justice and Public Order Act* 1994. The provision was subsequently repealed to prevent an adverse judgment by the European Court. Despite the current law leaving courts with some discretion, it has been significantly tightened. Together these measures would have been expected to result in a rise in the number of defendants remanded in custody and the prison remand population. In a number of other countries namely Australia, Canada and New Zealand similar moves to restrict the grant of bail have coincided with rising remand populations (see e.g., New Zealand Cabinet Office 2009; Sarre et al. 2006). By contrast, the prison remand population has been stable in England and Wales. Trends in the prison remand population are discussed in the next section of the article.

The Prison Remand Population in England and Wales

During the 1980s significant concerns were raised about the rising prison remand population[2] (Morgan & Jones 1992) which continued to increase for most of the decade. Figure 1 shows that the remand population dipped in the early 1990s before climbing again towards the end of the century. In 2000, the prison remand population stood at 11,061 (Ministry of Justice 2008c) after which it fell back slightly before rising again to stabilise at just over 12,000 prisoners by 2008. Between 1996 and 2008 the prison remand population rose by around a tenth.

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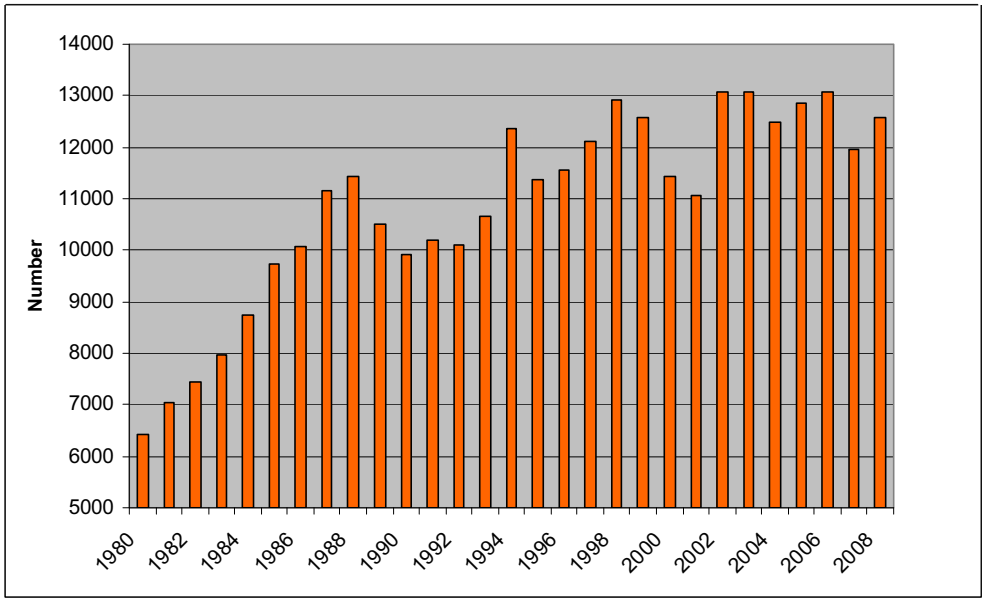
[2] The prison remand population in England and Wales includes two groups: unconvicted prisoners and prisoners who have been convicted and are awaiting sentence (unsentenced population).

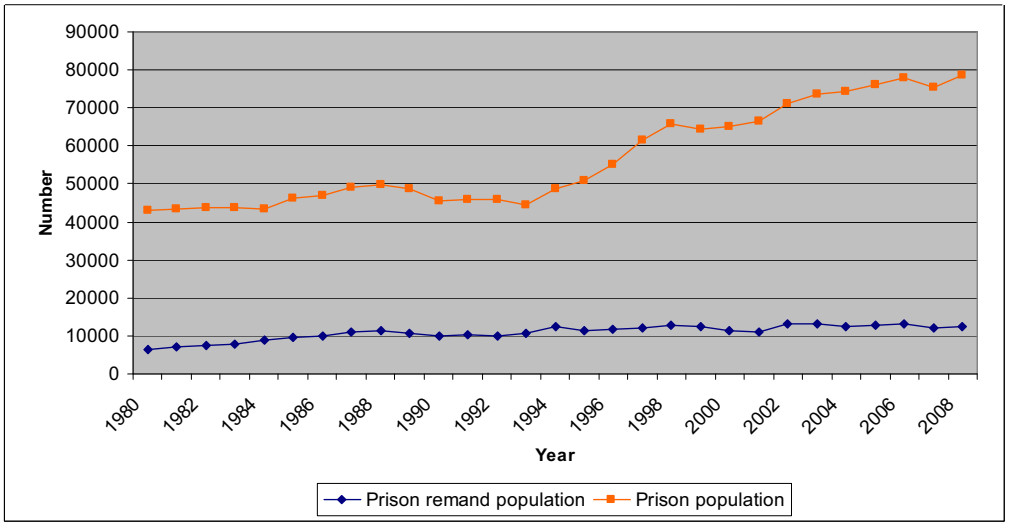
Figure 1: Prison Remand Population England and Wales 1980-2008



Source: Home Office (1989); Ministry of Justice (2008c, 2009a).

Figure 2 demonstrates the relative stability of the remand population compared with the prison population as a whole reflecting the sharp rise in the sentenced population since the mid 1990s. As a result, remand prisoners constitute a decreasing proportion of the prison population, dropping steadily from a high of 25% in 1994 to 16% in 2008 (Ministry of Justice 2008c). Source: Home Office (1989); Ministry of Justice (2008c, 2009a).

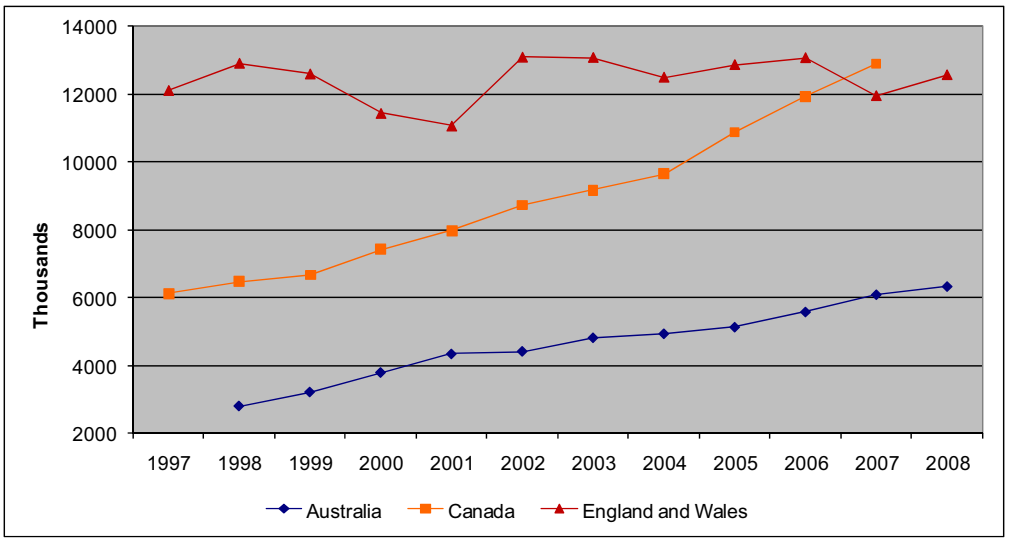
Figure 2: Prison Population England and Wales 1980-2008



Source: Home Office (1989); Ministry of Justice (2008c, 2009a).

The trajectory of the prison remand population in England and Wales is in sharp contrast to that of Australia and Canada (see Figure 3). In Australia, the average prison remand population more than doubled between 1998 and 2008, rising from 2,788 to 6,340. The imprisonment rate for remand prisoners in Australia also doubled from 17 per 100,000 in 1996 to 35 per 100,000 in 2006 (AIC 2007). A similar picture emerges in Canada where the prison remand population increased from 6,109 in 1997 to 12,888 in 2007. The rate of imprisonment for remand prisoners in Canada was 34 per 100,000 in 2004/5. In both Australia and Canada the remand population constitutes an increasing proportion of the prison population, accounting for 23% of the Australian prison population in 2008 (ABS 2009b) and 32% of the Canadian prison population (Walmsley 2008). Given the general hardening of attitudes against the granting of bail and the tightening of the law in all three countries, the experiences of Australia and Canada are more in line with expectations. Certainly the contrasting trajectories of the remand population in England and Wales and Australia and Canada raise additional questions about how England and Wales is managing to contain its remand population despite pressures to remand more defendants in custody. This question is addressed in the remaining sections of this article.

Figure 3: Prison Remand Populations



Source: Ministry of Justice (2008c); Australian Bureau of Statistics (2009b); Australian Institute of Criminology (2007).

The lack of published statistics on the remand process in England and Wales hampers any attempts to explain trends in the prison remand population. It also restricts the possibilities for evaluating the impact of legal changes or initiatives on the prison remand population and the use of bail. Published statistics only provide a very basic picture. It will become apparent in the remainder of this article how little knowledge we have about the remand process, which is of particular concern because it mainly deals with legally innocent people.

Explaining the Level of the Prison Remand Population in England and Wales

Many factors contribute to the level of the prison population, making it difficult to pin down exactly why changes in population levels occur. This is especially pertinent to the prison remand population. The lack of comprehensive and detailed statistics on the operation of the remand process hampers any analysis of changes in this population. Furthermore, most of the initiatives which have been introduced (whether directly to reduce the number of defendants remanded in custody, to speed up the criminal justice process or to keep people out of the criminal justice process) have not been evaluated. Even where they have been evaluated, their impact on the prison remand population has not been quantified in a way which addresses whether a reduction in the prison remand population is likely to have occurred as a result. In short, there is a lack of empirical evidence about the impact of initiatives generally and particularly on whether they have resulted in reductions in the number of defendants being remanded in custody and/or the prison remand population. This is partly because of the significant methodological obstacles inherent in undertaking such an analysis. As a result there is little concrete evidence about how the initiatives operate and their impact. Instead, the discussion in this article, while based upon some statistical evidence, generally relies on describing initiatives which governments intended to impact upon the operation of the criminal justice process and which might be reasonably assumed to have had an effect on the level of the prison remand population.

There are two main drivers of the prison remand population: the number of defendants who are remanded in custody and the length of time they spend awaiting trial. Each of these will be discussed in turn.

The Number of Defendants Remanded in Custody

The number of defendants in the remand process is dependent upon the number of cases appearing in court and the number of cases in which defendants are remanded either on bail or in custody by the courts. If fewer people are being prosecuted and going through the courts then this may be a contributory factor in the stabilisation of the remand population. In England and Wales there has been a steep decline in the number of individuals proceeded against in magistrates' courts since 2004, dropping from just over 2 million in 2004 to 1.73 million in 2007 (Ministry of Justice 2008a). One explanation for the falling number of people being proceeded against in court is the government's drive to increase the number of offences 'brought to justice', which involves dealing with some cases without going through the court process (OCJR 2007).

Two measures in particular have been used to deal with anti-social and offending behaviour without recourse to the court process. The first of these is the caution. The use of cautions has increased from 256,000 to 362,900 between 2004 and 2007 (Ministry of Justice 2008a). They account for around a fifth of disposals. The introduction of the conditional caution by the *Criminal Justice Act* 2003 is likely to contribute to an increase in the number of cautions given overall. It enables conditions to be attached to cautions, therefore arguably increasing their usefulness for more serious and/or prolific offenders who are potential candidates for custodial remands. Initially the conditions which could be attached to cautions were limited to rehabilitation and reparation. Since 2008 it has also been possible to attach a fine, unpaid work requirement or attendance at a specified place for a period of up to and including 20 hours (Brownlee 2009). This has increased the reach of cautions and potentially pulled offenders out of the formal court system. Cautions also guarantee that

more offences are dealt with. This helps to achieve the key government target of bringing more offences to justice with the minimum of work on the part of the police and prosecution (OCJR 2007). For this reason using cautions instead of formal prosecutions may well be the preferred option of the police.

The second measure which may have reduced the number of people appearing in court is the introduction of Penalty Notices for Disorder (PNDs) by the *Criminal Justice and Police Act* 2001. PNDs are on-the-spot fines of £50 or £80 issued by the police to anyone over the age of 16 for minor offences such as harassing or scaring people, being drunk and disorderly, destroying or damaging property and shoplifting goods valued at less than £200. Penalty notices are not criminal convictions but higher fines or a period of imprisonment that can be imposed if the fine is not paid. The number of PNDs issued has risen from 63,600 when they were introduced in 2004 to 207,500 in 2007 (Ministry of Justice 2008a).

One of the issues with both cautions and PNDs is the extent to which they have caused net-widening namely drawing people into the formal criminal justice system who may not otherwise have received a formal response (Young 2009). The extent of net-widening is unclear and likely to remain so because of the methodological difficulties inherent in measuring it. More crucially for our purposes is their potential impact upon the prison remand population. Theoretically this is limited because both measures are aimed largely at low-level offenders who would be unlikely to be remanded in custody. However, there have been a number of issues which arise with PNDs which may have resulted in an indirect impact upon the remand population. First, definitions of particular offences are malleable, so there is a potential for the police to 'define down' the seriousness of offences to bring them into the remit of PNDs in order to reduce their workloads and/or to meet government targets for bringing offences to justice (OCJR 2006). There has been particular criticism of the use of PNDs for retail theft (BBC News 2006). The number of offenders issued with PNDs for this offence has risen significantly from 2,072 in 2004, when the power to use PNDs for retail theft was introduced, to 45,100 in 2007 (Ministry of Justice 2008a). Secondly, PNDs are not criminal convictions so they are not recorded on the Police National Computer. It is possible, therefore, for repeat offenders to receive multiple PNDs for a succession of offences (BBC News 2006). This has the potential to impact upon the prison remand population, particularly if any of these offences would have been committed whilst on bail had offenders been processed through the court system. Thirdly, the threshold for the availability and suitability of addresses is likely to be less for the police decisions to use PNDs than it would be for courts to make bail decisions. Consequently, defendants with unsuitable bail addresses who would have been likely to be remanded in custody because of concerns about absconding are diverted from the court system. It has been suggested that there has been a shift from prosecutions to PNDs (OCJR 2006). Nevertheless, it is difficult to conclude that these measures would have had any more than a marginal impact on the prison remand population although they may have significantly reduced the number of defendants bailed by the courts.

Prior to the court remand decision, the police decide whether to release defendants on bail or detain them to appear at court. This decision impacts upon the court's remand decision (Hucklesby 1997a; Morgan & Henderson 1998). If defendants are bailed by the police, it is unlikely that they will be remanded in custody by the courts (Hucklesby 1996; Burrows et al. 1994; Morgan & Henderson 1998). However, if defendants appear in court from police custody the likelihood of a custodial remand increases significantly. At this juncture, the Crown Prosecution Service (CPS) in theory undertakes an independent review of police decisions and may not apply for a remand in custody. There are no published

statistics which illuminate the concordance rate between police and CPS decisions. However, Phillips and Brown (1998) found a high rate of agreement. In their study the CPS agreed with the police recommendation in 85% of cases, reducing slightly to 71% of cases in which the police opposed bail and rising to 96% when unconditional bail was proposed. A significant number of the cases in which disagreements between the police recommendation and the CPS decision occurred resulted from new information coming to light, such as addresses being found suggesting that the rate of agreement is even higher than the research findings indicate (Hucklesby 2002). The high level of agreement between the two agencies arises primarily because the CPS rely on police files to make their decisions. The police file contains, amongst other things, an explicit recommendation to the CPS about whether they believe that defendants can safely be released on bail and if so, what if any conditions are appropriate and the reasons for their recommendation. Nevertheless, the level of agreement raises considerable concerns about the independence of the CPS. Furthermore, the influence that the police are likely to have on CPS decisions means that they have a significant input albeit mediated by the CPS, into court bail decisions, particularly because there is a high concordance rate between CPS recommendations and court decisions (Hucklesby 1996; Morgan & Henderson 1998). Consequently, if the police have changed their patterns of decision-making this is likely to have impacted upon court remand decisions.

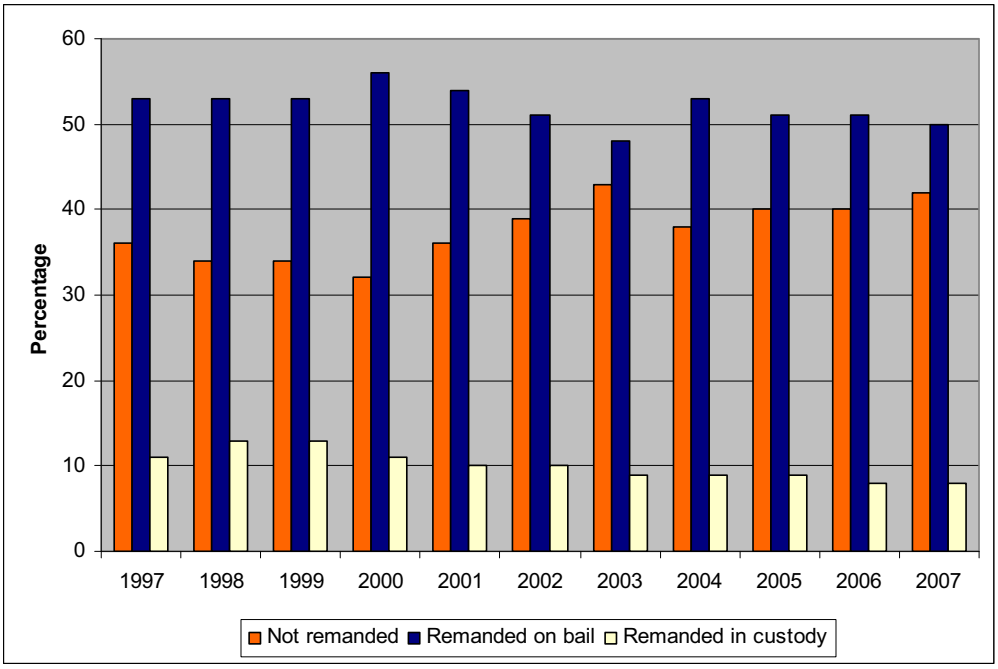
The number of defendants appearing in court having been arrested and held in police custody has fallen significantly since 2004. In 2003 153,000 defendants were held in police custody compared with 135,000 in 2004 and 110,000 in 2007 (Ministry of Justice 2008a). Similar falls have been recorded for all offence types. However, the proportionate use of police detention and bail remains broadly unchanged because the number of defendants arrested and bailed also reduced (Ministry of Justice 2008a). This suggests that there has been a general reduction in the number of defendants being charged by the police and subsequently appearing in court, which will have reduced the potential population to remand. However, it is possible that conflicting trends are hidden within national aggregate level figures.

Some of the reduction in the police use of post-charge bail and detention may be explained by the introduction of 'statutory charging' by the *Criminal Justice Act* 2003 and which was phased in between 2004 and 2006 (Brownlee 2004). Statutory charging passed responsibility for charging decisions from the police to the CPS in all but the most minor of cases, thereby theoretically ensuring that there is an independent assessment of the evidence at an earlier stage of the process. This should ensure that cases in which evidence is weak or potentially weak are not charged prematurely and that charges match the seriousness of the alleged offence. To facilitate the CPS review of cases, suspects may be released on bail before charge probably for a period of weeks. This option is likely to have resulted in a shift from the use of post charge bail to pre-charge bail. Alternatively if offences are serious and the police believe that it is necessary to detain suspects, mechanisms are in place to facilitate the quick review of cases by the CPS so that defendants who are charged can appear in court at the next available court hearing. Even though issues arise in relation to whether the CPS is able to make independent judgments about the strength of the case at this stage, the expectation would be that the introduction of statutory charging would have impacted upon post-charge police bail/detention decisions. Such assumptions are based on the evidence that prior to the introduction of statutory charging the police had a tendency to overcharge defendants which was one of the reasons for the introduction of statutory charging (Glidewell 1998). Following on from this it would be expected that the introduction of statutory charging would have reduced the overall number of suspects charged and the use

of police detention because at least a proportion of the offences with which defendants are charged should be less serious than those previously used by the police. It is also likely to have had an effect on the number of defendants remanded in custody because the nature and seriousness of the alleged offence is a key factor in remand decisions (Hucklesby 1996; Morgan & Henderson 1998).

Moving on to court remand decisions, official statistics for England and Wales suggest that there has been a fall in the number of defendants remanded in custody by the courts. It has dropped from a high of 98,000 in 1999 to 67,000 in 2004 and 52,000 in 2007 (Ministry of Justice 2008a). Figure 4 shows that this represents a fall from 15% of remanded defendants in 1999 to 10% in 2007, indicating that there has been a movement from the use of custodial remands to the use of bail. Simultaneously, the use of bail has decreased, falling from a high of 546,000 in 2004 to 467,000 in 2007 and the proportionate use of bail for indictable offences decreased from 53% in 2004 to 50% in 2007 (Ministry of Justice 2008a). Consequently, these figures support the conclusion that an important explanation for the stabilisation of the prison remand population is a fall in the overall number of defendants in the court process rather than a significant shift towards the use of bail and away from custodial remands. There has also been an increase in the number of defendants who are not remanded[3] during the same period from 38% to 42% (Ministry of Justice 2008a).

Figure 4: Proportion of Defendants Proceeded against for Indictable Offences in Magistrates' Courts in England and Wales 1997-2007



Source: Ministry of Justice (2008a).

[3] This group includes defendants whose cases are adjourned to a future date but whom the court decides not to remand them either on bail or in custody.

Various initiatives have been introduced in an attempt to reduce the use of custodial remands by the courts. The priority given to reducing the prison remand population and to bail initiatives changes over time and, unsurprisingly, tends to be linked to peaks in the prison population. A concern with all of the initiatives is the extent to which they divert defendants from custody or result in net-widening, therefore increasing the number of defendants in the remand process and/or the intensity of their contact with the criminal justice process. Net-widening is a particular concern because the majority of defendants are unconvicted and therefore legally innocent. If they are required to abide by additional conditions unnecessarily this restricts their freedoms and further threatens their civil liberties. There is no accurate information about the extent to which net-widening occurs at the pre-trial stage as a result of the introduction of initiatives to divert defendants from custody. However, community sentences which have been introduced as alternatives to custody have been shown consistently to divert only around half of offenders from custody (Mair 1988; McIvor 1992; Pease 1985; Pease et al. 1977). The remaining half would have received less punitive sentences. There is no reason to believe that pre-trial initiatives, which aim to divert defendants from custody, would have different outcomes. Indeed, remand decision-makers tend to suggest that bail initiatives may divert a small number of defendants from custodial remands but that any impact on their decisions to remand defendants in custody is marginal (see e.g., Barry et al. 2007; Hucklesby et al. 2007). The potential for 'net-widening' is significant in light of the increasing importance which is being placed upon managing risk and protection of the public.

Bail conditions are widely used in England and Wales, although no official statistics are recorded on their use. Research evidence suggests that they are used increasingly, with up to half of defendants being released on conditional bail (Hucklesby 2002). At the same time the use of unconditional bail has reduced. The police and the courts have the power to attach whatever conditions they believe are necessary to deal with the bail risks they identify.[4] In practice, they normally use a small range of conditions, including residence, curfews, banning defendants from particular places or from contact with particular individuals, and reporting to the police station (see Hucklesby 1994, 2001). However, the conditions imposed place restrictions upon defendants' liberty when they are legally innocent so overuse or misuse of them should raise serious concerns. Bail conditions provide a potential means of controlling defendants whilst they are awaiting trial, although the extent to which this is actually the case is arguable primarily because of issues of workability and enforceability (see Hucklesby 1994). The purpose of bail conditions extends further than providing an alternative to custodial remands, although this is an important function of them. They also provide reassurance to the court, operate as risk management tools and enable decision-makers to defend their decisions when problems arise. This is because the imposition of bail conditions explicitly acknowledges that bail risks were known to exist at the time bail was granted.

A number of additional bail conditions have been made available recently to the courts. One of the aims of the initiatives has been to divert defendants from custody even if this has never been acknowledged explicitly by the government because of concerns about the signals it sends out. Electronically monitored curfew bail conditions were introduced in September 2005 (Airs et al. 2000). They were introduced to increase the courts' confidence in the enforceability of curfew conditions and to relieve pressure on police resources by

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[4] The police have some restrictions on the conditions they can impose. For example they cannot require defendants to reside at a bail hostel.

reducing the need to physically check up on defendants who are subject to curfews. The number of defendants subject to electronically monitored curfew conditions whilst on bail is significant and increasing. By March 2009, approximately 3,500 adults were subject to an electronically monitored curfew bail condition at any one time compared with around 2,000 for the whole of 2007/8 (Ministry of Justice 2009b). The proportion of these defendants who would have been remanded in custody if electronic monitoring was unavailable is open to debate. An evaluation of a pilot project suggested that electronically monitored bail conditions were being used as an alternative to custody in around half of cases (Airs et al. 2000). This chimes with evidence from the post-conviction use of electronically monitored curfews. This research suggests that electronic monitoring is being used for relatively low tariff offenders as a sentencing option, and only as an alternative to custody in less than half of cases (Lobley & Smith 2000; Mair & Mortimer 1996). A slightly different picture emerges in Scotland where electronic monitoring bail operates with specific safeguards to reduce net-widening. An evaluation of a pilot suggested that electronically monitored curfew bail conditions were being used as an alternative to custody (Barry et al. 2007). Despite this it also concluded that there was no impact on the prison remand population. Even though the evidence from England and Wales is that net-widening is occurring, the recent introduction of a time served credit for any subsequent prison sentence clearly signals the government's intention that electronically monitored curfew bail conditions should be used as a direct alternative to custodial remands (Ministry of Justice 2008d). To be eligible defendants must have been monitored for at least nine hours a day, at which point they are credited with half a day remand time per curfewed day. This acknowledges the restriction of liberty which is intended to arise from curfews. However, it also raises expectations that electronically monitored curfews are akin to prison, which they are clearly not. They do not completely incapacitate defendants and share many of the characteristics of other community interventions (Hucklesby 2008, 2009). There is a danger that this measure may increase the use of short custodial sentences in order to acknowledge the time served under curfew pre-trial.

Restriction on Bail was introduced to channel drug-using defendants into treatment in order to reduce drug-related offending on bail (Hucklesby et al. 2007). It is a condition of bail which requires defendants to attend drug assessments and treatment. If they refuse, courts should remand them in custody. This makes this measure particularly controversial because it involves coercing defendants into drug treatment at a time when they have not been convicted of any offence. The measure is aimed at defendants who have allegedly committed drug-related offences. It has been used predominantly for relatively low level persistent offenders such as shoplifters (Hucklesby et al. 2007; Hucklesby forthcoming). This raises doubts about whether it has been used as an alternative to custodial remands because it is unlikely that these kinds of offences would result in a remand in custody even if they were committed persistently or on bail. They are exactly the type of offences which remand decision-makers use as examples of instances when a legal requirement to remand defendants in custody who have committed offences on bail would often not be enforced. Such decisions would be viewed as disproportionate in relation to the seriousness of the offence. In any event, the aim of diverting defendants from custodial remands was an implicit rather than an explicit aim of this measure, mainly because of government fears of being seen to encourage the greater use of bail and, therefore, of being open to criticism for being 'soft on crime'. Nevertheless, the practical application of Restriction on Bail means that during the pilots it was used predominantly for defendants who had been detained by the police to appear in court, so at least a proportion of them would have been destined for a custodial remand (Hucklesby et al. 2007).

The second initiative is the national Bail Accommodation and Support Scheme (BASS) set up in 2007 (Ministry of Justice 2007; National Probation Service 2008). This scheme provides a network of supported accommodation across the country. This was required because bail hostels, which traditionally provided this service, are now almost exclusively used for high-risk sentenced offenders, leaving a significant gap in pre-trial accommodation provision. The scheme aims to provide accommodation for defendants who have no suitable bail address and/or to provide support for defendants who are identified as needing support to comply with their bail and who are likely to be remanded in custody as a result. The support comprises of regular meetings with workers with the aim of assisting defendants to comply with their bail, to prevent offending on bail and to deal with their immediate and long-term needs. It can be provided alone or in conjunction with accommodation. The scheme is intended to be used for defendants who are assessed as being low risk, which has limited its practical use both generally and as an alternative to custodial remands. As a result, take up has been low: 1,292 defendants had been on the scheme between June 2007 and January 2009 (Hansard 2009). The scheme has been controversial, attracting political and media attention. This is partly because it is operated by the private sector and partly because accommodation has been provided in 'ordinary' houses, leading to accusations that bail hostels have been set up without going through the correct channels (i.e. a planning process including public consultation), arguably putting the public at risk. It was also set up very quickly, resulting in some implementation problems.

A slightly different accommodation and support scheme operates in the Yorkshire and Humberside region in the north of England. The Effective Bail Scheme (EBS) has been running as a pilot for just over three years at the time of writing (Hucklesby et al. forthcoming). In common with the BASS, it provides bail accommodation and bail support. There is less emphasis on accommodation provision than the BASS and a greater proportion of support-only packages are provided for defendants. Defendants have a greater number of contacts with staff in a week. In theory, it works with all defendants whatever their risk level and concentrates on higher risk individuals (except if the risk is deemed to be unacceptably high in terms of the public or scheme staff). This policy is an attempt to reduce levels of net-widening, in the process diverting defendants from custodial remands. The EBS currently has a higher take up rate than the BASS and has gained the confidence of decision-makers (Hucklesby et al. forthcoming). There is no robust evidence that either scheme is diverting defendants from custodial remands. Nonetheless, it is likely that it is being used for defendants who would have been remanded on bail as well as those who would otherwise be destined for custody.

The introduction of the bail accommodation and support schemes has required the resurrection of court-based bail information schemes to identify eligible cases. Similar schemes ran for a period of years at the beginning of the 1990s. They were based on the Manhattan Bail Project schemes run by the Vera Institute in the United States (King 1971). They provided verified information to the CPS in cases where defendants were at risk of a custodial remand, with the aim of persuading them that defendants could be bailed safely. Limited evidence suggested that these original schemes had some success in diverting defendants away from custodial remands (Lloyd 1992; Godson & Mitchell 1991). Despite their apparent effectiveness, the number of schemes decreased significantly after the mid 1990s when ring-fenced funding was withdrawn and they became one of the many services vying for funding from core probation budgets (National Probation Service 2005b). Second appearance schemes operated by the Prison Service continued to exist (HM Prison Service 1999). These pick up defendants who have been remanded in custody once they are received into prison and prepare a report containing verified information for their second appearance.

The scheme's aim is to prevent defendants who are further remanded returning to prison. The advantage of prison-based schemes is that they limit the potential for net-widening, but their major disadvantage is that defendants have already been remanded in custody. Hence, they are drawing on criminal justice resources and potentially causing long-term impacts on defendants' lives. Currently, prison-based schemes are able to refer defendants to both the BASS and EBS.

The resurrected court-based bail information schemes operate in much the same way as the original schemes although their specific purpose is to identify defendants who are eligible for the BASS or EBS. To this end, they liaise with the schemes' workers to identify suitable defendants and then provide details of the schemes to the courts, the CPS and defence solicitors. Generally they do not routinely provide information to courts in cases which do not meet the eligibility criteria of the bail accommodation and support schemes. The number of bail information reports provided to courts is rising but their impact on the number of defendants remanded in custody has not yet been examined.

Despite the introduction of these initiatives designed to limit the number of defendants remanded in custody by the courts, prison statistics suggest that the stabilisation of the remand population since 2004 has largely occurred in the convicted unsentenced population rather than the unconvicted population (Ministry of Justice 2008c). This may indicate that the pre-trial initiatives discussed above have had a limited impact upon the prison remand population. However, it is impossible to know what the level of the prison remand population might have been if the initiatives had not existed. Certainly, as Figure 5 shows, there has been a fall in the number of first receptions of remand prisoners since 2003.[5] However, a closer examination indicates that the fall has not been in the unconvicted population as might be expected if the various initiatives had impacted upon the prison population. Indeed, first receptions of unconvicted prisoners have risen slightly from 54,556 in 2004 to 55,305 in 2007 (Ministry of Justice 2008c). The reduction in the number of remand prisoners received into prison is accounted for by a fall in the convicted unsentenced population, which fell from 50,115 to 43,566 during the same period. Unfortunately, any investigation of the fall in the unsentenced population is hampered by a lack of published data. Court statistics only provide details of the overall number of defendants who are committed for sentence at the Crown Court having been convicted at magistrates' court. This figure dropped in 2007 by 6%, but the number had been increasing since 2004, suggesting that the fall in the remand population is not simply a result of a fall in the number of defendants being remanded for sentence (Ministry of Justice 2008b). Published statistics fail to provide any further details on the proportions of defendants who are remanded in custody or on bail to await sentencing.

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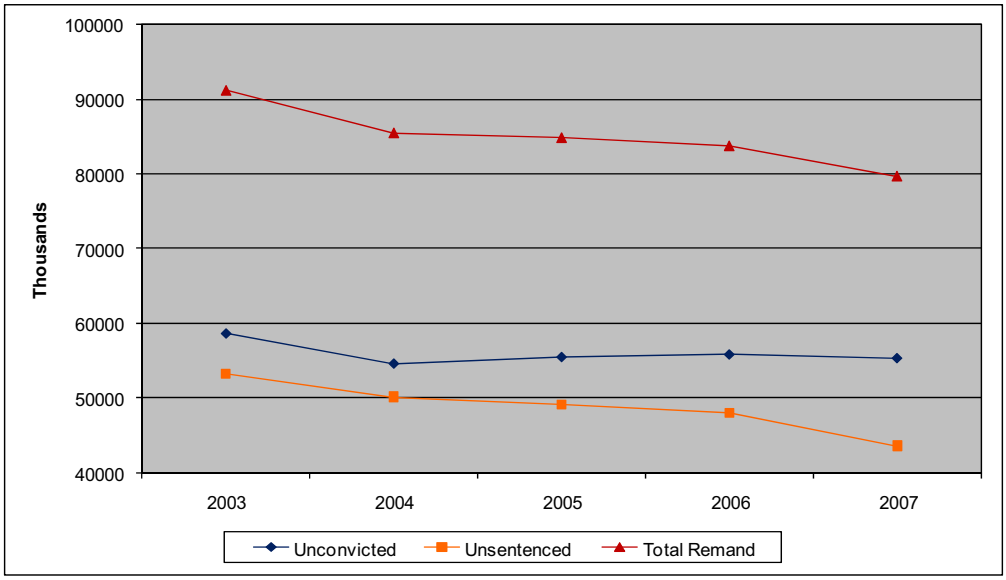
[5] The unconvicted and unsentenced population do not add up to the remand population because there is double counting. If a person is received into custody as an unconvicted prisoner and an unsentenced prisoner for the same offence they will be counted twice.

Figure 5: Number of Remand Prisoners Received into Prison Establishments in England and Wales 2003-2007



Source: Ministry of Justice (2008c).

Several changes have been made to the criminal justice process recently which may impact upon the use of custodial remands after defendants have been convicted. These include the introduction of fast delivery reports which provide decision-makers with details of the defendants' backgrounds and the circumstances leading to offences more quickly than through the traditional Pre-Sentence Reports (PSRs) or 'standard delivery reports' as they are now known (National Probation Service 2005a). Fast delivery reports should be used for offenders who have committed less serious offences and, in theory, are produced on the same day that courts request them (National Probation Service 2005a, 2009a, 2009b). Guidelines have been produced to ensure that they are used only in these cases, although no research has been undertaken to investigate whether they are adhered to or whether courts put pressure on probation staff to use fast delivery reports in more serious cases. The number of fast delivery reports has increased year on year since they were introduced (Ministry of Justice 2008c). At the same time the use of standard delivery reports has decreased slightly. However, the majority of defendants who are remanded in custody still have standard delivery reports completed, reflecting guidance about their use in more serious cases (Ministry of Justice 2008c). Therefore, it is likely that the introduction of fast delivery reports will have had only a marginal impact on the number of defendants remanded in custody awaiting sentence. Fast delivery reports may also have reduced the time some defendants spend on remand where it was impossible to produce a fast delivery report on the same day. It is certainly true that any impact on the prison remand population arising from the introduction of fast delivery reports was unintended.

A second possibility is that the reduction in the convicted unsentenced prison population is linked to the introduction of the generic community order by the *Criminal Justice Act* 2003. The single community order replaced a range of community sentences with one order to which decision-makers are able to attach up to 12 requirements. The new sentence was

proposed in order to provide decision-makers with more flexibility to select relevant requirements and to simplify community sentences. It is possible that decision-makers' reliance on PSRs generally and standard delivery reports in particular has reduced as a result of having only one community sentence option, albeit with a range of requirements thereby increasing the number of sentences imposed immediately. No published evidence is available on the impact of these changes on the use of PSRs or fast delivery reports.

Time Spent on Remand

The second driver for the level of the prison remand population is the time spent on remand. England and Wales has made some progress in reducing the time taken to progress all cases through the court process. Between 2004 and 2007 the average case processing time for cases proceeded against in magistrates' courts from first listing to completion reduced from 55 days to 47 days for indictable offences and from 26 to 24 days for summary non-motoring offences (Ministry of Justice 2008b). Conversely, waiting times between committal and trial at the Crown Court increased between 2001 and 2006 from an average of 10.1 weeks to 14.1 weeks, although it did fall back slightly in 2007 to 12.9 weeks (Ministry of Justice 2008b). The reduction in case processing times in 2007, particularly in Crown Court cases, is likely to have contributed to the fall in the average time spent on remand from 58 days in 2006 to 55 days in 2007 (Ministry of Justice 2008c). This decrease was the first for some years, although significant reductions were achieved between 1994 and 2002 when the average time spent on remand fell from 59 days to 49 days (Home Office 2003).

The time spent awaiting trial in Canada provides a contrast to the picture in England and Wales. The average time for case processing in adult courts in Canada increased from 160 days in 1996 to 217 days in 2005/6 suggesting that this is one of the drivers for the increasing remand population (Canadian Centre for Justice Statistics 2008). Not only is the increase significant, the average time in custody in Canada is over twice as long as in England and Wales. Similarly in Northern Ireland the time spent awaiting trial has been a driver for the increasing prison population (Northern Ireland Criminal Justice Inspectorate 2006; Northern Ireland Affairs Committee 2007). The average case processing time in Northern Ireland is half as long again in the Crown Court cases (360 days) and nearly twice as long in magistrates' courts (113 days) than in England and Wales (Northern Ireland Criminal Justice Inspectorate 2006). In Australia case-processing time is also increasing, although the available statistics are presented differently. Between 2001 and 2008, the proportion of cases dealt with from initiation to finalisation in less than 13 weeks reduced from 33% to 17% and the proportion of cases taking over a year increased from 14% to 25% (Australian Bureau of Statistics 2009a). However, it appears that this has not translated into remand prisoners spending longer periods in prison, with prisoners spending a median of around 2.6/2.7 months in custody (Australian Bureau of Statistics 2009b). As the available statistics are medians, it is likely that some prisoners spend significantly longer in custody (see e.g., Australian Bureau of Statistics 2009b). Nevertheless, the rising prison population in Australia appears to be driven by increasing numbers in the system rather than the time spent in prison, whereas a key driver for the rising prison population in Canada and Northern Ireland is the time spent awaiting trial.

One of the New Labour government's criminal justice commitments on taking office was to reduce delays in the criminal justice process in England and Wales. This followed the publication of the Narey Report (1997) which investigated delays in the criminal justice process, highlighting the deterioration in the time taken to complete cases. The commitment to speed up justice was packaged in the government's 'Simple, Speedy, Summary justice'

initiative (DCA 2006) and now forms part of the 'Bringing Offences to Justice' key performance measure (OCJR 2007). It includes keeping cases out of the court process altogether alongside a commitment to deal with cases as quickly as possible and where possible the day after charge. Since the publication of the Narey Report (1997), a number of measures have been introduced in an attempt to reduce delays in the court process. The initiatives generally take the form of court hearings with particular functions which are designed to ensure that cases proceed expeditiously. They include Early First Hearings, Early Administrative Hearings, Plea and Direction Hearings and Plea before Venue. Several of these initiatives have the potential to impact upon the prison remand population.

In Early Administrative Hearings, commonly referred to as 'Narey Courts', single magistrates or Justices' Clerks deal with legal aid applications and make remand decisions at the first appearance, although the latter's powers are restricted to the grant of bail albeit with conditions. This forms a significant departure from the legal principles which had hitherto applied in the remand decisions, because decisions can now be made by single justices and Justices' Clerks (although the latter's powers are restricted to the grant of bail albeit with conditions). Plea before Venue hearings take place in magistrates' courts and require defendants to enter a plea. If defendants plead guilty magistrates must deal with the matter after hearing representations from the prosecution and the defence. At about this time, sentence discounts for guilty pleas were put on a statutory footing, providing a clear incentive to defendants to plead guilty. The case is completed if the magistrates decide that their sentencing powers are sufficient; but if they believe that they are not, the case is committed to Crown Court for sentence.

The Plea before Venue requirements resulted in an increase in the number of defendants committed for sentence at the Crown Court between 2002 and 2006, before dropping back in 2007 (Ministry of Justice 2008a). It would be expected that many of these defendants would be committed for sentence in custody. This is because sentencing powers in magistrates' courts currently enable decision-makers to impose custodial sentences of six months for any one offence up to a maximum of 12 months imprisonment. So, only those defendants who are expected to receive a custodial sentence of over six months (for one offence) should be committed to the Crown Court for sentence. By definition, such defendants would be at greater risk of a custodial remand, thereby raising the unsentenced prison remand population. However, this has not materialised, with the convicted unsentenced prison population falling rather than rising. It is likely that one explanation for this is that magistrates' courts continue to commit offenders for sentence at the Crown Court, whose subsequent sentences are below the threshold of magistrates' courts' sentencing powers. Alongside these initiatives an explicit case management approach has been adopted. The Criminal Procedure Rules 2005 set out a range of measures to ensure that cases are dealt with speedily. This includes setting time limits for each stage of the case and the introduction of case progression officers who take charge of cases when they reach the Crown Court.

The impact of the measures discussed so far in this section on the time defendants spend in custody awaiting trial and therefore on the prison remand population is uncertain. It would be expected that there would be a link between them but no robust evidence is available to support this supposition. A clearer link can be made between the time spent in custody on remand and Custody Time Limits. Custody Time Limits were introduced in the mid 1980s and set maximum periods that defendants can spend in custody at different stages of the proceedings. If the time limits are exceeded defendants must be bailed by the courts. However, the prosecution can apply for the time limits to be extended. No systematic

research has examined the operation of Custody Time Limits but anecdotally they appear to concentrate the minds of prosecutors, so there is rarely a need to exceed them and when there is, extensions are normally granted (Samuels 1997). However, the time limits were set generously. On the downside, the prosecution are likely to work to the maximum, despite guidance which states otherwise, thereby increasing the time taken to complete some cases.

Conclusion

It has been suggested that a large number of legal and procedural changes in the criminal justice process of England and Wales may have contributed to the stabilisation of the prison remand population. The picture is complex and a lack of research evidence hampers any firm conclusions being drawn. However, no one single factor appears likely to have had a significant direct impact on the prison remand population. Hence there is no silver bullet to deal with increasing prison remand populations. It is more likely that the combined effect of the initiatives and the signals they send to decision-makers have contributed to the stabilisation of the population. It appears that there has been a general 'ratcheting down' of remand decisions so that some defendants who were previously remanded are now diverted from court through the use of cautions and PNDs, whilst other defendants who would previously have been remanded in custody are now bailed conditionally. However, the extent to which diversion has occurred is not quantifiable because the size of the remand population has not been modelled. Thus it is uncertain what trajectory the population was expected to take. Indeed different trends are occurring in different parts of the remand population: the convicted unsentenced population has fallen whilst the unconvicted remand population has increased slightly over recent years. Nevertheless the rate of increase in the remand population is lower than might have been expected. This raises interesting questions about how this has been achieved when the law has been tightened to make the grant of bail more difficult for large numbers of defendants and when government rhetoric has been focused upon ensuring that where it is deemed necessary defendants are remanded in custody.

There has been a quiet (and sometimes not so quiet) revolution taking place in remand policy. As a consequence of government concerns over prison overcrowding generally, pressure has been applied to remand decision-makers to make less use of custody. A policy of quiet persuasion has been used to cajole decision-makers into conforming. The specific mechanisms which have been used vary and include the introduction of Restriction on Bail and bail accommodation and support schemes. More direct pressure has been brought to bear through the use of memoranda and letters sent to courts asking decision-makers to think carefully before remanding defendants in custody. Some of these memoranda have been leaked to the media and caused some politicians and the media to call for further tightening of the law and policy on bail. However, just as Simon and Weatheritt (1974) observed, the climate in which remand decisions are made is as important, if not more important, than the legal rules which govern the decision-making process. This is made possible by the level of discretion the law allows decision-makers and a lack of interest and information about remand decisions generally. Only when something goes spectacularly wrong is the public interested in the mundane decisions made in magistrates' courts. It seems that the persuasive tactics used by the government have delivered a remand population which has stabilised. The drivers of the climate are markedly different from those of the 1970s when concerns about defendants' rights predominated. Instead, the policy has grown out of necessity because the prison population reached levels which were

unsustainable and costly and there was simply no room to house any more prisoners. In such a climate it is more politically acceptable to use the remand population as a safety valve than the sentenced population, because it deals with unconvicted people. Certainly there was more media coverage of an initiative to release prisoners early than there was about most of the initiatives to reduce the prison remand population. Furthermore, using the safety valve on this population enables the government to keep its law and order credentials almost intact whilst at the same time showing a willingness to adhere to defendants' rights to liberty whilst awaiting trial.

The disjuncture between the bail law and its practical operation may also be explained with reference to the judges and magistrates who make remand decisions. The independence of the judiciary is well documented. Court cultures are notoriously strong and resistant to change (Church 1982; Hucklesby 1997b; Paterson & Whittaker 1994). It may be that remand decision-makers continue to make decisions on the same basis as they did before the bail law was tightened. Certainly it has been argued that some of the legal changes were unnecessary. It was suggested that they would not result in radical changes to remand decisions because they were in line with current practice (see e.g., Hucklesby 2002). In short, the legal changes have been largely presentational rather than operational. This is most starkly illustrated when decision-makers are faced with defendants who persistently commit minor offences on bail. According to the law, these defendants should be remanded in custody, but remand decision-makers tend to see such decisions as going against ideas of natural justice and use the latitude provided by the law to bail defendants.

In the last two decades the number of District Judges (magistrates' courts) in England and Wales has risen. In many magistrates' courts they deal with many of the remand cases in which defendants are at risk of custody. District Judges are legally qualified, have greater presence and clout within courts and arguably have greater confidence in their decisions than the majority of magistrates (Morgan & Russell 2000; Seago et al. 2000; Smith 2004). They also sit much more frequently than magistrates. Arguably, this means that they are more likely to take a chance and release defendants who pose bail risks. They are generally more knowledgeable about any initiatives in place in the courts which aim to divert defendants from custody (Hucklesby et al. 2007, forthcoming). As a result they are more likely than magistrates to use such initiatives.

An important contributory factor in prison remand populations is the length of time defendants spend awaiting trial. It is difficult to gauge the impact of the various measures which have been put in place to speed up the criminal justice process on the remand population. This is particularly the case when official figures are averages and it is possible that regional variations or significant numbers of outliers exist. The relatively static averages for the time spent in prison awaiting trial in England and Wales, however, are in stark contrast to the position in Canada, where the time spent awaiting the completion of cases has risen significantly. This is likely to have been a significant driver in the rising prison population in Canada, suggesting that at least some of the explanation for the stabilisation of the remand population in England and Wales is the relatively static amount of time defendants spend in pre-trial custody.

Despite the stabilisation of the prison remand population, it is not a time for complacency. The remand population in England and Wales is still high at around 12,000 defendants and includes defendants who could be granted bail with minimal risk. Around half the defendants remanded in custody do not ultimately receive a custodial sentence (Ministry of Justice 2008a). Whilst it can be argued that some defendants receive non-custodial sentences because they have spent time on remand and that cases are dynamic, the

numbers involved suggest that many defendants are still being unnecessarily remanded in custody.

References

Airs J, Elliott R & Conrad E 2000 *Electronically monitored curfew as a condition of bail – report of a pilot* Home Office London

Australian Bureau of Statistics (ABS) 2009a *Criminal Courts 2007/08* 4513.0 Australian Bureau of Statistics Canberra

Australian Bureau of Statistics (ABS) 2009b *Prisoners in Australia* 4517.0 Australian Bureau of Statistics Canberra

Australian Institute of Criminology (AIC) 2007 *Prisoners in Australia 1996-2006* Crime Facts Info No 147 Australian Government/Australian Institute of Criminology Canberra

Barry M, Malloch M, Moodie K, Nellis M, Knapp M, Romeo R & Dhanasiri S 2007 *An evaluation of the use of electronic monitoring as a condition of bail in Scotland* Scottish Executive Edinburgh

BBC News 2006 'Repeat offenders 'evading court' 6th November 2007 at <http://news.bbc.co.uk/1/hi/uk/6421547.stm> accessed 12 May 2009

Bottomley AK 1970 *Prison Before Trial* Occasional Paper in Social Administration No 39 Bell and Son London

Brownlee I 2004 'The Statutory Charging Scheme in England and Wales: towards a unified prosecution system' *Criminal Law Review* 896

Brownlee I 2009 'Conditional Cautions and fair trial rights in England and Wales: form versus substance in the diversionary agenda' *Criminal Law Review* February pp 129-140

Burrows J, Henderson P & Morgan P 1994 *Improving Bail Decisions: The Bail Process Project, Phase 1* Research and Planning Unit Paper 90 Home Office London

Canadian Centre for Justice Statistics 2008 *Remand Statistics* paper presented at 'The Changing Face of Corrections Forum' October Ontario Department of Corrections, North Bay,

Church TW 1982 'The "Old and the New" convention wisdom of court delay' *The Justice System Journal* vol 7 no 3 pp 395-412

Department of Constitutional Affairs (DCA) 2006 *Delivering Simple, Speedy, Summary Justice* DCA, London at <www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf>

Glidewell LJ 1998 *The Review of the Crown Prosecution Service* Cmnd 3960 Home Office London

Godson D & Mitchell C 1991 *Bail Information Schemes in English Magistrates' Courts: a review of the data* Inner London Probation Service London

Hansard 2009 Written answer to Mr Grieve 2nd February 2009 at <www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090202/text/90202w0013.htm>

HM Prison Service 1999 *Bail Information Schemes* Prison Service Order No 6101 at http://pso.hmprisonservice.gov.uk/PSO_6101_bail_information_schemes.pdf

Home Office 1989 *Prison Statistics England and Wales 1988* Cmnd 847 HMSO London

Home Office 2003 *Prison Statistics England and Wales 2002* Cmnd 5996 HMSO London

Hucklesby A 1994 'The Use and Abuse of Conditional Bail' *Howard Journal* vol 33 no 3 pp 258-270

Hucklesby A 1996 'Bail or Jail? The Practical Operation of the Bail Act 1976' *Journal of Law and Society* vol 23 no 2 pp 213-233

Hucklesby A 1997a 'Remand Decision Makers' *Criminal Law Review* April pp 269-281

Hucklesby A 1997b 'Court Culture: an explanation of variations in the use of bail in magistrates' courts' *Howard Journal* vol 36 no 2 pp 129-145

Hucklesby A & Marshall E 2000 'Tackling Offending on Bail' *Howard Journal* vol 39 no 2 pp 150-170

Hucklesby A 2001 'Police bail and the use of conditions' *Criminal Justice* vol 1 no 4 pp 441-464

Hucklesby A 2002 'Bail in Criminal Cases' in McConville M & Wilson G (eds) *Handbook of the Criminal Justice Process* Oxford University Press Oxford

Hucklesby A 2008 'Vehicles of Desistance: the impact of electronically monitored curfew orders' *Criminology and Criminal Justice* vol 8 no 1 pp 51-71

Hucklesby A 2009 'Understanding offenders' compliance: a case study of electronically monitored curfew orders' *Journal of Law and Society* vol 36 no 2 pp 248-271

Hucklesby A forthcoming 'Pre-trial initiatives' in Hucklesby A & Wincup E (eds) *Drug Interventions in Criminal Justice* Open University Press Buckingham

Hucklesby A, Eastwood C, Seddon T & Spriggs A 2007 *The Evaluation of Restriction on Bail Pilots: Final Report* RDS On-line report 06/07 Home Office London

Hucklesby A, Jarrold K & Kazantzoglou E (forthcoming) *Effective Bail Scheme evaluation: action research report* Ministry of Justice

King M 1971 *Bail or Custody* Cobden Trust London

Lloyd C 1992 *Bail Information Schemes: practice and effect* Research and Planning Unit Paper No 69 Home Office London

Lobley D & Smith D 2000 *Evaluation of Electronically Monitored Restriction of Liberty Order* Scottish Executive Central Research Unit Edinburgh

Mair G 1988 *Probation Day Centres* Home Office Research Study No 100 HMSO London

Mair G & Mortimer E 1996 *Curfew Orders with Electronic Monitoring* Home Office Research Study No 163 Home Office London

McIvor G 1992 'Sentenced to Serve: the operation and impact of community service by offenders' Avebury Aldershot

Ministry of Justice 2007 *New Bail Accommodation and Support Scheme* at <www.justice.gov.uk/news/newsrelease180607a.htm> accessed 23 April 2009

Ministry of Justice 2008a *Criminal Statistics England and Wales 2007* Statistics Bulletin Ministry of Justice London

Ministry of Justice 2008b *Judicial and Court Statistics 2007* Cmnd 7467 Ministry of Justice London

Ministry of Justice 2008c *Offender Management Caseload Statistics 2007* Ministry of Justice London

Ministry of Justice 2008d *Criminal Justice and Immigration Act 2008* (provisions commencing on 3rd November 2008) Circular 2008/05 Ministry of Justice London at <www.justice.gov.uk/publications/docs/circular-criminal-justice-031108.pdf>

Ministry of Justice 2009a *Population in Custody* October Ministry of Justice London

Ministry of Justice 2009b *Total Adult Caseload Pre-trial* unpublished statistics, Electronic Monitoring Unit, Ministry of Justice London

Morgan P 1994 *Offending on Bail: a survey of recent research* Research and Planning Unit Paper 65 Home Office London

Morgan P & Henderson P 1998 *Remand Decisions and Offending on Bail: evaluation of the Bail Process Project* Home Office Research Study No 184 Home Office London

Morgan R & Jones S 1992 'Bail or Jail?' in Stockdale E & Casale S (eds) *Criminal Justice Under Stress* Blackstones London

Morgan R & Russell N 2000 *The Judiciary in the magistrates' courts* Home Office and Lord Chancellor's Department London

Narey M 1997 *Review of Delay in the Criminal Justice System* Home Office London

National Probation Service 2005a *Criminal Justice Act 2003: new sentences and the new report framework* Probation Circular 18/2005 Home Office London at <www.probation.homeoffice.gov.uk/files/pdf/PC18%202005.pdf>

National Probation Service 2005b *Bail Information Schemes* Probation Circular 19/2005 Home Office London at <www.probation.justice.gov.uk/files/pdf/PC19%202005.pdf>

National Probation Service (2008) *Accommodation and Support Scheme for Bail and HDC* Briefing No 42 Home Office London at <www.probation.homeoffice.gov.uk/files/pdf/NPS%20Briefing%2042%20.pdf>

National Probation Service 2009a *Pre-sentence report decision tool* Probation Circular 12/07 Home Office London available at <www.probation.homeoffice.gov.uk/files/pdf/PC12%202007.pdf>

National Probation Service 2009b *Determining pre-sentence report type* Probation Circular 06/09 Home Office London available at <www.probation.homeoffice.gov.uk/files/pdf/PC06%202009.pdf>

New Zealand Cabinet Office 2009 Effective Interventions Cabinet Paper 4: Remand in Custody at <www.justice.govt.nz/effective_interventions/cabinet_papers/remand-custody.asp> accessed 18 May 2009

Northern Ireland Criminal Justice Inspectorate 2006 *Avoidable Delay: A Thematic Inspection of the Delay in Processing Criminal Cases in Northern Ireland* Northern Ireland Criminal Justice Inspectorate Belfast

Northern Ireland Affairs Committee 2007 *The Northern Irish Prison Service: Volume 1 (HC 118)* HMSO London

Paterson F & Whittaker C 1994 *Operating Bail: decision-making under the Bail etc (Scotland) Act 1980* The Scottish Office Central Research Unit Edinburgh

Office of Criminal Justice Reform (OCJR) 2006 *Penalty Notices for Disorder: review of practice across police forces* OCJR London

Office of Criminal Justice Reform (OCJR) 2007 *Working together to cut crime and deliver justice*: strategic plan 2008-11 Cmnd 7247 HM Government London

Pease K 1985 'Community Service Orders' in Tonry M & Morris N (eds) *Crime and Justice* Chicago University Press Chicago

Pease K, Billingham S & Earnshaw I 1977 *Community Service Assessed in 1976* Home Office Research Study No 39 HMSO London

Phillips C & Brown D 1998 *Entry into the Criminal Justice System: a survey of police arrests and their outcomes* Home Office Research Study No 185 Home Office London

Samuels A 1997 'Custody Time Limits' *Criminal Law Review* 260

Sarre R, King S, & Bamford D 2006 'Remand in Custody: critical factors and key issues' Trends and Issues in Crime and Criminal Justice No 310, Australian Institute of Criminology at <www.aic.gov.au/publications/tandi2/tandi310.html>

Seago P, Walker C & Wall D 2000 'The Development of the Professional Magistracy in England and Wales' *Criminal Law Review* pp 631-651

Simon F & Weatheritt S 1974 *The use of bail and custody in London magistrates' courts before and after the Criminal Justice Act 1967* Home Office Research Studies No 20 HMSO London

Smith B 2004 'The Role and Influence of District Judges in the magistrates' court' unpublished PhD thesis, University of Leicester

Walmsley R 2008 *World Pre-Trial/Remand Imprisonment List* International Centre for Prison Studies London

Young R 2009 'Street policing after PACE: the drift to summary justice' in Cape E & Young R (eds) *Regulating Policing* Hart Publishing Oxford pp 149-190