

**Presumed innocent but behind  
bars – is remand overused in  
England and Wales?**

March 2018

# About Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system. Penelope Gibbs set up the charity in 2012 to help create a better justice system in the UK. Transform Justice promotes change through generating research and evidence to show how the system could be improved, and by persuading practitioners and politicians to make those changes.

The research and production of this report has been kindly supported by the Hadley Trust.

# About Penelope Gibbs

Penelope Gibbs worked as a radio producer at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at TimeBank before she joined the Prison Reform Trust to run the Out of Trouble campaign to reduce child and youth imprisonment in the UK. Under her watch, the number of children in prison in the UK fell by a third. Penelope has also sat as a magistrate. She has been director of Transform Justice since its foundation.

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# Foreword

Pre-trial detention is problematic world-wide. On any one day, about three million people languish in prison without having been tried or sentenced. In England and Wales the proportion of the adult prison population there on pre-trial remand sits at 7%, which, when put in the context of a high total prison population compared with the rest of Europe, is a significant, highly problematic figure. In 2017, of those who were remanded in custody pending trial or sentence in magistrates' courts, 58% did not go on to be sentenced to prison – that amounts to over 13,000 people in one year alone – and more than one-quarter of people remanded in custody in the Crown Court did not receive a custodial sentence. Over-use of pre-trial detention is not only expensive for tax-payers, but defendants and their families often suffer serious adverse consequences with the accused receiving no compensation even if they are acquitted – as a quarter of those remanded in custody in magistrates' courts are. It is also damaging in corroding the fundamental criminal justice principles of the presumption of innocence and the right to fair trial.

The pre-trial detention rate in England and Wales has been remarkably consistent for decades, and the causes of inappropriate use of pre-trial detention have remained largely the same, worsening in some respects. Despite the fact that the law is largely (although not completely) satisfactory and compliant with international standards, the way in which it is implemented in practice results in many defendants being remanded in custody when other alternatives are, or should be, available. Grounds for withholding bail rely upon the strength of evidence and likely sentence if the accused is convicted, yet the information supplied to the accused and the court by the police and prosecution, and the time devoted to consideration of that information, is normally wholly insufficient. More information about the evidence is potentially available at subsequent bail hearings, but by that time the die is cast, and the burden is effectively shifted

from the prosecution to the accused. Alongside this, bail information schemes, designed to provide courts with important information to assist their decision-making, have disappeared from many courts.

This report by Transform Justice provides important further evidence of deficiencies in the processes by which decisions to remand defendants in custody are made. Unfortunately, much of what it uncovers is not new. Perhaps comforted by the headline statistic of a 11% remand (pre trial and pre sentence) prison population, there is a degree of complacency. Whilst a number of the defence lawyers in the research that Tom Smith and I conducted made sensible proposals for reform, the magistrates, judges and prosecutors that we interviewed tended to believe that the system is as good as it can be. This is accompanied by a political lethargy which has failed to seriously address prison over-population. This report provides evidence of the need for change in a well-reasoned and accessible form. The question that remains is whether there is the political appetite to make that change happen.

*Ed Cape  
Emeritus Professor of Criminal Law and Practice,  
University of the West of England, Bristol*

# Executive summary

They're asking the judiciary to do a job...we have the tools to do that job... [but] nobody's supplied the foundation on which to build the building...it's falling down every time...we've got to come away from just remanding people for the sake of remanding because we haven't got the facilities. (judge)

It's only a minority that are practiced, good criminals-good in the sense of being good at what they do. Most of them are, pardon my French, f\*\*king idiots. But they're all treated as if they're a vicious threat to humanity, like serial killers are. (defence lawyer)

[Speaking of a remand in custody] It's not a punishment in itself... what we're doing is trying to protect people and if those defendants don't ultimately receive a custodial sentence...I don't think that you can criticise the pre-trial detention decision. (prosecutor)

Innocent until proven guilty is an ancient principle of English law. Given this, there's a presumption that those pleading not guilty should be granted bail, so they can live in the community while waiting for their trial. But for hundreds of years, in England and Wales as in other countries, some people have been imprisoned pending trial and/or sentence – remanded in custody. Imprisonment destroys family ties and community links, and leads to the loss of jobs and homes. Whilst remand is not technically a punishment, it effectively punishes the defendant as much as a prison sentence. Only those who are at high risk of either absconding or committing a serious crime on bail should be remanded.

We have too many people in prison in England and Wales and our prisons are plagued by violence and drugs, so it makes sense to ask whether all those in prison need to be there. We appear to have drifted far from the principle of using remand only when completely necessary. 10,776 people charged with summary (less serious) offences were remanded in

2017. Of those defendants whose cases stayed in the magistrates' court 58% did not get a custodial sentence at the end of their case. The evidence we have gathered suggests that remand is over-used and under-scrutinised; decisions to remand are taken too quickly, on the basis of too little information. Too often the prosecution case seems to be given greater weight than that of the defence, or the application to remand is unopposed. Once a defendant has been remanded, it's very difficult to get the decision reversed. The defendant in prison finds it hard to communicate with their lawyer, gets very little help from prison staff, and is usually forced to appear from prison on video for court hearings – which makes communication more difficult and leads to the defendant disengaging.

Ideally the government would look again at the Bail Act which is 42 years old, but new legislation is unlikely in this parliament. This report outlines why and how remand is overused and makes practical suggestions as to how the number of people on remand could be reduced. Some of these changes would cost money, but the outlay would be more than recouped through the saving in prison costs.

# Methodology and sources

We have reviewed published Ministry of Justice statistics and academic work. We are particularly indebted to “[The Practice of Pre-trial Detention in England and Wales](#)” (2016), a report by Professor Ed Cape and Dr Tom Smith of the University of the West of England (UWE).

Transform Justice conducted a survey of defence lawyers to which 131 responded (including a handful of non-lawyers) and we conducted 8 telephone interviews with lawyers who had responded to the survey. Leanne Robinson conducted the interviews and has assisted in all aspects of the production of the report. We also engaged with the Ministry of Justice and requested information via freedom of information requests.

This report focuses only on adult defendants, although we would welcome any data or research on the use of remand for children.

Unfortunately, there is a dearth of data and information about those on bail/remand. Much of the prison data amalgamates those not convicted and those convicted but awaiting sentence; there is no data on how long people spend on remand nor on the reasons given by courts for denying bail. There is also no information of the provision of bail information services in prison or at court, so we don't know what support is offered to those at risk of remand.

The quotes used in this report all come from either the UWE report or from our own survey/interviews.

The following kindly commented on a draft of the report: Dr Tom Smith, Rhona Friedman, Keima Payton, Dr Jessica Jacobson, Fiona Robertson, trustees of Transform Justice and members of Ministry of Justice staff.

# The impact of remand on the prison population

Compared to many European countries, the percentage of the England and Wales prison population on remand (either awaiting trial or sentence) is not so high (11% compared to 23% in Sweden and 28% in Northern Ireland<sup>01</sup>). But our prison population itself is very high (143 per 100,000 of the population compared to 57 in Sweden and 75 in Northern Ireland<sup>02</sup>), and thus the numbers affected are significant. Remand first receptions into prison in any one quarter (11,471) are higher than sentenced first receptions (9810)<sup>03</sup>.

The proportion of the prison population on remand belies its impact on resources. High administrative costs are incurred by processing prisoners in and out of prison, meaning that their cost to the system is far higher than 11% of prison costs. Unconvicted prisoners have rights – to be kept separate from sentenced prisoners, to be able to wear their own clothes and to have better access to family visits. All this involves extra costs.

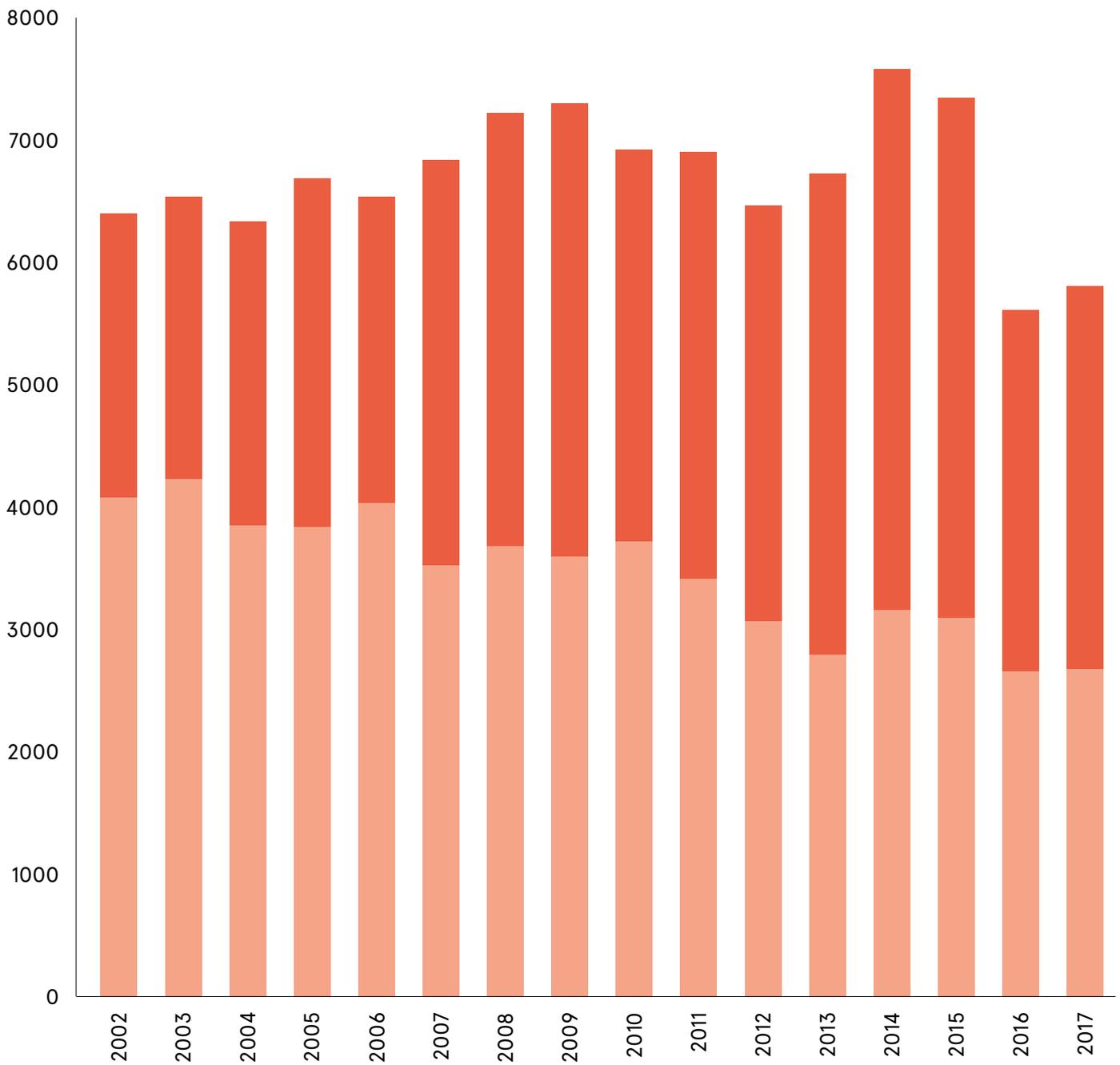
The numbers (and proportion) of prisoners on remand have recently begun to increase, having been in decline for a number of years. In the last year, numbers went up by 4% to 9,639<sup>04</sup>. The number of unconvicted people on remand has gone up less steeply (+2%) than those who are convicted but not yet sentenced (+9%). The earlier decline in the use of remand (see figure 3) may be linked to restrictions on the use of remand, introduced in 2012<sup>05</sup>, and to the speeding up of cases, so more people were sentenced without being bailed or remanded first. The recent increase in remand may be linked to the decline in Bail Information Services (p14), to difficulties in accessing lawyers and to the increase in the use of video links.

**Figure 1**

**Historic changes in remand**

Source: **MOJ Justice Analytical Services**

-  Number of untried adults on remand
-  Number of convicted unsentenced adults on remand



# What crimes are those remanded accused of?

Contrary to expectations, most people who are remanded have not been accused of sexual or violent crimes – according to recent figures, less than half (44%) of those on remand were accused of the most “dangerous” offences (violence against the person, sexual offences, robbery and possession of weapons).<sup>06</sup> 15% of those remanded were accused of theft, 17% were accused of drug offences and 8% of summary non-motoring offences, 2% of people on remand were accused of public order offences, 1% of fraud, and 9% of summary (magistrates’ court only) offences. The proportion of the remanded prison population who have been charged with a summary offence is more than double the proportion in the sentenced population convicted of such an offence.

## Adult remand population broken down by violent/non-violent offence group (31 December 2017)

Source: [MOJ Justice Statistics Analytical Services](#)

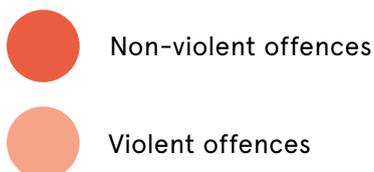
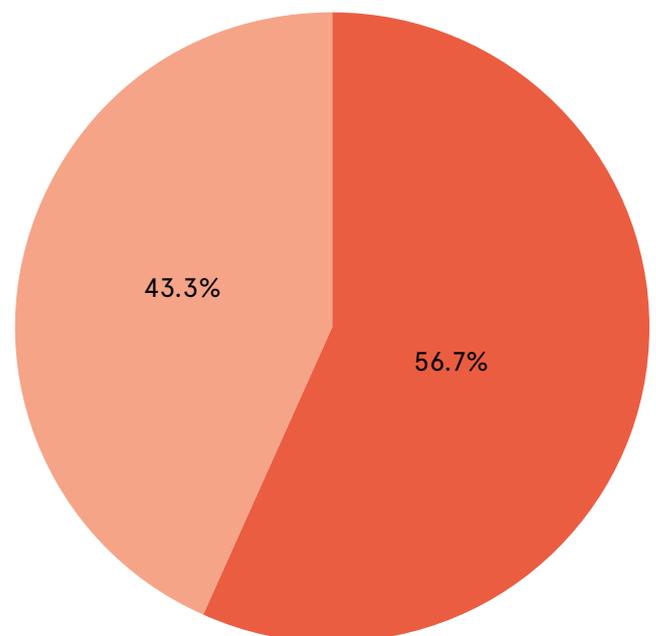
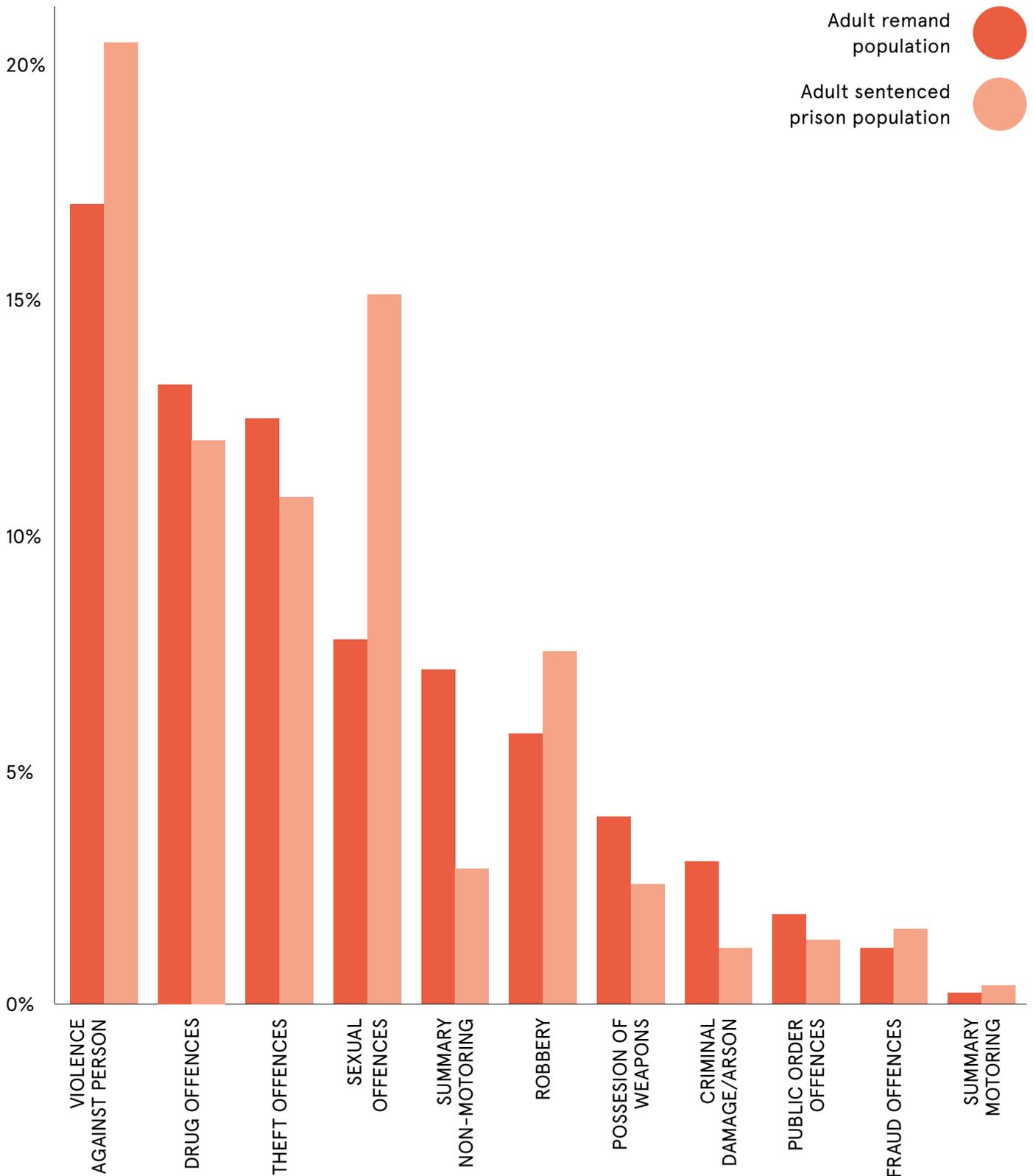


Figure 2

Adult remand and prison population, broken down by offence group (31 December 2017)

Source: MOJ Justice Statistics Analytical Services



# A woman on remand gives birth in prison only to be released on acquittal

Remand is seldom seen as a major miscarriage of justice, but the unfairness of one case recently hit the headlines. Cristina Bosoanca was arrested and charged in December 2016. She and two others were accused of conspiring to traffic a young woman to the UK from Romania for the purpose of prostitution, and of conspiring in her rape. Cristina was Romanian, did not have a home in England and was charged with a serious offence – so she ticked three of the boxes which often lead to remand.

Cristina found out she was pregnant on being booked into prison in December 2016. She gave birth in prison in August 2017. In the thirteen months of her imprisonment she could not see her other son, who was 8 years old and remained in Romania. Her lawyers asked for bail twice, but this was always refused, and Cristina's custody time limits (182 days) were extended three times. The defence said, if bailed, Cristina would surrender her passport, report regularly to the police station and live in accommodation approved by the court. Despite the low risk of a pregnant woman/a mother with a new born baby but without a passport, absconding, bail was always refused.

The most shocking aspect of the case was that there was clear evidence which significantly undermined the complainant's account in the possession of the police and CPS which, had it been properly considered, should have triggered a review of the charges. When the case eventually came to trial, it transpired that the main witness was already pregnant before arriving in the UK (which undermined her rape allegation) and many texts and messages she sent indicated that she was intent on becoming a prostitute, which undermined the trafficking allegation. This information was known to the police from February 2017 but wasn't disclosed until the trial started in December 2017.

After lengthy cross-examination of the complainant, and at the invitation of the defence and court, the

case was finally withdrawn. The tragedy of this case was that three people (one of whom had a home in England) spent long periods on remand on very weak evidence. The judge said it appeared "as though the court has been significantly misled as to the prosecution's state of readiness as well as the strength of the evidence at previous bail hearings as well as applications to extend the custody time limits." The case also begs the question of why decisions are made to remand vulnerable defendants if their risk of not turning up to court, or interfering with witnesses, is low or can be reduced.

# Why do we imprison anyone who has not been convicted of a crime?

In English law, everyone is presumed innocent of any crime they have been charged with, unless they admit guilt or are found guilty as a result of their trial. So, they have a right to remain at liberty - a prima facie right to bail. But the courts can imprison someone awaiting trial if they meet certain criteria. The main criteria used are:

- Risk of failure to surrender to bail (a fear, backed by evidence, that they will not turn up for their next court appearance)
- Risk of committing further offences while on bail
- Risk of interfering with justice, e.g. contacting prosecution witnesses

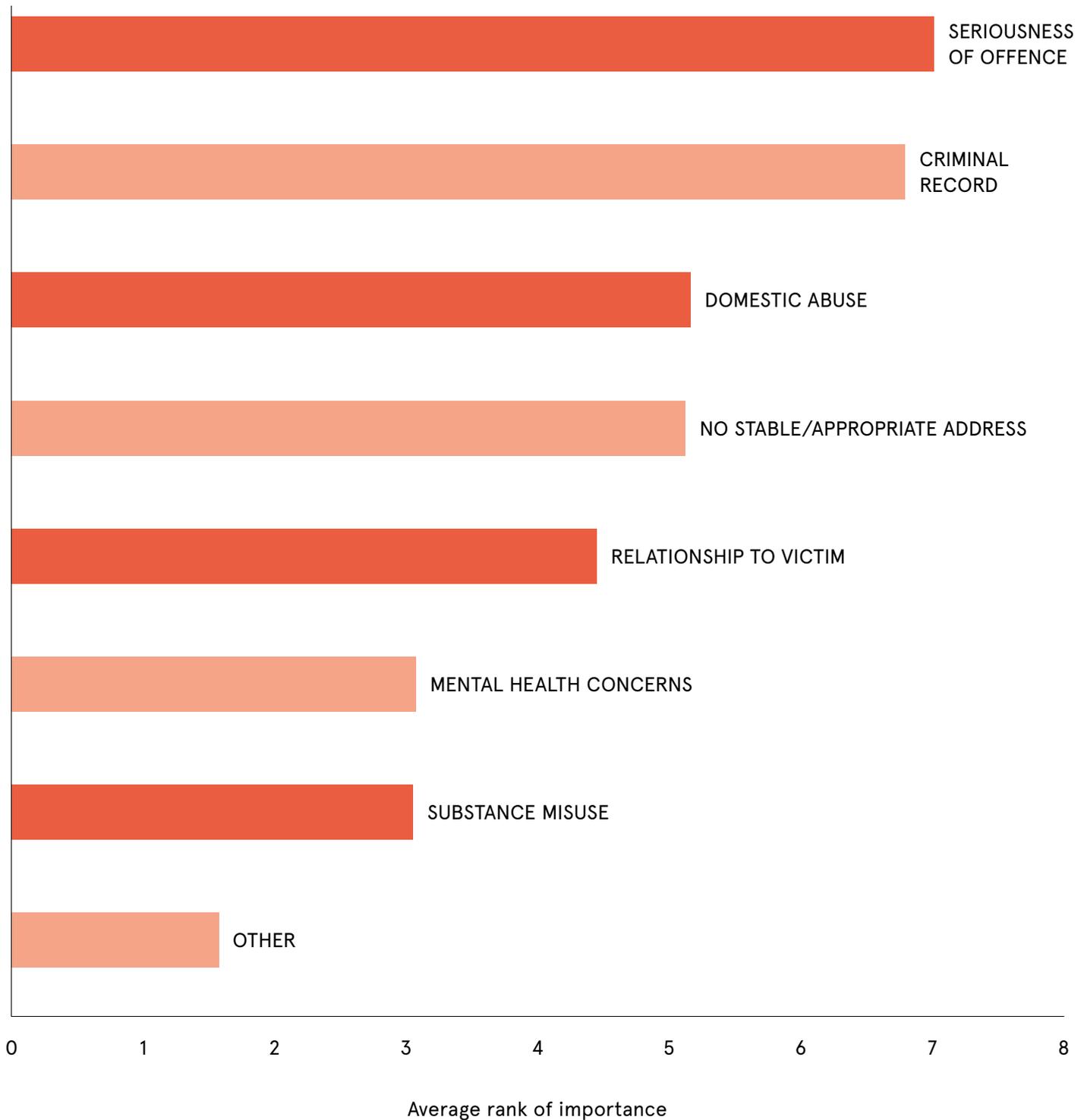
The court must use one of the Bail Act criteria (known as 'grounds') for justifying the refusal of bail. To establish these grounds, the court may consider factors including the strength of the evidence against the defendant, the seriousness of the offence, character and previous convictions of the defendant, and anything else that is deemed relevant. Lack of accommodation, or mental health problems are not Bail Act criteria but are frequently cited (see Fig 4) as reasons why a defendant might not get bail. For example, if someone does not have stable accommodation they are often considered at higher risk of failing to surrender.

If someone is charged with a non-imprisonable offence they cannot generally be remanded unless they have a record of breaching bail. And if there is "no real prospect" of the defendant being sentenced to imprisonment, the court has to take that into account.

**Figure 3**

**Most common barriers to a defendant getting bail, as experienced by lawyers surveyed**

Source: *Transform Justice survey*



# Remand for the defendant's own protection

You have to look at their support. Say for argument's sake you've got a 19/20 year old who's never had any support since he was five years of age, and he still hasn't got any support...perhaps you start the support by saying right, you're going to be remanded in custody, this is going to stabilise you, then we look at where we're going to go from there. (judge)<sup>08</sup>

There is an enormous gap in the system for anybody with mental health problems who are all too often remanded to a prison. (defence lawyer)

A court is allowed to remand someone for their own protection and/or for the completion of reports (e.g. a psychiatric or pre-sentence report). Whilst not one of the most used Bail Act criteria, this is one of the most controversial, as few experts believe that imprisonment can act to protect. In fact, 32% of those who commit suicide in prison are on remand<sup>09</sup> – a far higher proportion than the remand population overall.

One of the most tragic recent remand stories is that of Sarah Reed. Sarah was charged with grievous bodily harm in relation to an altercation she was involved in when sectioned in a mental health unit. She pleaded not guilty, since she said she had been acting in self-defence. Sarah had serious mental health problems but was stable and living in a flat close to her family. She was initially granted bail but at a hearing in October 2015, she was suddenly remanded into custody. She was then on remand for three months solely to obtain two psychiatric reports to confirm whether she was "fit to plead" (to participate in her own trial). Sarah committed suicide in mid-January 2016.

During her last weeks, multiple visits from Sarah's family and lawyer were cancelled, often with no reason recorded despite her status as a remand prisoner meaning she was entitled to daily visits. From January 7 through to her death, Sarah's filthy cell was not cleaned, she was not permitted a shower and was kept in virtual

isolation. An increasingly agitated and unwell Sarah spent her last tormented days locked in a cell towards the end of a corridor, behind a screen, with no visits or telephone calls to family, friends and no proper interaction with staff.<sup>10</sup>

Tamara Pattinson has researched the use of prison as a place of safety for mentally ill women<sup>11</sup>. Having worked in a women's prison, Tamara was concerned that women were usually much less safe in prison than in the community. She also found that magistrates and judges were under a misapprehension that someone with severe mental illness would be assessed and, if necessary, transferred into residential psychiatric care more quickly if they were remanded. This is not the case.

Tamara interviewed prison staff who felt out of their depth dealing with women with complex mental health problems, reporting that they had feelings of "helplessness and vulnerability". She concluded that the Bail Act should be reformed to so that no one can be remanded for their own protection: "it is questionable if detention in a prison can ever provide protection that would ensure that a defendant would not suffer harm".

# What is the outcome for those who are remanded awaiting trial?

I had a client, a Sri Lankan lady, with three children, one of them disabled; and she was remanded in custody throughout her trial at the Old Bailey. And what was she charged with? Money laundering. Nothing else. When it came to the trial, it was such a bad prosecution case that it collapsed in the first week. Yet, she spent 9 months on remand. (defence lawyer)

I think District Judges in particular are happy to scare defendants [by remanding them]. In a moral way, that's perhaps not a bad thing as it perhaps does frighten them and keep them out of trouble. Legally, of course it is not right. (defence lawyer)

A high proportion of those who are remanded in custody are either acquitted or get a non-custodial sentence. Some people are on remand for months before being acquitted, or their case collapses, but no financial compensation is available for lost income, tenancies, time with family, etc.

There were nearly 12,000 people remanded by magistrates for summary (less serious) offences in 2016. Of those remanded and subsequently tried by magistrates in 2016, 60% did not receive a custodial sentence. They were either acquitted (25%) or got another kind of sentence or sanction. Even in the Crown Court, 27% of all defendants who had been remanded did not go on to get a custodial sentence. Judges and magistrates should take into account whether a custodial sentence is likely before using remand, but they clearly err on the side of caution<sup>12</sup> and/or are given inaccurate information.

The latest figures suggest that women are particularly unlikely, if remanded, to receive a prison sentence. 43% of women who were remanded prior to a Crown Court trial, and 69% remanded and tried in the magistrates' court, did not end up getting a prison sentence<sup>13</sup>.

# Does the court process exacerbate the likelihood of remand?

Especially on a Saturday morning...you're constantly being told 'hurry up, the court are waiting' ...and it's a bit like 'well, this guy or lady's liberty is at risk actually- you're going to have to wait! (defence lawyer)

Quite often you don't get all the statements- so the prosecution still throws curveballs at you in courts. They read out bits of the statement which weren't in the case summary, they show exhibits that you don't know about- so 'how much information do you get' is a subjective question as it were because sometimes you'll think you have a fair amount and then you find out that you've got very little. (defence lawyer)

There are various factors in the court process which are likely to increase the likelihood of remand:

## 1. Time Pressure

- The bail hearing is often the first time the defence advocate (who may be the duty solicitor) has met the defendant. Given the number of cases they need to juggle, solicitors often don't have time to pick up whether a defendant has vulnerabilities or disabilities, particularly if they are embarrassed to disclose or the disability is undiagnosed.
- Any defendant who has been detained by the police overnight has to be produced the next court day. This puts huge time pressure on lawyers to identify and review all the relevant information relating to the case and suggest credible bail conditions.
- There is pressure, particularly in magistrates' courts, to process cases as speedily as possible. In court observations<sup>14</sup>, the average prosecution application for remand took just 3 ½ minutes. The average defence case was 5 ½ minutes<sup>15</sup>. In such little time it's impossible for details of the case, of the defendant, and of options for bail support to be discussed fully.

## 2. Inadequate information for the defence

You get a very short piece case summary of 2 of 3 pages if you're lucky... some office report without actually giving you the documentation and the evidence. So often, later on down the line, [you find out] what they've been saying was completely wrong. The case files haven't been correct, they've been exaggerated. And initially what they've been saying has scared the judge into refusing bail. (defence lawyer)

- Disclosure by the Crown Prosecution Service (CPS) to the defence on the first court appearance is minimal and, according to both defence and prosecution advocates, the information (which is based on summaries of the evidence by the police) often turns out to be wrong. Therefore, defence advocates have incredibly little to go on, even to challenge the correctness of the charge, let alone appraise the chances of acquittal and the likelihood, if guilty, of the defendant being imprisoned on sentence. They are working, more or less, in the dark. In a study by UWE, defence advocates said that in over half of cases, they were given less than 30 minutes to prepare and, in several cases, less than 10 minutes. In 30% of cases they had no paperwork at all before actually getting into the courtroom.
- Until a few years ago, police witnesses were sometimes called to give evidence, but this no longer happens. In the cases observed, no prosecutor either cited documentary evidence or called a witness to give evidence, instead providing the court with information only from the police file and a list of previous convictions. Both police information and the list of previous convictions often later turn out to be inaccurate.
- Many defendants are unrepresented. There is no official data, but the Magistrates' Association did a survey of its members in 2017 which suggested

that defendants were representing themselves in 18% of bail hearings.<sup>16</sup> Those who represent themselves struggle to understand the law, their rights and the court process, and are thus more likely to be remanded.

A man in his late 20s was on remand for the theft of a mobile phone. He had mental health issues and had seen a mental health practitioner but was refusing a solicitor. He gave evidence to the court via video-link. When the legal adviser asked the unrepresented defendant for his plea, he asked if he would be allowed home again. He then said it was a "not guilty plea due to a psychotic episode". The adviser accepted the plea but said, if he was relying on a defence of psychosis, he would need medical evidence covering the period of the offence. The unrepresented defendant was not granted bail. The CPS had very little on file about the offence, but said the unrepresented defendant was remanded as he failed to attend court after being charged with the offence. (court observation)<sup>17</sup>

### 3. Procedural Shortcomings

- Police detention puts the defendant at a disadvantage in terms of appearance - if remanded by the police, the defendant will appear in court already in custody, either from the police station or in the court dock. The bench or judge can invite any defendant to sit in the well of the court, but they very seldom allow those brought from police custody to do so.
- Defendants are not given reasons for their remand which are particular to their case. Case law says that reasons for not granting bail should "extend to a minimum reasonable level of adequacy and had to identify the ground or grounds upon which the court was satisfied that bail should now be refused, and with a minimum level of adequacy identify the case specific reasons for being so satisfied". But this guidance is frequently not followed. In 5 of the 28 cases which resulted in remand<sup>18</sup> no grounds for denial of bail were announced and in over half of the remaining cases the reasons given were formulaic, just reflecting the wording of the Bail Act itself. In the worst cases, the reasons given were not even compliant with the Bail Act. If judges were compelled to give individualised reasons for denial of bail, they might think again about their decision.
- Defence advocates feel that judges assume the prosecution's version of the facts to be correct, and seldom challenge it. This is supported by the UWE study - of cases observed and reviewed, 70% of prosecution applications for remand were accepted by the court (though many of these were unopposed). Of the defence advocates they surveyed, nearly half felt that prosecution and defence submissions were not treated equally and that the prosecution was favoured. Typical responses were that "more weight is given to representations by the prosecutor", "the police/prosecution are believed without having to produce evidence", "the prosecution case is taken at its highest", and "the bench often ignore the defence". One wrote "bias always for pros [the prosecution] and I say that as a former prosecutor". This would suggest that the presumption of bail is potentially undermined from the start.
- In many cases, the initial prosecution application for remand is not opposed by the defence - in the UWE study, prosecution applications for remand were only opposed in about half the cases. Defence advocates may feel they have no chance of getting bail because of the seriousness of the offence; or they may decide to "save" their bail application to the next court hearing, when they may be able to build a stronger case with more information. If a defence advocate does not oppose the prosecution application for remand, clearly the defendant has no chance of bail. It would be useful to know how often

those who are remanded in these circumstances are subsequently granted bail.

- When the defence does oppose a prosecution application of bail and loses, they usually wait and reapply for bail at the next bail hearing, which is held a week after the first (if the case is staying in the magistrate's court). But if convinced that the decision has been unjust, a defence lawyer can appeal the decision to a judge in chambers. They have to apply to the Crown Court to have a hearing and persuade the clerks to list it.

# The influence of video

“Psychologically, it is easier to do something negative to someone when they are not physically present. When I prosecute a bail matter, I prefer the defendant to be on the [video] link. When I defended, I always sought to have the defendant present in court, so the judge or magistrates would have to refuse bail to their face”. (prosecutor)

“Magistrates at second bail application hearings must feel that, as the defendant is already in prison, the pressure is off them to consider releasing on bail. They have no direct contact with the defendant, appropriate communication is limited, the human factor is missing.” (defence lawyer)

Video links are increasingly being used for bail and remand cases. Where there is a virtual link between the police station and the court (currently operating in a number of police areas), all defendants who have been remanded by the police appear on video into the remand court.

If a defendant is remanded, they most often appear on video from prison for their remand hearings. Prisoners frequently favour appearing from prison rather than going to court, since this avoids getting up in the middle of the night, hours in a very uncomfortable prison van (“sweatbox”) and also the risk of having to move prison after the hearing.

Though more convenient for prisoners, there is good evidence that virtual hearings may prejudice outcomes, particularly for certain groups of defendants. A Ministry of Justice evaluation of police station to court hearings concluded that there was a strong correlation between appearing on video and a higher likelihood of being imprisoned.<sup>19</sup> This may have been a direct effect of the defendant being on video or an indirect effect of being unrepresented – nearly half of those who appeared on video from the police station were not defended by a lawyer. The 311 lawyers and other practitioners

surveyed by Transform Justice<sup>20</sup> felt that a video hearing affected the *process*, if not necessarily the *outcome*, of the bail decision. Of these, 92 said that those who appear on video are *less likely* to get bail vs 40 who said defendants were more likely to.

The defence advocates surveyed had serious concerns about the use of virtual hearings for remand:

1. Insufficient time was allowed for lawyers to consult with their clients, who they may never have met before. In theory, lawyers are given a 15-minute timed slot to consult with their client, and to discuss bail options if they know that the prosecution are opposing bail. In reality, lawyers have much less time. Just over half of those surveyed said that their pre-court video consultations with clients were usually less than ten minutes long. 10 respondents said they got less than 5 minutes.
2. The symbolism of the defendant appearing from custody is potentially prejudicial to the decision. They are already in custody, and this may subconsciously lead to bias.
3. Defendants who appear from custody find it hard to communicate with the court and their advocate during the hearing, since they cannot use body language to attract attention or convey meaning. This leads defendants to either disengage completely or behave in an inappropriate manner because they cannot sense the “gravitas” of the court, and they become frustrated by the barriers to communication.<sup>21</sup>

The government are currently developing a fully virtual remand court in which all parties will appear on a screen or on a phone, with no-one physically present in the court room.<sup>22</sup> This was proposed in the (abandoned) 2017 Prisons and Courts Bill and is likely to be re-tabled in a new courts bill.<sup>23</sup>

# The difficulty of getting out once in

[We] tend to adhere to previous decisions unless there's very compelling reasons to the contrary. (crown court judge)

The failure to properly review a remand decision on an ongoing basis is a major concern... the courts tend to rubber stamp earlier decisions. The whole issue of needing a change of circumstances for a third bail application is rigidly applied, often negatively for the defence. (defence lawyer)

Once someone is refused bail it becomes very difficult for the next court to change that. What will often help is substantial amounts of sureties and security. So, if you're rich, or you have rich friends, you'll be alright.<sup>24</sup> (defence lawyer)

In theory, defendants have the same right to be considered for bail whether it is their first appearance or if they have already been remanded in custody. They have up to two opportunities to apply for bail in a magistrates' court, and a right to apply to the Crown Court after this, if there is a change of circumstances.

In reality, lawyers felt that the chances of a defendant being granted bail once they had been remanded were greatly diminished due to a number of factors:

1. Once remanded, prisoners often appeared on video for their court hearing, bringing the problems already outlined above, including difficulties in communication before and during the hearing, and the negative symbolism of appearing from custody.
2. Many remand hearings in the Crown Court are held "in camera" without the defendant present.
3. After the first remand hearing, all subsequent benches do not have to hear the full prosecution case.
4. Defence lawyers are convinced that, despite the prima facie right to bail, once a defendant has been remanded, the court places the onus on the defence to prove that their client should be granted bail, rather than vice versa.
5. Judges seem reluctant to overturn their colleagues' decisions – one Crown Court judge said he was quite prepared to overturn a decision made by a magistrates' court but felt himself "bound to follow an earlier decision made by another Crown Court judge unless there was a good reason for not doing so"<sup>25</sup>. In reality, lawyers felt there was little chance of getting bail for someone on remand unless there was a significant change in circumstances. Again, this flies in the face of the prima facie right to bail.
6. Lawyers feel there are insufficient opportunities to have remand decisions reviewed. Defence advocates were asked whether remand reviews were regular enough to take account of changed circumstances or other factors. Of 106 responses to this question, 71 (67%) indicated that reviews were not regular enough.<sup>26</sup>

# Who is most likely to be remanded?

Data on who is remanded and who is granted conditional and unconditional bail is incomplete. Those least likely to be remanded are defendants who have a lawyer, are accused of a non-violent crime and have a stable address.

Transform Justice asked defence advocates which groups were particularly likely to be remanded. These groups often overlapped, but lawyers said that those who had a criminal record were mostly likely to be remanded, followed by those with no fixed abode, those with substance misuse and/or mental health problems – all of which are directly or indirectly related to the statutory criteria for refusing bail. (Fig 3)

Those offered specialist bail accommodation are probably similar in characteristics to those remanded in custody: “among these people, it is estimated that 42% had no fixed abode (and 77% had either no fixed abode or problems with the permanence or suitability of their accommodation or locality), 64% had no form of employment, and 61% used drugs weekly and/or had problems with current alcohol use.”<sup>27</sup>

“Foreign nationals” are less likely to get bail than those who have British nationality. In 2017 (y/e September), 17% of foreign national prisoners were on remand, compared to 10% of British prisoners. Foreign nationals are considered by the court to be less likely to have a stable address and thus more likely to abscond. But, this is not backed up by evidence. Some 80,000 non-EU foreign nationals currently live in the community with some form of reporting restriction. In 2015 compliance rates of 95% were reported.<sup>28</sup>

## Race

The Lammy review highlighted potential problems in the way black and minority ethnic defendants are treated, including when it comes to remand.

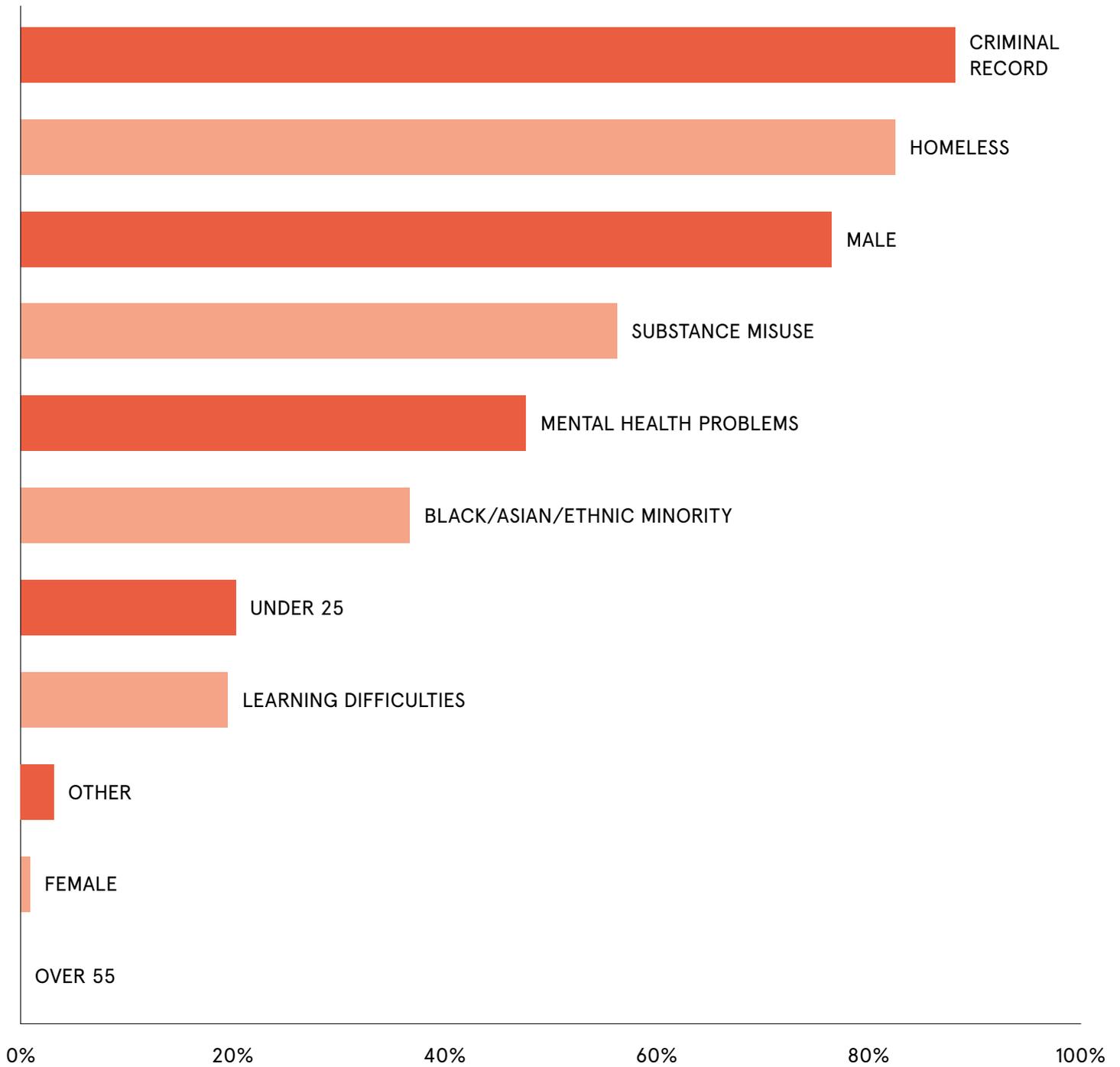
“In addition to the seriousness of the offence committed, custodial remand and plea could influence custodial sentencing for those convicted at Crown Court. Where the number of cases was sufficiently large for calculations to be made, all adult BAME groups were more likely than the white group to be remanded in custody at Crown and, apart from other ethnic women, to plead ‘not guilty’ in their cases. For instance, black, mixed ethnic and other ethnic men were more than 20% more likely than white men to be remanded in custody.”<sup>29</sup>

The latest statistics show that black defendants are 23% more likely, and mixed race defendants 18% more likely, to be remanded in the Crown Court for an indictable offence, but subsequently both groups are more likely to be acquitted by a jury.<sup>30</sup>

**Figure 4**

**In your experience, who is most likely to be remanded in custody?**

Source: *Transform Justice survey*



# Accommodation

Problems with accommodation cannot be used as a legal justification for denying someone bail but they are at the root of many such decisions. Many defendants are homeless or “of no fixed abode” and this is often used to suggest that they will not turn up for their court appearance. (defence lawyer)

I think perhaps it needs a review as to what they’re actually doing about hostels... for every court there should be a bail hostel room or more available, even if they’re not used by that court they should be available... there aren’t enough rooms in the prisons, so you’ve got to find an alternative. (judge)

Even if you are staying with friends, the presumption is that you have no fixed abode and they will chuck you in prison. The police will always say you have no fixed abode, even if you are living somewhere. (defence lawyer)

In cases where the defendant has no home the prosecution may be concerned that the defendant will fail to appear at court. Where the defendant has been accused of domestic violence, they will be forbidden from staying in their own home. So a cautious court will want to find alternative accommodation before granting bail. But finding alternative accommodation is often impossible, particularly when pressed for time.

Most defendants at risk of remand have been detained by the police in police cells immediately prior to their court appearance. They must be produced in court the next court day after being charged. This means lawyers and probation have very little time to anticipate an accommodation problem and resolve it.

Even if the problem of accommodation has been recognised, there is very little alternative accommodation available for those at risk of remand. Bail Accommodation and Support Services

(BASS) offer specialist accommodation, which can be used by those on bail, but there are relatively few places compared to the numbers remanded, some at risk of remand are excluded,<sup>31</sup> and places seldom seem to be available when needed (see p 22).

If the bench is concerned by the risk of the defendant interfering with witnesses, they often want them to be accommodated far away from their home. Unless a BASS bed is available, such accommodation is almost impossible to identify. A frequent scenario is that no accommodation is found and the defendant is remanded while inquiries continue. Some judges also have concerns about the environment of bail accommodation – that it can be a lure for drug dealers and thus, that vulnerable people are more at risk there than in prison.

One major centre of gravity of their lifestyle is accommodation, and often a breakdown of accommodation exacerbates temptations to take alcohol, drugs, and therefore compounds the issues that they have and therefore makes them that more likely to commit further offences, or not to show up in court. (defence lawyer)

A number of barriers need to be overcome to facilitate a reduction in the number of defendants remanded due to the perceived unsuitability of their accommodation:

- A better evidence base for the risk assessment taken when defendants have “no fixed abode”. Are they really homeless and/or unlikely to get to court?
- More support provided for those who are homeless to get to court (see below).
- More use of GPS or other tagging as part of bail conditions, particularly for those seen as likely to interfere with witnesses or reoffend.

- Less pressure on courts and lawyers to process bail cases swiftly and allowance given for cases to be adjourned until later in the day when suitable accommodation has been identified. Maybe it would be better for someone to return to a police cell for one night, rather than be imprisoned for a week or more if accommodation cannot be confirmed within one court day?
- Up to date information on the availability of alternative accommodation.
- Greater availability of suitable specialist bail accommodation (see overleaf).

# Bail Accommodation and Support Services

These days the odd client will say 'what about bail hostels' and we'll sort of laugh, as if they exist at all. (defence lawyer)

Places in bail hostels have become non-existent as an alternative to a remand in custody, as spaces are taken up by early release prisoners on licence. As prison release is anticipated they can fill waiting lists...its over 3 years since I have known of a bail hostel place for a remand prisoner. (defence lawyer)

Accommodation for those on bail used to be provided in "bail hostels", but places in these supervised hostels were increasingly taken by prisoners released on licence. In response, bail hostels became approved premises in 2007, and a new form of accommodation for those on bail was launched - BASS. This bail accommodation is managed by a housing association and consists of rooms in ordinary houses and flats for those on bail and those released from prison on home detention curfew (HDC). Residents on bail are not supervised, though they meet with support staff once a week. Defendants on bail must pay rent.

The mystery of BASS accommodation is that, despite an apparent shortage of accommodation for those on bail, the service has been underused, particularly by those on bail. The number of available beds has been reduced since 2007 from 650 to 550. In January 2018, only 98 of the potential 550 beds were being used by those on bail - most were used by those on HDC and a fifth of the beds were unoccupied. A recent government drive to increase the numbers released from prison on HDC is likely to put even more pressure on spaces.

One reason for underuse of BASS accommodation is the ignorance of its existence among lawyers and courts. But BASS also seems to exacerbate offending. A Ministry of Justice study found that those who are accommodated using BASS and later convicted have worse outcomes than similar defendants awaiting trial:<sup>32</sup>

For people who go on to receive a custodial sentence, community order or suspended sentence:

- More people (+4%) who receive BASS housing support reoffend within a one-year period, and BASS recipients commit more reoffences during a one-year period, compared to those who do not receive it.

For people who go on to receive a conditional discharge or fine (compared to those not in BASS accommodation):

- More people who receive BASS housing support reoffend within a one-year period.
- Previous BASS residents commit more reoffences during a one-year period.
- Previous BASS residents who go on to reoffend during a one year period commit more serious acquisitive reoffences are more likely to commit a first reoffence that is more serious than the original offence, are more likely to be sentenced to custody for their first reoffence and receive more custodial sentences.

These findings are concerning and intriguing. Maybe those who are accommodated through BASS are already more vulnerable (and thus more likely to reoffend), or maybe living alone, away from family and friends damages the desistance process? Perhaps mixing those on bail with those released from prison is counter-productive?

The BASS contract was re-tendered in 2017, though it has not yet been awarded. The results of the Ministry of Justice research suggest that the provision of bail accommodation needs a fundamental reappraisal - both for its availability and its effect.

# Bail

“Key workers can be key to successful outcome of bail application. Recently I made a bail application for a homeless alcoholic, but luckily, I spent half an hour with his key worker, who came from St Mungo’s. She knows him inside out, told me about all his current problems and how he’s dealing with them and gave a human side to him that persuaded, almost out of nursing, the district judge, to opt for bail.”

(defence lawyer)

Most defendants awaiting trial or sentence are placed on conditional or unconditional bail by the court. Unconditional bail places no restrictions on the defendant, bar returning to court as requested. Conditional bail can involve a number of restrictions, including:

- Regularly reporting to the police station
- Agreeing to the police checking your home
- Sureties and securities<sup>33</sup>
- Electronic monitoring (“tagging”)

There is no recent data on what conditions are most commonly imposed, nor on how many defendants breach those conditions and/or offend on bail.

There is data on the use of electronic monitoring which shows that its use has reduced 22% in recent years; in 2014/15 there were 20,070 new tags for bail ordered, whereas in 2016/17 there were only 15,685. Given that there are 11,271 first remand receptions into prison every quarter, it appears that the potential for electronic monitoring to reduce remand is being underused.

# The strange disappearance of bail information

When the Bail Information Officers are involved they are generally very helpful, but it is extremely rare at the current time to hear from them at all. I did not realise that they were still in all prisons, it is so rare to hear from them. (defence lawyer)

I do recall them being helpful many years ago. Not for the last 15 years. (defence lawyer)

Bail information is advice given by a trained officer to help people on remand to provide positive, verified information which might assist the court in making a bail decision. In court, the bail information service can benefit defendants in mounting a case for bail. If bail is denied, the prison-based bail information service comes into play to provide further information on a second appeal.

Bail information services in prisons started in the late 1980s. By 1997, schemes were fully operative in 31 prisons and a limited service was available in a further 14. The 1998 Comprehensive Spending Review recommended that all prisons should have bail information services and in 1999 Prison Service Order 6101 established a mandatory requirement that all prisons holding people on remand operate a “comprehensive” bail information scheme. It states that “the management of bail information officers should allow them to make a full commitment to the work during the day.”

So just eight years ago, all prisons with remand prisoners had identifiable bail information officers who were either probation officers or prison officers. Unfortunately, almost as soon as prison bail information services were mandated, the actual service seems to have fallen apart. Now, although all prisons are supposed to provide such a service, lawyers and prisoners seem ignorant of it and there is no hard information on what service prisons do provide, if any. There is no incentive for prison governors

to abide by the letter or the spirit of PSO 6101, since there is no active monitoring of the service.

Only the Prisons Inspectorate is reporting on the decline in provision. In 2012, they published a thematic report on remand prisoners:<sup>34</sup>

Few in our groups knew about the bail information officer at their establishment, and nearly half of remand prisoners in our survey reported difficulties with obtaining bail information. Bail services varied considerably between establishments and in many cases were not visible or active enough to ensure all who needed the support received it. Remand prisoners also reported difficulties in maintaining contact with solicitors, which was mainly due to difficulties accessing phones and affording calls... Where services were implemented well, they had a considerable impact on the success of prisoners' bail applications.

The decline in service is marked in the two recent (August 2017) inspection reports of male prisons with remand prisoners. In Swansea prison, only 15% of prisoners said it was easy/very easy to get bail information and 40% found it difficult to communicate with their legal representative. At Wormwood Scrubs in Central London, only 10% found it easy/very easy to get bail information whilst 46% found it difficult to communicate with their lawyer.

There is, however, some good practice in prisons. In Peterborough women's prison, “peer workers saw all women who came into the prison on remand and helped them apply for bail accommodation. Staff at The Link Resettlement Centre could provide women with lists of solicitors and authorise a free phone call in an emergency.”<sup>35</sup>

Lawyers reflected on the disappearance of prison bail information services to Transform Justice. Of the lawyers surveyed, many said they had no experience whatsoever

of bail information officers, 37% said they were never contacted by bail information officers and 46% said they were very rarely/not often contacted by them.

The quality of a prisons' bail information service is not part of the current prison performance framework. While governors are fire-fighting riots, self-harm, violence and drug dealing, it is not surprising that the provision of bail information has sunk down to the bottom of the priority list. It's a pity however that a service which could help lower the prison population is being neglected.

# Bail information in courts

When I started there was a system where you went to court, you could speak to the probation officer, then he would make an enquiry for you if you wanted to apply, on the basis of a bail hostel. That disappeared 10-15 years ago. (defence lawyer)

On the rare occasions I have had contact with them they have been helpful, for example in relation to accommodation and substance misuse issues, but they are noticeable by their absence in most cases. (defence lawyer)

Bail Information Services also used to be provided by the probation service in courts. This service should still be provided by the National Probation Service (NPS) as outlined in the up to date service specification for bail services.<sup>36</sup> This has very laudable aims:

- Prospective bailees in courts and custodial settings are targeted in an efficient manner.
- Bail information, enquiries and referrals are provided on targeted cases or in response to requests from the court.
- Sentencer and judicial knowledge and confidence are promoted.

However, there is no evidence that the NPS achieves these aims, and lawyers seem even less aware of bail information services in courts than they are of those in prisons. The UWE study found prosecutors and defence advocates to be enthusiastic about bail information services in courts where they existed, but that the provision was patchy – bail information was only available in some courts, on some days. The service appears to have declined further since 2015 when their research was conducted.

Lawyers interviewed by Transform Justice said probation officers were never available to discuss

bail options for defendants who appeared straight from police custody. So lawyers with many cases to juggle, are forced to investigate options alone. Given the impossibility of succeeding with the clock ticking, many decide not to oppose the first prosecution application for remand.

# Domestic violence

In September this year, a client was charged and [remanded in custody] for breach of a non-molestation order. His partner invited him to the address [where she lived] and she had applied to the court for discharge of the order, which was granted three weeks before his trial, yet no court would bail him. He was acquitted at trial. The only winner was me. (defence lawyer)

In my experience, domestic violence cases result in many accused persons being deprived of their liberty because officials are concerned about their own position in the event that a person is given bail and further serious offences are committed. Of course, that is an abhorrent situation. But the reality is that such an occurrence is rare... (defence lawyer)

You've got the domestic violence cases...where most of the charges are assault by beating, but again those are cases that could have a serious risk of fear of further offences or fear of interference with witnesses. (prosecutor)

We don't know what proportion of alleged perpetrators of domestic violence are remanded in custody, but many respondents have highlighted this as a particular problem. Lawyers we surveyed cited allegations of domestic violence as a key barrier to the granting of bail – an even more significant barrier than lack of accommodation. The prosecution often opposes bail on the basis that the defendant will reoffend and/or interfere with witnesses. The only way of addressing this risk may be for the alleged perpetrator to be housed far away from the family home, but such accommodation is often not available.

Defendants accused of domestic violence are at risk of being imprisoned on remand even if they are accused of a summary offence (as they often are), and unlikely to get a prison sentence if convicted.

# Lack of scrutiny, feedback and performance management

The discretion of the courts has progressively been eroded in some areas and replaced in others, which has made some people feel like there is always someone looking over their shoulder, not from the defence side but from the prosecution side. (defence lawyer)

I would send a message to my fellow judges... saying these are the areas where you have to do better...this is how much it's costing to keep people who ultimately don't get locked up anyway, or who ultimately are innocent... you're making very, very expensive decisions every day, and you have to take responsibility for those. (judge and defence lawyer)

Bail and remand is a neglected area. No inspectorate of probation, prisons or Crown Prosecution Service, has examined remand practice in the last five years and there is no performance framework associated with reducing unnecessary remand. It is difficult to appeal a remand decision and there is no scrutiny of judicial and advocacy practice in relation to remand. Despite evidence that the prima facie right to bail is being compromised, there has been no recent strategic litigation on remand practice.

The Criminal Procedure Rules were changed in February 2017 to encourage judges to give defence advocates a better opportunity to put their case. They must:

...ensure that if information about the prosecution case is supplied later than usually is required then the defendant, and any defence representative, is allowed sufficient time to consider it; (ii) explicitly to require that information provided for the court in bail proceedings must be provided for the defendant, too; and (iii) to require the court itself in bail proceedings to take sufficient time to consider the parties' representations and reach its decision.

However, there is no evidence that compliance with this rule has been monitored or enforced. Or even that most courts know about the rule change.

There is no data or published information on bail, the conditions applied to it or compliance with it. Unfortunately, what is not measured tends not to be valued, so bail and remand is seen as something of a Cinderella service, in which the exercise of caution is valued above curbing potentially unnecessary use of custody. Once a defendant has been remanded, there is no incentive in the system for them to be given bail. There are processes, but no scrutiny of those processes, apart from custody time limits. These restrict the length of time defendants can usually be kept on remand - for instance those accused of an indictable offence cannot be remanded for more than 182 days. But the prosecution can ask the judge for an extension to the custody time limit and, in the case of serious offences, this is almost always granted.

# Turning up in court

Previous convictions for Failing to Surrender should not be relied upon, unless information can be provided about the detail of the previous failure and good reason for finding substantial grounds to believe that the defendant will again fail to surrender due to a likely pattern of behaviour. Failing to Surrender often enters the record due to circumstances which actually have great mitigation and are unlikely to be repeated, but once on the record are a significant influence on withholding bail. (defence lawyer).

It is clearly essential to the smooth running of the court system that those on bail turn up for their court hearing at the right time, on the right day. Respondents to our survey said risk of failing to surrender is the second most used criterion for denial of bail (after risk of further offences). But is remand a disproportionate and expensive remedy for those defendants who don't turn up when they should or who are at risk of not turning up at all?

Those charged with crimes frequently lead chaotic lives. Many have addictions, have no stable home and many have mental health and/or learning difficulties. They may have no ability to schedule appointments and find it hard to keep pieces of paper. With the closure of so many courts, it can be difficult and expensive for them to get to court, so they sometimes miss court appointments, usually not intentionally.

Given these issues, it is perhaps surprising that many more defendants do not turn up for court. And there are very few defendants whom the police or support workers cannot find when they need to – even those sleeping on the streets usually sleep in the same place every night. When a warrant without bail is issued to arrest someone who hasn't turned up in court, the police usually find them.

It is these chaotic defendants who are at risk of remand because they may not turn up for their next

hearing. It would make sense for the government to focus on ways of helping defendants get to court at the right time – it's cheaper to pay someone to pick up a defendant from home and take them to court rather than use remand. Options such as reminder phone calls or texts to nominated friends, family and support workers, as well as the defendant, alongside other prompts should be tried. Tagging software could also be adapted to issue court reminders.

Overall, the "punishment" for not turning in court at the right time, or having a record for not turning up, seems unnecessarily severe and a poor use of resources. Given future court closures, this is a problem which needs imaginative solutions.

# Training and development

Retrain district judges and lay justices on the presumption of bail, domestic and European case law on Article 5. Make them spend a day in a local remand prison talking to inmates, officers, mental health professionals and the families of inmates. (defence lawyer)

Sometimes with very poor benches you just see them tacking on things, sometimes with the help of the legal advisor. They'll start off with 'we fear he'll commit further offences', 'oh and interfere with witnesses', 'oh and yeah, for his own safety maybe as well'. It becomes a shopping list. (defence lawyer)

Judges and magistrates would benefit from further training and development on bail and remand. All judges receive training in bail decision-making before they start sitting, but they receive no follow-up training. There is evidence that some judges and magistrates do not sufficiently challenge the prosecution case for remand (e.g. by asking for evidence), do not give the defence sufficient time to consider information provided late by the prosecution, find it hard to weigh up the real risks of a defendant interfering with witnesses/not turning up in court, do not give reasons particular to the individual case when they refuse bail, or give reasons which are not compliant with the Bail Act. Magistrates and judges also have no training in how to interact with defendants appearing on video, whom evidence suggests find it harder to participate than those who appear in person.

More importantly, judges and magistrates receive no feedback on the outcomes of their decisions, unless they happen to see the defendant again. Although the criteria for bail decisions are different to those of sentencing, surely it would be useful for judges and magistrates to get feedback on whether, and why, those they remanded had been acquitted or got a community sentence/fine/other non-custodial disposal, particularly in summary and either-way cases?

# Conclusion

The presumption is in favour of bail, but you start off actually at a disadvantage in reality as that legal presumption is never abided by as it were...the psychological presumption is always in favour of the crown. (defence lawyer)

Remand appears to be out of sight and out of mind – some remand hearings being closed and excluding the defendant altogether symbolises something about the whole system.

We need to be able to remand some defendants. No one would suggest that someone accused of a serious crime who appears from evidence to be at high risk of reoffending or absconding should be at liberty. But equally, the right to bail is an important one given that anyone can be acquitted.

The question is not whether to have criteria to refuse bail, but what those criteria should be, and what evidence should be available to aid decision-making. Our findings suggest that the balance is wrong, and that expediency is taking priority over justice. From the very beginning, the scales are weighted against a defendant if the prosecution is applying to deny bail. They may arrive in court from police custody and have a short consultation with a lawyer they've never met before, who has very little, if any, information about the charge or the circumstances of the crime. Probation is not available to set up bail support in the few minutes before the hearing. In court, the bench is unaccustomed to challenge or to require evidence to back up the prosecution case and under pressure to make a decision quickly.

The odds against getting bail only increase if someone is remanded. They appear in their remand hearings from custody, and judges are loathe to overturn their colleagues' decisions without new information. But systems to provide bail information have broken down.

Unfortunately many judges do not get feedback on their remand cases. They don't know how many of those they remand are acquitted or get a community sentence on conviction. They may still say that they made the right decision to remand on the information they had, but any reflection is worthwhile.

The remand population of England and Wales receives scant attention or scrutiny. There is little research or data, and no one systematically monitors practice. Few complain of the overuse of remand. Defendants who have been acquitted after many months on remand often just want to put it all behind them. But the recent rise in the numbers on remand and evidence of over-cautious, formulaic decision-making should give rise for concern.

Speedy, summary justice has led to speedy remand. It may be necessary to slow down justice in order to improve decision-making.

# Recommendations

1. Improve the training and development of judges and magistrates so that they are more confident in challenging the prosecution case, in insisting on more information being provided, in assessing the risks presented, and in giving legal and defendant specific reasons for the refusal of bail.
2. Slow down the court process to allow the defence and prosecution to learn more about the defendant, the evidence of the alleged offence and the risks posed, whilst also improving disclosure prior to the first bail hearing. It would help if fewer defendants were remanded in custody by the police.
3. Increase the proportion of prosecution first applications for denial of bail which are opposed by defence.
4. Halt any increase in the use of video hearings until there is research available on whether video affects the chance of a defendant being denied bail.
5. Reform, revive and incentivise bail information services in prison and courts. Probation staff should ideally present a bail package on the first appearance of those at risk of custodial remand and at every subsequent bail hearing.
6. Improve the outcomes for those housed in bail accommodation (BASS) pending trial, improve communication of its availability and explore ways of facilitating the identification of non-BASS accommodation for those on bail.
7. Support defendants at risk of not turning up to their court hearing in doing so.
8. Conduct research on why the “no real prospect” test does not seem to be working in practice i.e. why so many who are remanded do not go on to receive a custodial sentence.
9. Reform bail legislation with more stringent criteria for the use of remand, including preventing remand being used for a defendants' own protection.
10. Gather evidence on the possible ways of reducing the perceived risk of granting bail to foreign national prisoners and those accused of domestic violence.
11. Key bodies, namely the Inspectorates of Prosecution, Probation and Prisons, and Ministry of Justice, should focus on remand so that poor practice is scrutinised and improved.

# End notes

- 1 <http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees>
- 2 [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate)
- 3 <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2017>
- 4 <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2017>
- 5 The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 was designed in part to reduce the number of people being remanded into custody unnecessarily. Section 90 of the Act introduced the 'no real prospect test', which restricted the courts' power to remand an unconvicted adult defendant into custody where it appears that there is no real prospect that the defendant would receive a custodial sentence if convicted.
- 6 <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2017> as at 31 December 2017
- 7 Custody time limits restrict the number of days someone can be held on remand before their continued detention is reviewed by the court
- 8 UWE research
- 9 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/676146/safety-in-custody-deaths-dec-17-final.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676146/safety-in-custody-deaths-dec-17-final.xlsx)
- 10 <https://www.inquest.org.uk/sarah-reed-inquest-conclusions>
- 11 <http://www.thegriffinsociety.org/news/fellow-tamara-pattinsons-research-published-and-seminar-held-findings-house-lords>
- 12 <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>
- 13 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-12-07/118177>
- 14 UWE study
- 15 UWE study
- 16 MA had 400 survey responses. Of these, 86 magistrate said that they dealt with bail or remand hearing at their last sitting. They were asked 'How many individuals were (a) Represented by their own solicitor or barrister, (b) Represented or advised by the duty solicitor, or (c) Represented themselves and they replied 450 (49%), 299 (33%) and 169 (18%) respectively.
- 17 [http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL\\_Singles.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf)
- 18 University of the West of England research
- 19 <https://www.gov.uk/government/publications/virtual-courts-pilot-outcome-evaluation-report>
- 20 Transform Justice did two surveys in which this question was posed – one on remand [http://www.transformjustice.org.uk/wp-content/uploads/2018/02/Data\\_All\\_171028-2.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2018/02/Data_All_171028-2.pdf), the other on virtual hearings [http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Data\\_All\\_170927.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Data_All_170927.pdf)
- 21 <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>
- 22 <https://insidehmcts.blog.gov.uk/2017/10/26/susan-acland-hood-sets-out-our-priorities-for-the-next-phase-of-courts-and-tribunals-reform/>
- 23 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7907#fullreport>
- 24 Security is money paid into court before the defendant is released on bail. The money must be deposited into court in cash or other cleared funds. Surety, in contrast, is money promised to the court by third parties and only at risk of being collected if the defendant does not attend court as required. Security can be raised by the defendant himself or by others; surety can only be offered by someone other than the defendant.
- 25 UWE study
- 26 UWE study
- 27 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627515/bail-accommodation-and-support-service-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627515/bail-accommodation-and-support-service-report.pdf)
- 28 [https://www.barcouncil.org.uk/media/623583/171130\\_injustice\\_in\\_immigration\\_detention\\_dr\\_anna\\_lindley.pdf](https://www.barcouncil.org.uk/media/623583/171130_injustice_in_immigration_detention_dr_anna_lindley.pdf)
- 29 <https://www.gov.uk/government/publications/lammy-review-final-report>
- 30 <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales>
- 31 Those accused of arson or some sex offences and those assessed as posing a high or very high risk of harm are excluded from using BASS beds <https://www.justice.gov.uk/.../pi-10-2013-accommodation-support-service-bail.doc>
- 32 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627515/bail-accommodation-and-support-service-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627515/bail-accommodation-and-support-service-report.pdf) The control group consisted of defendants with the same demographic characteristics as those on BASS who spent a period of time on remand or on bail awaiting trial.
- 33 Security is money paid into court before the defendant is released on bail. The money must be deposited into court in cash or other cleared funds. Surety, in contrast, is money promised to the court by third parties and only at risk of being collected if the defendant does not attend court as required. Security can be raised by the defendant himself or by others; surety can only be offered by someone other than the defendant.
- 34 <https://www.justiceinspectorates.gov.uk/hmiprisoners/inspections/remand-prisoners/>
- 35 <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2018/01/HMP-YOI-Peterborough-Women-Web-2017.pdf>
- 36 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/666528/Bail-services-MoJ-service-specification.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666528/Bail-services-MoJ-service-specification.pdf)

# Transform Justice

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