

**AN EVALUATION OF
THE USE OF ELECTRONIC
MONITORING AS A CONDITION
OF BAIL IN SCOTLAND**

**FINAL REPORT
MARCH 2007**

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Monica Barry
On behalf of the Research Team

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AN EVALUATION OF THE USE OF ELECTRONIC MONITORING AS A CONDITION OF BAIL IN SCOTLAND

EXECUTIVE SUMMARY

INTRODUCTION

In April 2005, the piloting of electronic monitoring as a condition of bail (hereinafter referred to as 'EM bail') was introduced across 4 courts, the High Court sitting at Glasgow and the sheriff courts in Glasgow, Kilmarnock and Stirling. The aims of the pilots were twofold:

- to reduce the use of custody for those accused deemed eligible for electronically monitored bail who would otherwise be remanded in custody; and
- to offer additional security to the general public against the likelihood of offending or intimidation of witnesses by accused people who are seen as a potential risk if not remanded in custody.

The Criminal Procedure (Amendment) (Scotland) Act 2004 introduced 2 relevant provisions: first, to allow an accused person who has been refused standard bail to apply for bail with an electronically monitored movement restriction condition under Section 24A(1); and secondly, to grant the court powers to impose an electronically monitored movement restriction condition without application from the accused, in petition cases involving rape or murder charges under Section 24A(2). The evaluation on which this report is based covers the period from April 2005 until the end of July 2006, the first 16 months of the 2 year pilot.

AIMS AND METHODS OF THE EVALUATION

The aims of the evaluation were to assess the implementation of EM bail in replacing custodial remands, and to conduct a cost analysis of EM bail in contrast to those given custody. The study included the collection of qualitative and quantitative data, matched comparison data and cost analysis. Interviews were conducted with 10 Steering Group members and 45 professionals (comprising the police, social work, procurators fiscal, clerks of court, judges, sheriffs, defence agents, advocates, the electronic monitoring companies and victims' agencies). Interviews with 16 bailees and 15 household members were also undertaken. Quantitative data were collected from various sources, namely: court pro formas, Reliance/Serco databases, court files, social work files, police records, Scottish Criminal Record Office and data provided by the Scottish Executive Justice Statistics Branch, the Scottish Court Service and the Scottish Prison Service. Data from 3 comparison sheriff courts also provided a range of information on accused remanded in custody or bailed with or without conditions in areas outwith the pilot sites to ascertain whether EM bail is being used as a direct alternative to custodial remand and to explore differences in final sentences for the 2 groups.

The data presented in this evaluation are limited in both scope and accuracy. The numbers of respondents interviewed were small and the data collected both by the Scottish Executive and other agencies were not always complete or compatible. The various agencies do not necessarily keep the same data on accused and given that each agency records information using their own unique reference number, it is not always possible to cross-reference between databases. It was therefore deemed essential to use triangulation methods to build up a more accurate and fuller picture of the numbers being processed through the various stages of EM bail, through comparing and contrasting data from, *inter alia*, the Scottish Executive, the Scottish Court Service, the Crown Office and Procurator Fiscal Service, complaint files held in each court and social work files.

CHARACTERISTICS OF EM BAIL APPLICANTS

In the first 16 months of operation, applications were known to have been made for EM bail in 306 out of 6,914 (4.4%) potentially eligible cases across the pilot sites: 108 in Stirling, 105 in Glasgow and 93 in Kilmarnock. All of these applications came under Section 24A(1) legislation, even though there were 22 known eligible cases of murder and rape included in these applications. Of the 306 applications, 116 were granted EM bail, comprising a reduction of 1.7 per cent of all custodial remands, while 75 were refused outright at the first hearing and 115 were refused following receipt of suitability reports.

The vast majority (94%) of applicants were men and the mean age was 26, ranging from 14 to 63. The majority of applicants presented with one or two offences and the most common of these were violence offences, breach of bail/bail aggravation offences and disorder offences. Most of the successful applications were from accused charged in summary rather than solemn proceedings. Those who were refused EM bail without the sheriff calling for a suitability report had a significantly higher number of previous offences (15.70) than those who were refused EM bail following a suitability report (9.27) and those who were granted EM bail after a suitability report had been completed (9.35). This suggests that the offenders with a higher number of previous offences are less likely to be considered appropriate for EM bail.

THE REFERRAL PROCESS

The EM bail referral process has operated relatively smoothly over the course of the fieldwork period, although numbers have not increased significantly in the first 16 months. In 75 per cent of applications, the sheriff called for a suitability report. The remaining 25 per cent were refused outright (9 per cent of Kilmarnock applications, 17 per cent of Glasgow applications and 45 per cent of Stirling applications). Where suitability reports were called for, the average length of the custodial remand pending such reports was 5.7 days.

The conversion rate from an application for EM bail to EM bail being granted is relatively low, with 38 per cent of all applications being granted; 50 per cent of those where suitability reports are called for being granted; and 62 per cent of those whose

suitability reports considered EM bail appropriate being granted. Where the same sheriff presided over both hearings, sheriffs in Stirling and Glasgow tended to grant the majority of applications whilst Kilmarnock sheriffs did not. It may well be that the reasons for this are changed circumstances of the accused or additional information on the charge(s) brought to the attention of the court in the intervening period; however, it was suggested by some sheriffs at interview that a different interpretation of suitability may be a determining factor.

Initially, the relatively low application rate was suggested by respondents to be partly due to the possibly limited awareness amongst out-of-town defence agents and visiting sheriffs regarding the existence and procedures of the pilots. This report concludes, however, that it is more likely a presumption of remand by defence agents that has limited the application rate in some courts, not least because only 26 defence appeals against refusal of standard bail, EM bail or both were lodged out of the total of 116 cases granted EM bail in the first 16 months. Section 24A(2) legislation has not been used to date in respect of rape and murder charges. There have, however, been a total of 22 eligible cases of rape, attempted rape, murder and attempted murder appearing in the pilot courts in the first 16 months of operation, 9 of which were granted EM bail under section 24A(1) legislation, and 13 refused. The report concludes that giving the Crown as well as the court greater powers to impose EM bail might well strengthen standard bail in these cases.

The application rate was particularly low in Glasgow, where despite the presence of 80 per cent of all potentially eligible cases, EM bail was applied for in just one in 50 cases, as opposed to over a fifth of cases in Stirling and one in 10 cases in Kilmarnock. Glasgow's low application rate may be because of unrelated industrial action by bail officers early on in the pilot, or problems in Glasgow Sheriff Court relating to legal aid for defence agents, a review of criminal justice staffing and other action by the legal profession in relation to criminal court matters.

THE EFFECTIVENESS OF EM BAIL

A total of 63 bailees completed an EM bail order during the first 16 months of the pilots, with 46 per cent being under 20 years old. Presenting offences for accused who completed an EM bail order included bail aggravation/breach of bail offences, disorder offences and violence offences. Fifty-two of the 63 completers were restricted to a place, 9 restricted from a place and 2 restricted both to and from a place. The majority of curfew restrictions to a place were overnight, generally for 12 hours (e.g., from 7pm to 7am). Four accused were restricted to their home for 24 hour periods and of the 9 restricted from a place, 8 of these were for 24 hour periods and one was overnight. Twenty-three of the 63 EM bailees spent between 5 and 40 days on EM bail, a further 27 bailees between 41 and 90 days and the remaining 13 spent between 91 and 217 days.

Failures to comply

Failures to comply with the EM component of a bail order comprise voluntary non-compliance (e.g., failing to comply with curfew times) and involuntary non-compliance (e.g., withdrawal of consent by householders) with the EM component of

the order. Two thirds (44 out of 63) of the EM bailees allegedly failed to comply with the EM component of their bail orders on at least one occasion and 36 per cent of these failures to comply happened within the first 10 days of an order. There was no significant increase in failures to comply by length of time on EM bail, and equally, although curfew times were often lengthy (mainly overnight but some EM bailees were confined for 24 hours 7 days a week), there was no apparent link between the number of hours of curfew and the ability of the accused to comply with the order. These findings suggest that failures to comply are not necessarily linked to the length or curfews of EM bail orders *per se* but to extraneous factors such as age, circumstances or offending history. For example, although accused aged 20 and under were more likely to be granted EM bail, they were also less likely to comply with one or more conditions (79%) than the over 21 age group (61%); likewise those whose presenting offences included breach of bail/bail aggravation were less likely to comply (72%) compared with those with no bail aggravated presenting offences. However, it is also the case that the electronic component allowed for immediate detection of infringements of curfews and tampering of equipment, which may have increased the reported number of failures to comply.

Breach proceedings were brought against 31 of the 63 EM bailees; 11 of the total of 29 in Glasgow; 9 of the 13 in Kilmarnock; and 11 of the 21 in Stirling. Fifty five per cent of Glasgow breaches, 22 per cent of Kilmarnock breaches and 36 per cent of Stirling breaches were as a result of breach of bail conditions only. In the majority of notified failures to comply, the procurators fiscal took no further action and the EM bail order was continued. EM bail orders lasted for between 5 and 217 days. Fifty-one of the 63 EM bailees (81%) had their orders revoked at the time of the trial, rather than prematurely because of breach. Where the final outcome of the trial for the original offence is known, 14 EM bailees of the 37 known outcomes received custodial sentences for the original offence.

Reducing custodial remands

When compared to a matched sample from Edinburgh, Greenock and Linlithgow Sheriff Courts in the period April 2005 to March 2006, it would seem that the pilot courts have a stronger tendency towards remand in custody for higher-tariff accused than their counterparts in the comparison courts, where 24 per cent of the matched sample were given custodial remands pending trial. This is perhaps surprising given that the levels of offending histories of both samples were matched, as were the presenting offences. Likewise, the comparison sample was at an advantage in terms of how long these accused spent on remand pending trial: whereas the pilot group spent a mean average of 70 days on EM bail, those remanded in the comparison courts spent a mean average of 48 days in custody pending trial, and these latter periods on remand would be taken into account in any final custodial sentence, whereas the EM bail period would not be taken into account. However, it should be borne in mind that accused are at liberty during their period on EM bail, which many respondents acknowledged was a definite advantage of the pilots.

Final outcomes for the comparison group were also less severe than for those in the pilot courts – 22 per cent of the comparison sample received a custodial sentence for the original offence compared with 30 per cent of the pilot sample who were granted EM bail and 57 per cent of the pilot sample who were refused EM bail. The mean

average length of custodial sentences for the comparison group was 93 days (before backdating to take into account length of time on custodial remand) and 121 days for the pilot group where no backdating was available. It would thus seem that EM bailees are given longer custodial sentences than the comparison group, and are also not eligible for the backdating of such custodial sentences.

The evaluation period did not allow for the collection of substantive data regarding offending on bail or reconviction rates, and it was not possible to make detailed comparisons of offending trends between those in the pilot sample and those in the comparison sample.

INTER-AGENCY COOPERATION

Initial consultation and subsequent liaison between the Scottish Executive and key stakeholders was seen as both crucial and effective in the implementation of the pilots. Both the National Steering Group and the Local Liaison Groups were important in establishing inter-agency communication and cooperation and in keeping abreast of any difficulties or inconsistencies within and between the pilot sites. There is a fear, however, that the consistency of practice and learning from mistakes that the NSG and LLGs encouraged during the pilot period will be lost in the event of a national roll out, which could result in variations in practice, a lack of sharing of information and advice, and the potential for criticisms of inconsistency and incompatibility between sheriffdoms, police forces and local authority social work departments.

THE COSTS OF EM BAIL

The overall cost to agencies per accused on EM bail was estimated at £4,123 as compared to £5,096 per case for those refused bail and remanded in custody. This suggests an expected cost saving of £973 per accused granted EM bail. However, this apparent cost difference does not take into account the differential treatment of time spent in custody during the pre-trial period: for people in custodial remand a subsequent custodial sentence is likely to be backdated to the start of the remand period. There is no equivalent backdating for EM bail cases. When comparing costs between EM bail and custodial remand, such backdating becomes pivotal because, under all assumptions that we were able to make about the proportion of custodial remand cases that get custodial sentences at final trial diet, the cost ranking is reversed. If, for example, 50 per cent of custodial remand cases are subsequently sentenced to custody, EM bail would be £1,575 more expensive per case. Overall, therefore, we conclude that EM bail is more expensive than custodial remand.

PRESS COVERAGE OF THE PILOTS

The press coverage of Scotland's EM bail pilots tended to be both sceptical and negative, and where covered at all, they were used to illustrate a larger, ongoing - and very critical - debate about bail and tagging more generally. There are subtle differences between tabloids and broadsheets, but the thrust of the argument in each is much the same. Much of the early news focussed upon the anticipated impact of EM

bail in murder cases - and latterly, on an actual murder case - although murder represented only a small proportion of the cases in which EM bail was granted.

The credibility of EM as a condition of bail will only be taken seriously as an enhancement of bail if the image of tagging more generally is improved. The image of bail itself is a problem - by dwelling on cases of serious offending that have occurred on bail, the press use it to connote leniency and incompetence on the part of legislators and courts. The negative press coverage of EM in Scotland serves to weaken the credibility and legitimacy of an initiative in Scottish criminal justice policy for which an obvious and reasonable case might otherwise be made. This is heightened by the absence, anywhere in the public domain, of accessible and intelligible positive images which might contextualise, counter or balance the negative ones.

CONCLUSIONS

There is evidence to suggest that although the process of EM bail is relatively efficient, the outcomes are less promising. The electronic component of EM bail did not inspire great confidence amongst professional respondents and indeed may well have exacerbated the breach rate for EM bailees because of the immediacy and transparency of the surveillance equipment. Those on EM bail also seemed to be disadvantaged in terms of lengths of time on bail and the length of custodial sentences where imposed for the original offence.

This evaluation suggests that the pilots have not fulfilled their aims of either increasing perceptions of public safety or reducing the custodial remand population in any significant way. This report is not saying, however, that EM bail has no value. On the contrary, it has intrinsic value as a means of imposing greater and more verifiable control over a defendant than ordinary bail. In this regard, EM bail can work, not least because individuals pending trial can maintain social commitments and family contacts that they might not otherwise have done if remanded in custody. However, unless a way can be found to make it more cost-effective, it is difficult to make the case for its continuance or expansion.

CHAPTER ONE INTRODUCTION

BACKGROUND

1.1 The Scottish Executive is committed to introducing new measures in the Criminal Justice system which support safer communities, improve reintegration of offenders, support victims and witnesses, combat anti-social behaviour and increase the efficiency of court and legal procedures (Scottish Executive, 2003 and 2005b). Proposed reforms to date have included legislative initiatives and the development of existing infrastructures to expand successful community disposals in order to provide increased options to the courts to reduce unnecessary custodial sentences. Electronic monitoring was considered to have a role in developing these measures, not only post-conviction but also as a condition of bail (Scottish Executive Consultations, 2004). In April 2005, the Scottish Executive thus introduced the piloting of electronic monitoring as a condition of bail (EM bail) across 4 courts, the High Court sitting at Glasgow and the Sheriff Courts in Glasgow, Kilmarnock and Stirling. The contract for service delivery of electronic monitoring across Scotland began in 2001 and was held by Reliance Monitoring Services Ltd. This contract expired at the end of March 2006 and the service is now operated by Serco.

THE DEVELOPMENT OF ELECTRONIC MONITORING

1.2 The electronic monitoring of offenders was introduced in the United States during the 1980s with its use increasing significantly during the 1990s due to the potential for a cost-effective way of reducing the escalating prison population. It is currently used in most US states for home detention, probation, parole, juvenile detention and bail. Use of electronic monitoring increased throughout Europe during the mid 1990s, particularly in Sweden and the Netherlands, where it is used alongside intensive supervision programmes and as a direct alternative to custody (Eley et al, 2005).

1.3 Mortimer and May (1997) calculated that there could be significant savings made by using EM curfews to displace custodial sentences. While the use of EM curfew orders has continued to increase it has been suggested that only 20 per cent actually displace custody, with 32 per cent replacing other community sentences and 43 per cent replacing fines and discharges (Toon, 2003 cited in Nellis, 2004: 233). The use of electronically monitored curfews has increased sharply in England and Wales, from 9,000 cases in 1999-2000 to 53,000 in 2004-05 (National Audit Office, 2006). It has become an integral part of the criminal justice system in England and Wales, and can be used at each stage of a criminal case (as a condition of bail, sentence or condition of early release from prison) and for young people remanded to local authority accommodation (Cassidy et al, 2005).

POST-SENTENCE ELECTRONIC MONITORING IN SCOTLAND

1.4 Electronic monitoring was introduced in Scotland in 1998 in order to monitor compliance with restriction of liberty orders (RLOs) (under section 245 of the Criminal Procedure (Scotland) Act 1995 as inserted by section 5 of the Crime and Punishment (Scotland) Act 1997). These orders were initially piloted in 3 areas: Hamilton, Aberdeen and Peterhead. Curfews could be at a specified place (for a maximum period of 12 hours per day) and/or exclusion from a specified place (up to 24 hours per day) for up to 12 months. The evaluation of these pilots (Lobley and Smith, 2000) indicated that 40 per cent of the orders made were direct alternatives to custody and there was little evidence that EM curfews clearly improved on existing community penalties.

1.5 Respondents in the evaluation of electronically monitored RLOs (including offenders, their families and criminal justice professionals) were generally positive about the orders and the procedures and equipment for monitoring were found to be efficient. However, the report raised concerns about the type of offender for whom the order was most appropriate. Young offenders and those with serious criminal records were less likely to complete the order successfully. Fewer orders were made than anticipated and it was suggested that for RLOs to be cost-effective, the sentences they replaced would have had to have been relatively long.

1.6 RLOs were extended across Scotland from May 2002 as a sentence of the court and were made available to the High Court, Sheriff Courts and Stipendiary Magistrates Court within Glasgow District Court. RLOs can also be made concurrently with a probation or drug treatment and testing order (DTTO). Subsequently, the Scottish Executive extended the use of electronic monitoring by introducing the Criminal Justice (Scotland) Act 2003 which was able to build on the existing infrastructure for electronic monitoring. This enabled RLOs to be used as a direct alternative to a custodial sentence; electronic monitoring to be used as a condition of a probation order or DTTO; and the use of electronic monitoring as a condition of a parole licence.

1.7 Electronic monitoring on bail was also made available in the Youth Courts at Hamilton and Airdrie from 2003 and 2004 respectively, at the request of the agencies involved in the pilot youth courts. The use of this mechanism as a condition of bail for 16 and 17 year old offenders with extensive previous offending histories could be used at the discretion of the Sheriff and does not fall within the remit of the piloting of EM bail covered in this evaluation. Similarly, the Anti-Social Behaviour, etc. (Scotland) Act 2004 allowed electronically monitored RLOs to be used on young people under the age of 16 years dealt with in the court system, and electronically monitored movement restriction conditions to be applied by Children's Hearings in certain specified conditions.

ELECTRONIC MONITORING AS A CONDITION OF BAIL IN SCOTLAND

1.8 An analysis of the use and impact of aggravated sentences for bail offenders (Brown et al, 2004) indicated that across the 7 courts in Scotland, the overall rate of offending on bail in 2001 was 29 per cent. Although the number of women in the

study was small, females were less likely to offend on bail than males and those accused of crimes of dishonesty were more likely to offend on bail than any other group. Younger accused were more likely to offend on bail than older accused. A minority of accused committed multiple offences on bail (12% of all accused granted bail). Interestingly, in courts with a high usage of custodial remand, rates of offending for those on bail were lower. Overall, Brown et al (2004) suggested that remanding a higher proportion of accused in custody is the method most likely to lower offending on bail, but they were cognisant of the need to balance attempts to reduce crime rates with keeping custodial remands within the workable capacity of the prison service.

1.9 The Sentencing Commission for Scotland reviewed the use of bail and custodial remand and made recommendations on the basis of this consultation document (Sentencing Commission for Scotland, 2004). The Commission considered the importance of balancing the rights of the accused with interests of public safety and the smooth operation of judicial proceedings. It was noted that people should not be deprived of their liberty without good reason before being found guilty of an offence. However, it was also considered necessary to protect the public where there was good reason to believe that an accused may commit further offences or attempt to intimidate witnesses while on bail. In 2005, the Sentencing Commission produced its report on the use of bail and custodial remand in Scotland and the Scottish Executive followed this up with an Action Plan (Scottish Executive, 2005a) on the use of bail and custodial remand.

1.10 Scottish Ministers have continued to emphasise their determination to implement an effective bail and custodial remand framework by tightening up the process of granting bail; ensuring the court gives reasons for all bail decisions; and that breach of bail is dealt with robustly. Respondents to the consultation (Scottish Executive Consultations, 2004) were generally supportive of the potential which electronic monitoring might have if used as a condition of bail but sheriffs at that time considered that it should not be used as a belt and braces approach on those who would otherwise have been bailed but as a direct alternative to custodial remand.

1.11 The potential for rehabilitative interventions in Scotland has been a priority for the Scottish Executive over a number of years, evidenced by the introduction of DTTOs, Drugs Courts and Youth Courts. Additionally, the introduction of RLOs demonstrated the potential which restrictive alternatives to custody can provide. The rising prison population, particularly in short term sentences and the significant increase in the number of remands (an increase of 27% in 2002 from the previous year) had led to the view that electronic monitoring as a direct alternative to custodial remand could potentially reduce the use of custody (Nellis, 2006; Scottish Executive Consultations, 2004).

1.12 To introduce electronic monitoring as a condition of bail (EM bail) and as a direct alternative to custodial remand was considered particularly important given that there were more receptions of custodial remand prisoners in 2002 than of prisoners sentenced to imprisonment, with only half of those on custodial remand ultimately convicted and given a custodial sentence (Sentencing Commission, 2004). While the number of female accused remanded in custody was small, there was considerable

variation between the number of women given custodial remands and imprisoned across courts (Brown et al, 2004). Therefore, the aims of piloting EM bail in Scotland were twofold:

- to reduce the use of custody for those accused deemed eligible for electronically monitored bail who would otherwise be remanded in custody;
- to offer additional security to the general public against the likelihood of offending or intimidation of witnesses by accused people who are seen as a potential risk if not remanded in custody.

1.13 The Criminal Procedure (Amendment) (Scotland) Act 2004 introduced 2 relevant provisions: that an accused person, who has been refused standard bail, may apply for bail with an electronically monitored movement restriction condition under Section 24A(1); and that the court can impose an electronically monitored movement restriction condition without application from the accused, in petition cases involving rape or murder charges under Section 24A(2). The first provision is dependent on a court having considered and rejected the option of standard bail thus remanding the accused in custody. Its use is intended to provide the courts with an additional tool, if satisfied that the reasons for refusal to grant standard bail initially can be addressed to a certain extent by a monitored movement restriction condition. The second provision is used as a means of tightening conditions attached to bail and to act as an additional safeguard to the public and extends to accused persons pending trial and those convicted and/or sentenced pending appeal in rape and murder cases. Under this condition, if the court grants bail to an accused or a person appealing conviction of rape or murder then the court can impose electronic monitoring as a matter of course.

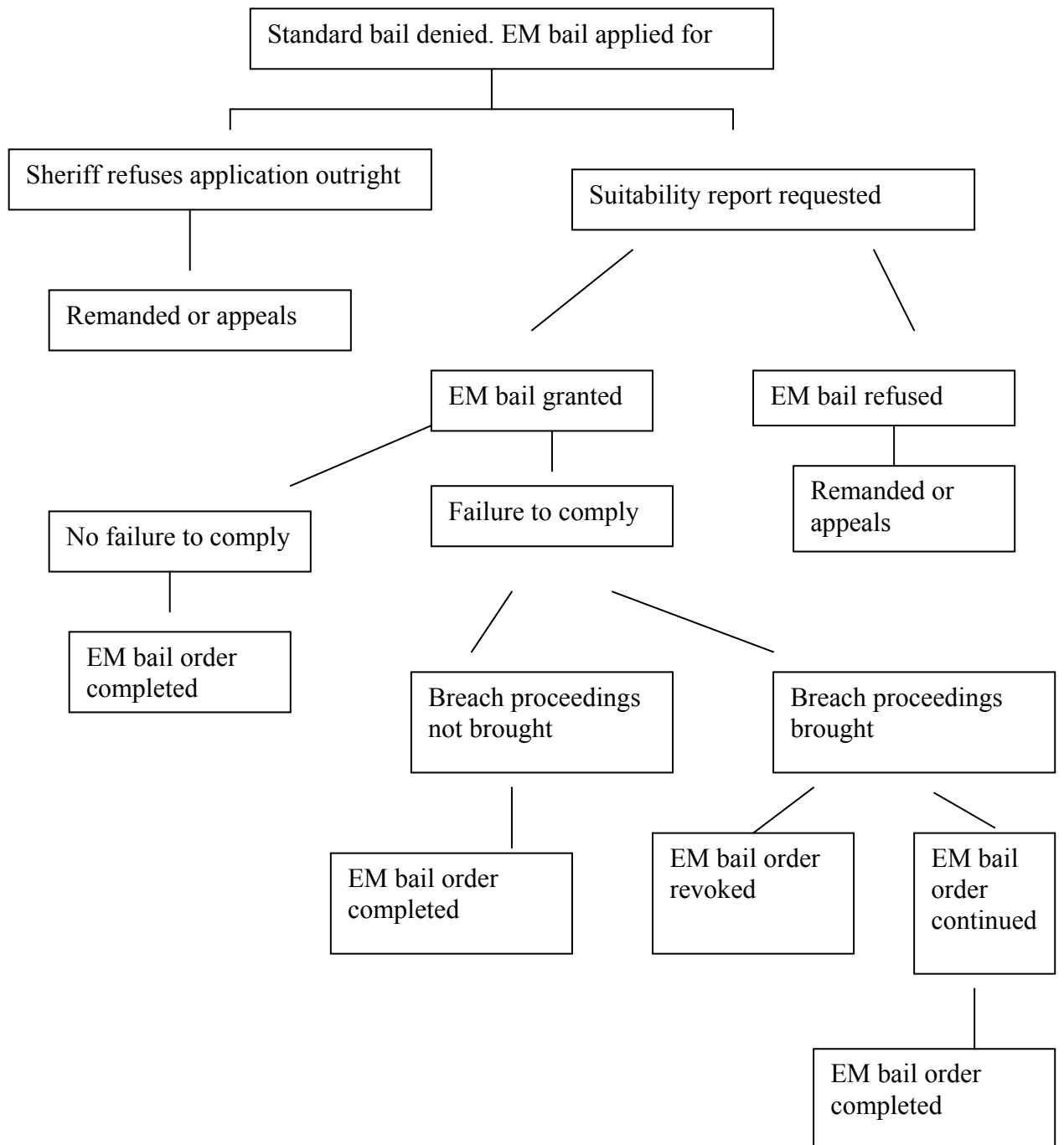
THE OPERATION OF EM BAIL

1.14 Figure 1.1 below charts the process of EM bail, from application to revocation. When standard bail is refused and the sheriff has decided to remand the accused in custody pending trial, the defence agent can apply for EM bail, at which point the Crown can oppose this. A suitability report is requested from the social work department on the day of the first hearing and a second hearing is set for 'not earlier than 5 days' from the date of the first hearing. If EM bail is subsequently granted, the Crown can appeal, and if not granted, the applicant can appeal.

1.15 When an accused person is granted EM bail, there are 8 conditions imposed on the bail order as a matter of course. Additional conditions may or may not be added as the sheriff sees fit. The fixed conditions for EM bail are that the accused:

1. appears at all further hearings as directed by the court;
2. does not re-offend;
3. does not intimidate witnesses or otherwise obstruct the course of justice;
4. is available for the compilation of reports;
5. remains at the 'restricted to' address during stipulated hours;
6. cooperates fully with electronic monitoring during those hours;
7. continuously wears an electronic monitoring device; and
8. does not tamper with or damage the monitoring equipment.

Figure 1.1: The process of EM bail



1.16 The monitoring company must fit the device within 4 hours of receipt of the confirmation of an EM bail order. An unobtrusive transmitter (a tag) is fitted to the accused person's ankle or wrist. It emits a signal which is picked up by a monitoring unit (MU) when the accused is within range. The MU is sited at the place to or from which the accused is restricted and is linked by a telephone line to a central computer system, where the information about the accused person's presence or absence is permanently stored. The computer will alert monitoring staff if an accused is present at a place from which he or she is restricted or is not at a place to which he or she is restricted during the restriction period. The MU has a roughly circular range (depending on the nature of the building) which can be adjusted. Typically, subject to any specific instructions from the Court, it would be adjusted to be as close as possible to the boundaries of a dwelling. Outwith the hours of restriction, however, the accused is free to go where s/he chooses and is not monitored. If the accused or anyone else attempts to tamper with the MU, or it is moved accidentally, it alerts the central computer system and the electronic monitoring company must investigate. If the accused removes, or attempts to remove the tag within range of the MU, there will be a 'tamper alert'. Again, the company must investigate. Should the tag be removed outwith the range of the MU, the unit will not be able to detect the accused person's presence.

1.17 Finally, in order to oversee the implementation of the pilots and to devise a Procedure Manual for all parties involved, a National Steering Group was set up in 2004, comprising one representative from each of the key agencies. These were: the Sheriffs' Association, the Crown Office and Procurator Fiscal Service, the Scottish Court Service, the Association of Directors of Social Work, the Police, Reliance Monitoring Services and the Law Society of Scotland. A representative from the Scottish Executive's Social Research unit was also present, and the Group was chaired by representatives from the Scottish Executive's Community Justice Services Division. In each of the 3 geographical areas, a Local Liaison Group (LLG) was established following the completion of the model for EM bail, in order to further refine the Procedure Manual and to iron out any local teething problems arising as a result of the implementation of the pilots. These LLGs comprised representatives from each of the partner agencies cited above, but members who could offer a local rather than a national perspective. These local groups were also chaired by a member of the Scottish Executive's Community Justice Services Division.

LAYOUT OF THE REPORT

1.18 This Chapter has explored the context within which electronic monitoring, EM bail and the pilots were developed and briefly describes the processes of application for and imposition of an EM bail order. Chapter 2 describes the methods used in evaluating EM bail across the 4 pilot courts, and Chapter 3 explores the referral process in terms of applying for EM bail, including Section 24A(1) and 24A(2) distinctions, and describes the characteristics of applicants. Chapter 4 looks at the operation of EM bail once an EM bail order has been granted and explores the levels of and reasons for failure to comply and the conditions under which breach of bail

occurs. This chapter also explores inter- and intra-agency issues. Chapter 5 looks in greater depth at professional and bailee perceptions of effectiveness of EM bail in fulfilling the objectives of the pilots in terms of reducing custody and improving public safety. Chapter 6 describes the economic model for estimating the costs of EM bail and analyses the results in terms of cost. Finally, Chapter 7 draws together the conclusions of the evaluation in respect of the overall implementation and operation of the pilots to date. A detailed description and analysis of the press coverage of EM bail and electronic monitoring more generally is given in Annex 1.

CHAPTER TWO THE RESEARCH METHODS

INTRODUCTION

2.1 As outlined in Chapter 1, it was agreed by the Scottish Executive, in consultation with other key players, to pilot electronic monitoring as a condition of bail over a 2 year period starting in April 2005 in order to assess its feasibility in Scotland. Four pilot sites were identified for the use of electronic monitoring as a condition of bail, namely, the Sheriff Courts at Glasgow, Kilmarnock and Stirling and the High Court sitting at Glasgow. The evaluation covers the period from April 2005 until July 2006, the first 16 months of the pilots. This chapter describes the methods used in evaluating the pilots, including the collection of quantitative and qualitative data, an analysis of press coverage of electronic monitoring and bail and the economic component of the evaluation.

AIMS AND OBJECTIVES OF THE RESEARCH

2.2 The aims of the research were as follows:

- to evaluate the implementation of electronic monitoring as a condition of bail in replacing custodial remands and the potential impact on the prison population;
- to conduct a cost analysis of electronic monitoring as a condition of bail in contrast to those given custody/bail.

2.3 The key objectives of the research were as follows:

1. to identify how agencies prepared themselves across the pilot sites for this provision;
2. to monitor the extent and nature of training;
3. to assess levels of awareness of the provision among key groups;
4. to analyse the characteristics of all cases that meet the criteria for EM bail, regardless of whether it is applied for or granted;
5. to monitor both provision and remand generally;
6. to examine the effect that outside influences have on the ability of the accused to be effectively monitored, e.g., other court appearances and outstanding warrants;
7. to identify best practice in the use of electronic monitoring as a condition of bail across all agencies;
8. to monitor the breach rate and the action taken as a result of breach;
9. to analyse what behaviour constitutes breaches of electronic monitoring as a condition of bail, along with the individual characteristics of offenders;
10. to provide information on final sentencing decisions of cases involving electronic monitoring as a condition of bail;
11. to assess how the legislation is being used in each pilot site;
12. to establish how the legislation fits into the bail process and the implications for national roll out;

13. to analyse the cost of electronic monitoring as a condition of bail in comparison with custodial remand, factoring in any associated costs associated with breach of bail; and
14. to extrapolate from this analysis the costs to each agency of rolling out electronic monitoring as a condition of bail nationwide.

THE COLLECTION OF DATA

2.4 This evaluation employed a range of methods of data collection and analysis, both to describe the process of EM bail and to gauge outcomes. Qualitative interviews were conducted with sheriffs and judges, clerks of court, procurators fiscal, bail officers, the police, victims' agencies, defence agents, the electronic monitoring company, and bailees and their families. All interviews were tape recorded, with the exception of those conducted with judges. Quantitative data were collected, where possible on an ongoing basis, on the number and type of EM bail orders, previous and subsequent offending, demographic characteristics of EM bailees, and comparative data from 3 comparison sheriff courts, Greenock, Linlithgow and Edinburgh. Press coverage of the pilots was also examined through interviews with journalists and through scrutiny of the key national and local newspapers during the period of the fieldwork. Finally, a cost analysis of the pilots was undertaken relating to the economic implications of EM bail in the 4 pilot courts.

Qualitative data

2.5 The evaluation drew significantly on the views of stakeholders involved in the pilots, given their expertise and experiences to date of implementing EM bail. Thus, interviews were conducted with Steering Group members, with representatives of all the professionals involved and with bailees and their families.

Interviews with professionals

2.6 It was agreed to interview all 10 stakeholder members of the National Steering Group at an early point in the study in order to inform the research team's awareness of the practice issues emerging, any teething problems anticipated in the pilots, the logistics of the new legislation and training, personnel and resource issues. These members comprised 2 Scottish Executive personnel, a sheriff, 2 representatives of the Scottish Court Service, one defence agent, one social work manager, the manager of the electronic monitoring company (formerly Reliance, now Serco), a police superintendent and a procurator fiscal. The 3 criminal justice social work managers for Glasgow, Kilmarnock and Stirling were also interviewed. All these discussions were deemed useful to refine the research instruments, to negotiate the administering of information sheets and consent forms to (potential) bailees (see Annex 2) and to negotiate final access arrangements to key professionals and bailees and their families. Scoping interviews began in October 2005 and were completed in December 2005.

2.7 An additional meeting was held with Reliance management early on in the fieldwork period and with Serco management 3 months following the change over.

Members of the research team also held meetings with the Scottish Criminal Record Office (SCRO) and police personnel during the fieldwork period in order to finalise data collection methods for the quantitative data on bailees and the comparison sample.

2.8 As mentioned above, Steering Group members were asked for their help in identifying specific professionals for the research team to interview once the pilots had been operating for a year or more (i.e. as at April 2006). This small purposive sample cannot be deemed representative of all the agencies involved in the operation of EM bail in the 4 pilot sites nor of all the views of staff within each agency; nevertheless, they offer a likely range of evolving views and experiences of those staff and agencies directly involved with EM bail.

2.9 In addition to the scoping interviews, interviews were also held with the following professionals in the 3 geographical pilot sites of Glasgow, Kilmarnock and Stirling, and where appropriate, with specific personnel associated with the High Courts sitting at Glasgow and Edinburgh, all of whom had first-hand experience of dealing with EM bail applications, orders and failures to comply:

- 6 sheriffs, all of whom had experience of EM bail
- 2 appeal court judges, both of whom had experience of EM bail or custodial remand appeals in Edinburgh High Court
- 6 operational staff from the Scottish Court Service, including one sheriff clerk, 4 sheriff clerk deputed and one administrator
- 3 procurators fiscal
- 4 defence agents, all of whom had represented clients on EM bail
- 2 advocates with experience of EM bail appeals in the Edinburgh High Court
- 7 bail officers¹ with responsibility for preparing suitability reports
- 5 police officers, all of whom had experience of policing breaches of EM bail
- 3 representatives of victims' agencies
- 3 electronic monitoring company staff, 2 operational and one manager.

2.10 It was decided not to interview judges at the High Court sitting at Glasgow partly because of the turnover of visiting judges there, some of whom may have limited experience of EM bail according to court staff, and partly because the vast majority of EM bail applications emanate from the sheriff courts, where solemn cases are first heard. Although the number of defence agents interviewed was less than originally hoped for, it does include those practising in the High and Appeal Courts, cover the 4 pilot courts as well as the Appeal Court in Edinburgh, and all had experience of EM bail applications. Nevertheless, defence agents were not always amenable to being interviewed about the pilots because of industrial action over wider legal aid issues and other payments for court-related work at the time of the fieldwork.

2.11 Interviews with professionals tended to last between one and one and a half hours and included coverage of the following topics (see Annex 3):

¹ The term 'bail officer' is used throughout this report to denote the writer of the suitability report, who is not a qualified social worker. In Glasgow, they are officially known as 'bail officers', in Kilmarnock as 'bail workers' and in Stirling as 'criminal justice officers (bail)'.

- knowledge and experience of EM bail;
- perceptions of the referral process;
- perceptions of the appeal process;
- specific procedural and operational issues relating to EM bail;
- attitudes to breach and compliance;
- advantages and disadvantages of EM bail;
- the impact of EM bail on public safety, offending behaviour and due legal process; and
- overall perceptions of the appropriateness and effectiveness of EM bail.

Interviews with bailees and their families

2.12 A total of 91 bailees agreed - either directly by returning consent forms or indirectly by not responding to an opt-out letter – to participate in the research, which included agreeing to be interviewed about their experiences of EM bail. A further 11 actively declined to take part in the study. These individuals had been approached by bail officers preparing suitability reports or in retrospect by letter following a completed period of bail. An introductory letter and information sheet about the research, plus a consent form, were either posted to or handed to ex- or current bailees with the option of returning the signed form in a pre-paid envelope or giving this pre-paid envelope to the bail officer to forward to the researchers.

2.13 Although we had contact details for 91 bailees, it was only possible to interview 31 bailees or family members about their experiences of EM bail. This was because many no longer resided at the stated address or the phone numbers were no longer operational. A small number refused when contacted by phone or did not reply to messages. In particular, EM bailees who had been on EM bail prior to the interviewing commencing (in December 2005) proved difficult to trace in retrospect, not least given their transient lifestyles (often mobile phone numbers no longer existed; mobile phones had changed hands; or addressees had moved).

2.14 The breakdown of EM bailee and family respondents was as follows: 16 bailees (3 of whom were young women) and 15 household members² (9 mothers, 3 fathers, one female partner, one sister and one cousin). Both bailee and a family member were interviewed in 8 cases, the bailee only in 8 cases and a family member only in 7 cases. Thus the respondents' comments relate to a total of 23 bailees. Respondents were located across the 3 pilot areas and related to Stirling bailees in 9 cases, Glasgow bailees in 9 cases and Kilmarnock bailees in 5 cases. The bailees had been on EM bail for between 2 weeks and 8 months, with 11 bailees both restricted from and to an address and consisted of previous and current EM bailees. The majority of bailee respondents had a range of previous offences and 13 of the total 16 bailees interviewed reported previous experience of custody. All respondents, both bailees and family members were positive about EM bail as an alternative to custodial remand.

² All of whom were either sole or joint householders and responsible for giving permission for the bailee to reside there.

2.15 Although initially the research team had hoped to undertake face to face interviews with the majority of bailees and their families in their own homes, gaining access to them proved difficult, and coupled with time constraints and safety issues, it was decided to continue interviewing bailees and family members by phone where possible. These interviews lasted on average half an hour and included questions relating to the following topics:

- previous experience of electronic monitoring and/or custodial remand;
- knowledge of EM bail and experience of the referral process;
- perceptions of EM company staff fitting and dismantling the tag;
- the conditions of the order;
- attitudes to breach and compliance;
- criminal justice and other commitments whilst on EM bail;
- the impact of the tag on lifestyle, relationships and offending behaviour; and
- overall perceptions of the appropriateness and effectiveness of EM bail.

The perceptions of victims

2.16 There is often an unspoken assumption that because EM bail ostensibly exerts more control over accused persons than other forms of bail, it should therefore offer a higher level, or an additional degree, of protection to victims. Within the literature on electronic monitoring, little is said about victims' views of tagging. In this research, given that the safety of known victims is an important consideration in the making of bail decisions, it was deemed important to gain some indication of what crime victims think about EM bail being imposed on someone accused of offending against them - even if such victims were not asked to have the technology fitted in their own homes as part of a 'restricted from' EM bail order. However, following discussions with the Scottish Executive, it was decided *not* to interview specific victims, but to gain their views through proxies, namely with a representative of each of the 2 Victim Information and Advice services based in the procurator fiscal offices in Stirling and Kilmarnock and with a representative of Assist, a voluntary organisation working in the pilot Domestic Violence Court in Glasgow Sheriff Court. It was the job of the VIAs and Assist to keep victims and witnesses informed of the progress and outcome of their cases, to support vulnerable witnesses in court and to refer them on, where necessary, to other organisations offering practical and emotional support.

Quantitative data

2.17 The following databases and files have been accessed to provide data on bailee characteristics, court processes and outcomes:

2.18 ***Court pro forma sheets*** that were sent to the Scottish Executive by each court were accessed by the research team, showing 271 applications for EM bail up until the end of July 2006; they provide some or all of the following information: court; COP number; verbal/written application; solemn/summary; refused immediately; date report requested/received; why refused (where given); whether granted/appealed and reasons. Not all clerks of court were able to complete pro formas in respect of their

caseload relating to EM bail or to identify particular details on each case, and although the research team have supplemented the pro formas with additional records kept by court officials, Reliance/Serco and bail officers, it is possible that there may be other applications that have escaped recording on any of the agencies' databases.

2.19 **Reliance/Serco** have provided the research team with data relating to 63 closed cases³ as at the end of July 2006 and include the following: SCRO number, PF number, Police number and Complaint number; breach information (number and types); date of order; timing of orders; estimated date of revocation; offence type; notifications to the police.

2.20 Data from **court files** (COP1 database) **and social work records** in Glasgow, Stirling and Kilmarnock have been obtained up until the end of July. These data supplement the court pro formas and Reliance/Serco database in providing the following information: COP number, date of custody court, date of EM bail hearing, outcome of hearing, sheriff seeking suitability report; sheriff reading suitability report; content of suitability report.

2.21 Access to **police records** using STORM was also granted by police statisticians, where available, up until the end of July 2006. This database provides information on the following: cases of failure to comply where this information was passed to the police and coded correctly; SCRO numbers; date of and reason for failure to comply; outcome of incident; length of time from notification of the failure to comply to final outcome; and number of police officers involved.

2.22 **SCRO** data provide information on the offending histories of those granted EM bail; and where possible, offences committed whilst on EM bail. SCRO data were also obtained post-July to match the final sample with a comparison sample from Linlithgow, Edinburgh and Greenock Sheriff Courts.

2.23 Using triangulation methods to build up a more accurate and fuller picture of the numbers being processed through the various stages of EM bail, it was possible to gain information on up to 306 applications for EM bail during the pilot period of April 2005 to July 2006. All quantitative data were entered into SPSS in order to undertake further analyses and calculate frequency data. Statistical tests (see Annex 4) were conducted to ascertain the similarities and differences between various groups within the overall sample population.

Limitations of the data

2.24 In terms of the above quantitative data, on average 14 per cent of these data are missing across all agency files (up to 8% missing data for complaint number, SCRO number, gender, age, presenting offence(s), date of application and suitability report outcome; and 40-60% missing data for identity of sheriffs at first and second hearings). Although the researchers attempted to reduce the amount of missing data by triangulation across all databases, this was not always successful. The Scottish

³ It was decided to focus on all closed cases of individuals who had completed a period of EM bail as at 31st July 2006, which resulted in 63 closed cases in total. This allowed a full rather than partial history of individual cases, any breach proceedings brought and final outcomes.

Executive is aware of the limitations of quantitative data currently being collated by various criminal justice agencies, not least in relation to bail. The main issue for this evaluation was the use of complaint numbers, which apply to different cases (and within each case there may be more than one accused) rather than to different individual accused: in some cases applicants may present at court with more than one complaint file, and practice varies across clerks of court and across courts in relation to whether a separate pro forma is completed for each complaint number or for each 'case'. As each complaint number is not unique and is shared by each accused who is allegedly involved in the same offence, it has thus proved difficult to isolate only those who had applied for EM bail from those who had not.

2.25 However, the research team can be reasonably confident that cases where the sheriff asked for a suitability report to be carried out prior to the decision about bail being made are all included in this dataset, but where a sheriff immediately refused to consider EM bail, it is not always the case that a pro forma was completed. To supplement the information on the pro formas, the research team used the complaint number to access the COP1 database system in each pilot court to collect further information relating to the applicant (e.g., date of birth, SCRO number and presenting offences) as well as accessing the actual complaint files to find outcomes of trial, dates of applications for EM bail and sheriffs involved in both the initial application and second hearing for EM bail.

2.26 It has been highlighted in a recent report (Brown *et al.*, 2004) that data on bail generally can be patchy and out of date. The report concludes that:

“[Such data] are not judged to be sufficiently reliable to be badged as "National Statistics". In particular, no reliable conclusions can be drawn from it about trends in bail.” (ibid: 55).

2.27 There have been major difficulties for the research team in accessing reliable, consistent and complete data on bail, custodial remand and breach statistics across the pilot and comparison courts; hence the need to 'triangulate' the data via several different sources, as mentioned above. Equally no data are necessarily held within the Scottish Executive's Justice Statistics Unit about the cancellation of bail orders or on charges proved in bail aggravated sentences. The above authors suggest that ISCJIS may be a way forward for centralising statistical and management information on the Criminal Justice system in Scotland in the future; however, that does not resolve the issue for the current study, where effective implementation, practice and evaluation are heavily reliant on quantitative data. The research team resorted therefore to manually retrieving much data from paper files to supplement the official data.

Comparison courts

2.28 Three comparison sheriff courts were identified, in consultation with the Scottish Executive, which matched the pilot sites in several ways: their populations and urban/rural breakdown were similar; their rates of custody overall and for various types of offence were similar, as were their lengths of custodial sentences. Table 2.1 below exemplifies these similarities with the comparison courts highlighted in bold. These figures are for 2004/05.

Table 2.1 Pilot and comparison court characteristics

	Population	No. given custody	% given custody	Length of custody (days)
Glasgow	662K	1,589	18	96
Edinburgh	401K	1,182	15	93
Kilmarnock	44K	773	19	101
Greenock	55K	357	21	93
Stirling	86K	248	13	93
Linlithgow	67K	342	16	70

Source: Scottish Executive (2006)

2.29 Glasgow Sheriff Court was matched with Edinburgh, Kilmarnock was matched with Greenock, and Stirling with Linlithgow. Kilmarnock and Greenock are both high incarceration cities, whilst Stirling and Linlithgow are both relatively ‘rural’ areas (although it was drawn to the Research Team’s notice that Stirling has a higher than national average number of ‘bench hours’ per sheriff, and therefore ‘rurality’ does not necessarily equate with ‘low usage’). The characteristics of the cohort of 191 accused in the comparison courts were analysed in terms of age, gender, number and type of previous convictions since 1989 and main presenting offence. All had been convicted of at least one offence in both solemn and summary proceedings between April 2005 and March 2006. The data were drawn from the Scottish Executive’s court proceedings database.

2.30 Data matching of samples between the pilot and comparison courts was felt to be desirable for 2 specific reasons: one was to ascertain whether in fact EM bail was being used as a direct alternative to custodial remand (as opposed to being used to augment standard bail), and the second was to examine the various outcomes for both the pilot and comparison cases in terms of final outcomes and lengths of custodial remand/bail. The analysis of the comparison data is given in Chapter 5.

Observations

Attendance at policy/practitioner meetings

2.31 An additional element of the fieldwork included attendance by members of the research team at all Local Liaison Group meetings between November 2005 and September 2006. These meetings tended to be held every 3 months, allowing for observation and feedback about the research at a total of 4 meetings per pilot area. These meetings in particular proved invaluable in allowing for an observation of each group’s deliberations on operational procedures and legislation as well as observation of inter-agency working. The meetings also gave the research team a greater understanding of distinctive local procedures and practices. Minutes and action taken

as a result of these meetings were made available to the research team, as were minutes of Steering Group meetings, which were held on average every 4 months.

Attendance at custody court hearings

2.32 Most of the business of the courts in relation to custodial remand or bail occurs in the custody courts, which sit every day at a fixed time for those accused who had been remanded in police or prison custody the night (or last working day) before appearing at court. Research team members were able to sit in on 4 custody courts, 2 in Glasgow, and one in each of Kilmarnock and Stirling Sheriff Courts, to observe and to familiarise themselves with the process of applying for and/or being granted EM bail. One of these observations included a hearing of the Domestic Abuse Custody Court in Glasgow Sheriff Court, where the 2 resident sheriffs have used EM bail on a regular basis since the pilots began, not least to restrict an accused away from an address as well as to monitor movements of accused persons within their own homes.

Economic modelling

2.33 The aim of the economic component was to conduct a cost analysis of electronic monitoring as a condition of bail in contrast to those given custodial remand although the measurement of effectiveness is not straightforward in this field. The estimation of 3 related areas included:

- costs of EM bail in relation to data on the number of bailees, applications, appeals and breach;
- costs of custodial remand in relation to data on individuals held in custodial remand; and
- cost savings to the Scottish Executive and to the criminal justice agencies as a result of successful applications for EM bail.

Press coverage

2.34 The aims of the press analysis (see Annex 1) were to ascertain the characteristics of newspaper reporting on the EM bail pilots, to judge the extent to which it has presented a rational, rounded and responsible account of this particular initiative and to explain why the press coverage takes the form it does. This analysis covered the period April 2005 - November 2006, 21 of the 24 months of the pilot scheme, and required collation and analysis of press cuttings (including news items and/or editorials, augmented by Scottish Executive press releases) and interviews with journalists (2 on local newspapers in the pilot sites, 2 on national newspapers). Newspapers were initially analysed in terms of the following criteria:

- the specific prominence given to tagging in the context of the overall bail and custodial remand reforms;
- the use made by the press of official press releases;
- the use made - and the identity of - other key 'news and comment' sources;

- the use of human interest stories to bolster particular lines of argument;
- the use of photographs and logos.

CONCLUSIONS

2.35 The aims of the evaluation were to assess the implementation of electronic monitoring as a condition of bail in replacing custodial remands; and to conduct a cost analysis of electronic monitoring as a condition of bail in contrast to those given custodial remand.

2.36 Interviews were conducted with Steering Group members, professionals from the relevant partner agencies and with bailees and their families. Quantitative data was collated from various sources in both the pilot and comparison courts which provided a range of information on accused remanded in custody or bailed in areas outwith the pilot sites. This quantitative analysis explored the extent to which EM bail is being used as a direct alternative to custodial remand in the pilot courts and to explore differences in judicial processes and final sentences between the pilot and comparison groups. These data sources were not readily complementary or indeed complete, and given that different agencies had different methods of data collection and data protection, it proved difficult to build up a comprehensive picture of the whole process and outcomes of EM bail. To supplement the information on the pro formas (which were not always completed or were only partially completed), the research team also accessed databases pertaining to court records, police records and electronic monitoring company records, as well as paper files held by the courts and social work departments. Nevertheless, approximately 14 per cent of data were missing from agency files relating to EM bail. Overall, statistics on bail, remand, breach and final outcomes were also limited in scope and not readily accessible from various agency files. Numbers of applications which converted to actual EM bail orders were also relatively small, making meaningful comparison between and within the pilot sites difficult to achieve.

2.37 The cost element of the study enabled specific costs to be calculated for the various stages of the process of EM bail and thus enabled a comparison to be made between EM bail and custodial remand.

2.38 The press analysis of the first 21 months of the pilots not only explored the perceptions of journalists about electronic monitoring and bail but also informed how such perceptions could impact on the future success or otherwise of EM bail and EM more generally in Scotland.

CHAPTER THREE THE REFERRAL PROCESS

INTRODUCTION

3.1 Bail is a complicated legal process, not least because it has to balance the protection of the public with the rights of the accused. For the accused, it has to maintain a presumption of innocence until proved guilty with the right to privacy and freedom of movement. Adding the electronic surveillance aspect of EM bail thus requires stringent legislation and procedures. These processes were discussed and refined within the National Steering Group prior to the pilots commencing, and have since been amended and tightened following implementation and feedback from each Local Liaison Group. The referral process, as experienced and perceived by stakeholders, is the lynchpin of a successful pilot exercise of this kind. This chapter therefore explores how the procedures are working across the agencies and courts in relation to the application and granting of EM bail, outlines the characteristics of accused persons who apply for EM bail and describes the perceptions of key stakeholders about the process of referral.

APPLICATIONS FOR EM BAIL

3.2 When an accused appears from custody, the defence agent representing him/her has little time to explore the circumstances of the alleged offence and to take instruction from the client. However, it was reported that clients were often aware of EM bail with one defence agent commenting: 'many of the clients locally know about it... and they will quite often raise it with us before we raise it with them'. Nevertheless, to bolster this 'street' knowledge, posters and leaflets regarding the availability of EM bail were placed in cells and waiting areas within the courts, with the approval of the relevant Sheriff Principals, to remind not only accused but also 'out of town' defence agents about its availability.

3.3 Although the onus is on the defence to apply for EM bail if standard bail has been refused, some respondents suggested that defence agents, especially out-of-town defence agents, may not be familiar with the option of EM bail. Two sheriffs in particular suggested this may be the case, as well as one procurator fiscal. One sheriff also commented that some defence agents are more likely to suggest EM bail than others and one defence agent and 2 sheriffs suggested that visiting sheriffs may be unfamiliar with the pilots.

3.4 Defence agents suggested that there is a 'tariff' of standard bail conditions⁴ that they will suggest to a sheriff prior to making a motion for EM bail, which they see as 'a last resort' and thus a direct alternative to custodial remand. From the start of the pilots in April 2005 until the end of the fieldwork period in July 2006, 306 applications for EM bail were known to have been made: 105 (34%) in Glasgow, 108

⁴ Special conditions of standard bail include not approaching a witness or victim; 'signing in' at a police station on a regular basis; and being curfewed to a specific bail address for stipulated periods of the day or night.

(35%) in Stirling and 93 (30%) in Kilmarnock. Table 3.1 shows the proportion of EM bail applications from the overall remand population per month during the first 16 months of operation. These figures fluctuate across the 3 pilot sites and it is difficult to detect any particular trends, other than a slow start in all 3 sites and an unexplained peak in early 2006. It is possible that the scoping interviews and access arrangements for interviewing professional respondents in the spring of 2006 may have prompted a heightened awareness of the pilots amongst key stakeholders.

3.5 As can be seen from this breakdown, of the total of 6,914 cases where the accused was refused standard bail and therefore potentially eligible for EM bail during the fieldwork period, 4.4 per cent applied for EM bail. Although this seems a relatively small number of applications overall, more than a fifth (21.5%) of those denied bail in Stirling made an application for EM bail compared with 10.4 per cent in Kilmarnock and 1.9 per cent in Glasgow, even though Glasgow has by far the highest number of cases potentially eligible for EM bail. Glasgow's low application rate may be because of unrelated industrial action by bail officers early on in the pilots or problems in Glasgow Sheriff Court relating not only to legal aid for defence agents and a review of criminal justice staffing, but also wider action short of a strike by the legal profession in relation to criminal court matters more generally.

Table 3.1 Number of EM bail applications per month per court⁵

Glasgow Sheriff Court

Month of application	No of remand receptions	No of EM bail applications	% of all eligible cases
April 05	312	0	0
May 05	324	1	0.3
June 05	301	3	1.0
July 05	302	5	1.7
August 05	347	11	3.2
September 05	376	7	1.9
October 05	417	14	3.4
November 05	354	4	1.1
December 05	319	5	1.6
January 06	363	13	3.6
February 06	302	5	1.7
March 06	353	6	1.7
April 06	332	2	0.6
May 06	404	8	2.0
June 06	375	8	2.1
July 06	334	13	3.9
Not recorded	0	0	-
Total	5515	105	1.9

⁵ Based on Scottish Executive (2006), *Prison Statistics Scotland 2005/06*, Edinburgh: The Stationery Office and on Scottish Prison Service database records.

Stirling Sheriff Court

Month of application	No of remand receptions	No of EM bail applications	% of all eligible cases
April 05	25	5	20.0
May 05	28	1	3.6
June 05	31	1	3.2
July 05	24	0	0
August 05	28	5	17.9
September 05	32	2	6.3
October 05	28	2	7.1
November 05	42	12	28.6
December 05	37	7	18.9
January 06	33	10	30.3
February 06	29	17	58.6
March 06	30	17	56.7
April 06	34	10	29.4
May 06	33	5	15.2
June 06	30	6	20.0
July 06	39	2	5.1
Not recorded	0	6	-
Total	503*	108	21.5

* This figure does not include the 3 cases whose applications for EM bail were heard on the same day.

Kilmarnock Sheriff Court

Month of application	No of remand receptions	No of EM bail applications	% of all eligible cases
April 05	51	1	2.0
May 05	54	2	3.7
June 05	46	3	6.5
July 05	50	4	8.0
August 05	66	2	3.0
September 05	58	4	6.9
October 05	57	7	12.3
November 05	63	10	15.9
December 05	34	4	11.8
January 06	50	9	18.0
February 06	62	12	19.4
March 06	41	2	4.9
April 06	48	2	4.2
May 06	70	10	14.3
June 06	65	8	12.3
July 06	77	12	15.6
Not recorded	0	1	-
Total	892*	93	10.4

* This figure does not include the 1 case whose application for EM bail was heard on the same day.

Characteristics of EM bail applicants

3.6 The vast majority of applications for EM bail were from men, notably 94 per cent in Stirling, 95 per cent in Glasgow and 92 per cent in Kilmarnock. The age of applicants varied from 14 years to 63 years with an average of 26 years. Table 3.2 gives the age of all 306 applicants.

Table 3.2 Age of applicants for EM bail

Age at application	Glasgow	Kilmarnock	Stirling	Total (%)
Under 20 years	39	37	29	105 (34%)
21 to 30 years	30	27	38	95 (31%)
31 to 40 years	19	13	26	58 (19%)
Over 41 years	15	8	5	28 (9%)
Not recorded	2	8	10	20 (7%)
Total	105	93	108	306 (100%)

3.7 The largest group of applicants for EM bail in Glasgow and Kilmarnock were aged 20 and under, while in Stirling the largest group of applicants were aged between 21-30 years. Several sheriffs commented that young people in particular should be offered the opportunity of EM bail; while it may not be the same as a custodial remand in restricting movement generally, it might 'keep them off the streets' at night.

3.8 Of the 23 bailees included in the qualitative interviews with bailees and family members, 6 were in employment while on EM bail, 13 were unemployed and data were missing in 4 cases. In the 6 cases where the bailee was employed, restriction conditions were organised around their hours of employment, and in some cases, relatively complex arrangements had been put in place to allow for shift work. This was seen as one of the positive benefits of EM bail by all EM bailees and their families, and the professional respondents also reported that EM bail was a useful option for those who were working or had caring roles or family commitments.

Presenting offences

3.9 Information on presenting offences relating to EM bail applicants was gleaned from a combination of sources: complaint files, the COP1 database of the Scottish Court Service and records kept by the social work departments when suitability reports were called for. However, it should be borne in mind that social work departments were not asked to maintain these latter records but chose to do so for their own use, although in Glasgow, only the 'main' offence was recorded by the social work department whilst in Kilmarnock and Stirling all presenting offences were recorded. Thus, in 261 applications, all the presenting offences are recorded, in 26 further cases the main presenting offence is recorded and in 19 cases (12 in Glasgow, 5 in Kilmarnock and 2 in Stirling) no data on presenting offences are recorded.

3.10 It is not possible to rank EM bailees' presenting offences by seriousness, because such categorisation is not available. Where there is more than one offence per charge sheet, the most serious is identified at the sentencing stage (only in cases

where there is a finding of guilt) as the one incurring the highest penalty, and since complaint files did not always record this information (in cases where sentence had indeed been passed and a disposal given), it was not possible to gauge seriousness. Equally, the ‘main’ offence does not always imply the most serious offence and therefore cannot be assumed to imply higher risk. As an indicator of the types of offences accused presented with, however, all offences listed on charge sheets were grouped into six categories as per Table 3.3 below. Accused were likely to fit into more than one offence category and the percentages in brackets denote the proportion of the total number of applicants presenting in these offence categories who were granted and refused EM bail.

Table 3.3 Numbers per category of presenting offence by EM bail granted

Category of presenting offence	EM Bail granted	EM Bail refused	Total
Theft offences	13 (19%)	55 (81%)	68
Disorder offences	35 (39%)	54 (61%)	89
Violence offences	41 (35%)	76 (65%)	117
Breach of bail/bail aggravation	43 (42%)	59 (58%)	102
Drug offences	5 (22%)	18 (78%)	23
Vehicle offences	8 (24%)	25 (76%)	33

3.11 Those accused of theft, drug and vehicle offences are least likely to be granted EM bail, whereas those accused of disorder, violence and breach of bail/bail aggravation offences were more likely to be considered for EM bail; however, there is no statistically significant relationship in these figures. Perhaps ironically, the most common category of offence likely to be granted EM bail is the breach of bail/bail aggravation category which would run counter to the perceived wisdom amongst the majority of respondents that EM bail is inappropriate for those with a history of breaching bail.

3.12 Those with one or 2 presenting offences were granted EM bail in 35 per cent and 33 per cent of cases respectively, and those with 3+ presenting offences were granted EM bail in 32 per cent of cases. The number of presenting offences appeared to have no statistically significant effect on whether EM bail was granted or refused. Procurators fiscal at interview also stressed that the number and seriousness of presenting offences are often less important in matters of bail than the previous offending history.

3.13 In order to look more closely at any potential relationship between previous offending history, age, location of court, type of court and whether granted EM bail, a log linear analysis was applied to the frequency data (see Annex 4). In situations where the data can be grouped into categories, log linear analysis is an effective way to look at associations between more than one variable. A relevant association was found between the number of presenting offences and age group and those granted EM Bail. (L.R. Chisq = 252.203, p<0.01). Table 3.4 below looks at this association in more detail.

Table 3.4 Number of presenting offences by age

Granted EM Bail						Refused EM bail					
	No of presenting offences						No of presenting offences				
Age groups	One	Two	Three	Four+	Total	Age groups	One	Two	Three	Four+	Total
Under 21 yrs	16 41%	13 33%	8 21%	2 5%	39 100%	Under 20 yrs	16 31%	13 25%	11 21%	12 23%	52 100%
21-30 yrs	7 35%	7 35%	1 5%	5 25%	20 100%	21-30 yrs	18 29%	14 23%	10 16%	20 32%	62 100%
31-40 yrs	3 17%	6 33%	1 6%	8 44%	18 100%	31-40 yrs	15 43%	9 26%	6 17%	5 14%	35 100%
41+ yrs	5 45%	3 27%	1 9%	2 18%	11 100%	41+ yrs	5 42%	3 25%	2 17%	2 17%	12 100%
Total	31 35%	29 33%	11 13%	17 19%	88 100%	Total	54 34%	39 24%	29 18%	39 24%	161 100%

3.14 The above figures suggest that for those in the older age group of 41+ years old, there seems to be no relationship between number of presenting offences and whether EM bail was granted or refused. Equally, for those in the middle two age brackets (21 - 30 years old and 31 - 40 years old), the number of presenting offences appears not to have an influence on sheriff decision making. For the youngest age group (under 21 years old), those presenting with 4 or more offences were less likely to be granted EM bail than their older counterparts.

Offending histories

3.15 The offending histories of 276 of the 306 applicants were available and these were differentiated by whether EM bail was granted, refused outright or refused following suitability reports, as in Table 3.5 below. These figures include all offences accrued since 1989.

Table 3.5 Offending histories of EM bail applicants

	All Applicants (n=276)*	EM bail granted (n=107)	EM bail refused outright (n=60)	EM bail refused following suitability report (n=109)
Mean number of previous offences	10.70	9.35	15.70	9.27
Range of previous offences	0-77	0-57	0-77	0-47

* Data are missing on previous offences in 30 of the 306 cases.

3.16 For those granted EM bail, the number of previous offences ranged from zero to 57, with a mean number of 9.35. For those refused EM bail where a suitability report had been called for, the mean number of previous offences was 9.27, closely matching that of those granted EM bail. However, where a suitability report was *not* called for – and the application was thus refused outright – the mean number of previous offences was 15.70. Using a one-way Anova, this difference in number of

previous offences between those refused and those considered for EM bail was shown to be statistically significant at ($F=7.858$, $p<0.01$), a post hoc Scheffe shows that those refused EM bail outright differ from both those refused after a suitability report and those granted EM bail. Likewise, those refused EM bail outright differed significantly from those granted EM bail and those refused after a suitability report in terms of the type of previous disposal and type of previous offences. Perhaps ironically, those refused outright had received more community disposals (an average of 4.37) in the past compared to those granted EM bail (an average of 1.43) and those refused after a suitability report (an average of 1.61) ($F=27.569$, $p<0.001$). Those refused outright also had more dishonesty offences (an average of 6.77) and more violence offences (an average of 0.63) compared with those granted EM bail (an average of 3.41 for dishonesty offences and 0.33 for violence offences). For dishonesty offences, the significance was $F=4.762$, $p<0.01$ and for violence offences the significance was $F=4.115$, $p<0.05$.

Suitability reports

3.17 There is little difference between those granted and those refused EM bail once suitability reports have been called for, suggesting that those *considered* for EM bail are consistently lower tariff than those refused outright: in other words, the offenders with extensive offending histories are not being considered eligible for EM bail, and this would confirm the inference made by 3 sheriffs, 3 defence agents and 1 procurator fiscal that EM bail is more appropriate for those accused persons who are borderline between standard bail and custodial remand.

3.18 Where suitability reports were called for, 80 per cent of these were found to be suitable (see Table 3.6 below). Suitability meant that the premises were able to accommodate the equipment, the accused person's circumstances were suitable and the householder(s) had given permission.

Table 3.6 Suitable versus unsuitable reports by court

Court	Suitable report	Unsuitable report	Not recorded	Total
Glasgow	74 (85%)	6 (7%)	7 (8%)	87
Kilmarnock	66 (78%)	12 (14%)	7 (8%)	85
Stirling	46 (78%)	9 (15%)	4 (7%)	59
Total	186 (80%)	27 (12%)	18 (8%)	231

3.19 As can be seen from the above table, reports produced for Glasgow Sheriff Court were marginally more likely than Stirling or Kilmarnock to report that the accommodation, the accused person's circumstances and the other householders' attitudes were suitable for EM bail. However, given the fact that only approximately 10 per cent of pro formas stated reasons for the appropriateness or otherwise of applications (see following section), one cannot speculate on why this was the case.

3.20 The compilation and submission of suitability reports is the responsibility of the relevant social work departments in the 3 pilot local authorities, although this role

has been contracted out to SACRO in Kilmarnock. Once an accused had been seen by a bail officer, the address of residence given would be checked and family members consulted either by phone or in person to ascertain the appropriateness of the property for installing the equipment. Any other relevant information from the social work database or from these interviews with the accused and household member would equally be contained in an application. The suitability report examines the feasibility of remote monitoring. Questions to be addressed in the report are as follows:

- whether the accused resides in Scotland (as long as the case is dealt with in one of the pilot courts, the remote monitoring equipment can be installed anywhere in Scotland);
- is the accommodation relatively settled for the accused and appropriate for the installation of equipment;
- does the accused have any commitments or responsibilities which might prevent him/her from complying with electronically monitored curfews;
- is the accused already tagged or serving other community-based disposals;
- where the accused is to be restricted *from* a particular address, is the other householder agreeable to this and is that accommodation appropriate.

Timescale between first and second hearing

3.21 Whilst the Procedure Manual advises that the accused be remanded in custody for a period of approximately 5 working days to allow for suitability reports to be compiled, in practice, as demonstrated in Table 3.7 below, the length of time between first and second bail hearings can range from 0-27 days, although the mean number of days is 5.7 days.

Table 3.7 Length of custodial remand between first and second bail hearing

No of days remanded in custody	EM bail granted
None (EM bail granted same day)	4 (1.7%)
1 – 3 days	22 (9.5%)
4 - 6 days	108 (46.8%)
7 – 9 days	83 (35.9%)
10 – 15 days	6 (2.6%)
20 days	1 (0.4%)
27 days	1 (0.4%)
Not recorded	6 (2.6%)
Total	231 (100%)

3.22 The vast majority of second hearings took place within 9 days of the first hearing: 93 per cent in Glasgow, 98 per cent in Kilmarnock and 90 per cent in Stirling. Stirling held a second hearing on the same day as the custody hearing in 3 cases and Kilmarnock in one case. In one of these 4 cases, it was felt that a custodial remand would be potentially damaging to the accused person's mental health and given that a household member was in court that day and willing to accept the equipment, the case was adjourned until the afternoon to allow the bail officer time to talk to both the accused and family member.

3.23 As will be seen in Chapter 6, the estimated cost of one day's custodial remand pending suitability reports is £91, and if an accused is remanded in custody pending a suitability report for 25 days or more, there are no savings from EM bail. Whilst only two applicants spent 20 and 27 days in custody pending suitability reports, information is not available on why there can be such delays; however, it is most likely to be court business that affects the timing rather than bail officer availability to write the report. However, cases are not always adjourned for the full 5 working days, often being reconvened within 3 or 4 days.

3.24 Social Work Department and SACRO estimates of the proportion of interviews of accused conducted in court holding cells as opposed to prisons on the day of the first hearing were as follows: Glasgow – 70 per cent; Kilmarnock – 90 per cent; and Stirling – 100 per cent. Where it is not possible for bail officers to access an individual in court because of time pressures, social workers from the prison or local area could be contacted and asked to interview the accused on behalf of the bail officer, although this may not always be possible. In Glasgow, it was suggested by a Social Work Department representative that often EM bail applications come from the Petition Court and in solemn cases it is not always possible to notify the bail officers of EM bail applications while the accused is still in the court building because the proceedings are undertaken in private. In such cases, bail officers would have to do the interview at the relevant prison, resulting in increased time and money being spent on producing the suitability report. The impact of this on bail officer time and travel expenses would need to be taken into account if the scheme was made available nationally. It may well be desirable to make it a requirement that the accused is seen by the bail officer in the court as a matter of course prior to being transported to prison.

3.25 Reliance Custodial Services transport individuals to prison from court and are under obligation, once the extract licence [paper work from the clerk of court] has been obtained, to leave for the prison within an hour of an accused being remanded in custody. As with other agency requirements to interview prisoners in the court cells, they will try to accommodate bail officer requests for interviews with accused, so long as this does not infringe contractual arrangements to transport the accused to prison. Bail officers in all 3 case study areas suggested that they had developed good informal arrangements with Reliance Custodial Services and clerks of court so that, irrespective of whether the paperwork from the clerk of court, defence agent or procurator fiscal was forthcoming that day or the next working day, the bail officer would normally be notified by the clerk of court or a member of Reliance Custodial Services that an accused was about to be remanded in custody pending a suitability report. The bail officer would thus be able to talk to the accused in the court cells.

3.26 Among the social workers and bail officers interviewed, there appeared to be differing views about the efficacy of conducting home background checks by telephone, but the National Steering Group had suggested that this was a matter for local authority social work departments to decide on. Where home visits are made, 2 bail officers may be required as a safety precaution based on prior knowledge of the householders or because of the presenting offence, where known. In Glasgow, mainly because of the wide catchment of the court and limited staff resources, addresses were

verified by phone unless workers deemed it necessary to visit in person. In the other pilot areas, however, which had a smaller catchment area, home visits were more feasible in order to ensure that other family members were aware of the requirements of EM bail, understood what it was likely to entail, and were aware of their right to give or withhold consent to the installation of EM equipment in their home. However, this still had resource implications, as 2 bail officers explained:

“We have an awful lot more contact with family members and stuff like that, than I think was anticipated. We’re going out and doing home visits and I think a lot of our time is spent on information giving and kind of supporting the family.”

“You know if someone’s to be restricted from perhaps 7 in the evening to 7 every morning, that can have an impact on their family, you know, the relationships there and you have to make sure that people understand what that entails.”

3.27 Some bailees and family members stated at interview that they were confused about who had carried out a suitability report and were unable to distinguish between bail officers and Reliance/Serco employees, although Reliance/Serco staff display clear personal identification. There was also some confusion about whether or not family members were asked to give their consent to the installation of monitoring equipment via a telephone call or as the result of a personal visit from bail officers, although all family members reported that they had consented to allow bailees to reside in their home and to accommodate the equipment so as to prevent the latter from being remanded in custody.

The content of suitability reports

3.28 Generally the process of providing suitability reports has been relatively unproblematic and bail officers noted that sheriffs had commented on the usefulness of suitability reports. Sheriffs in particular welcomed a ‘feel’ for the case in terms of whether the accused and his/her family would ‘engage’ with the exercise. However, one Sheriff commented that if s/he were minded to restrict an accused from an address as well as to an address, more information would be needed than was presently available within the suitability report about the circumstances of the other householder and from the Crown about the circumstances of the offence/offender. Likewise, it was reported by several bail officers that information on whether the sheriff wanted a restriction *from* as well as or instead of a restriction *to* an address condition on the bail order was often unavailable which could reduce the accuracy of the information contained in the suitability report. This may have been because sheriffs did not specify when calling for reports whether they were considering restrictions from or to a given address, and such information would need to be more readily available at the time the sheriff calls for a report if EM bail was rolled out nationally.

3.29 While information on previous convictions was not required for suitability reports, some bail officers considered this to be useful information when assessing the appropriateness of maintaining a particular individual in the community and could provide information on any child protection issues, for example. Such information on

previous circumstances of accused are often available from the social work database, but a court official commented that previous convictions cited in a suitability report may incriminate an accused whose case subsequently goes to trial.

OUTCOMES OF APPLICATIONS FOR EM BAIL

3.30 Of the 306 applications made for EM bail where standard bail (with or without conditions) had been denied, 115 (38%) were refused following a suitability report and 116 (38%) were granted following a suitability report. In 75 of these 306 applications (25%), the sheriff refused to consider EM bail outright at the first hearing. The granted applications comprised a 1.7 per cent reduction in the custodial remand population. In order to look for any relationship between outcome of bail application (granted EM bail, refused EM bail after reports or refused EM bail outright), age group, number of presenting offences, previous offending history, location of court and type of court, a log linear analysis was applied to the frequency data (see Annex 4). A relationship was found between the outcome of the EM bail application and the court from where this application was made (L.R. Chisq = 200.908, $p < 0.001$). Table 3.8 shows this relationship.

Table 3.8 Applications refused outright versus suitability reports requested

	Application refused outright	EM bail refused after reports	EM bail granted	Total
Glasgow	18 (17%)	39 (37%)	48 (46%)	105
Kilmarnock	8 (9%)	50 (54%)	35 (38%)	93
Stirling	49 (45%)	26 (24%)	33 (31%)	108
Total	75 (25%)	115 (38%)	116 (38%)	306

3.31 The numbers of the 306 applications refused without the sheriff calling for a suitability report vary considerably between the different sheriff courts, with Stirling refusing EM bail applications outright in 45 per cent of cases, Glasgow in 17 per cent of cases and Kilmarnock in 9 per cent of cases. However, it is possible that the number of applications refused outright could be higher than that recorded on pro formas, since not all courts completed the paperwork in these instances. Equally, because a sheriff need not give reasons as to why an EM bail application is refused, it is difficult to make any inference from these figures. However, as shown in Table 3.5, those refused outright had a mean average of 15.70 previous offences compared with just over 9 for those considered for EM bail.

3.32 Table 3.9 gives the number of suitability reports requested, found appropriate and granted EM bail. The proportion of applications resulting in the granting of EM bail is termed the 'conversion rate' and this percentage is given in brackets in the final column. The conversion rate from the number of applications made to the number of EM bail orders granted was 46 per cent for Glasgow, 38 per cent for Kilmarnock and 31 per cent for Stirling, averaging out at 38 per cent across the three sites.

Table 3.9 Numbers converting from application to granting of EM bail

	Glasgow	Kilmarnock	Stirling	Total
Application made for EM bail	105	93	108	306
Suitability report requested	87	85	59	231
Suitability report inappropriate	13	19	13	45
Suitability report appropriate	74	66	46	186
EM bail granted	48 (46%)	35 (38%)	33 (31%)	116 (38%)

3.33 As mentioned above, Glasgow was less likely to find applications unsuitable and therefore had a higher conversion rate than Kilmarnock and Stirling. However, as will be seen below, the conversion rate depends on factors additional to the suitability of the premises and the accused, including changed circumstances between the first and second hearing and the views of the sheriff at the second hearing.

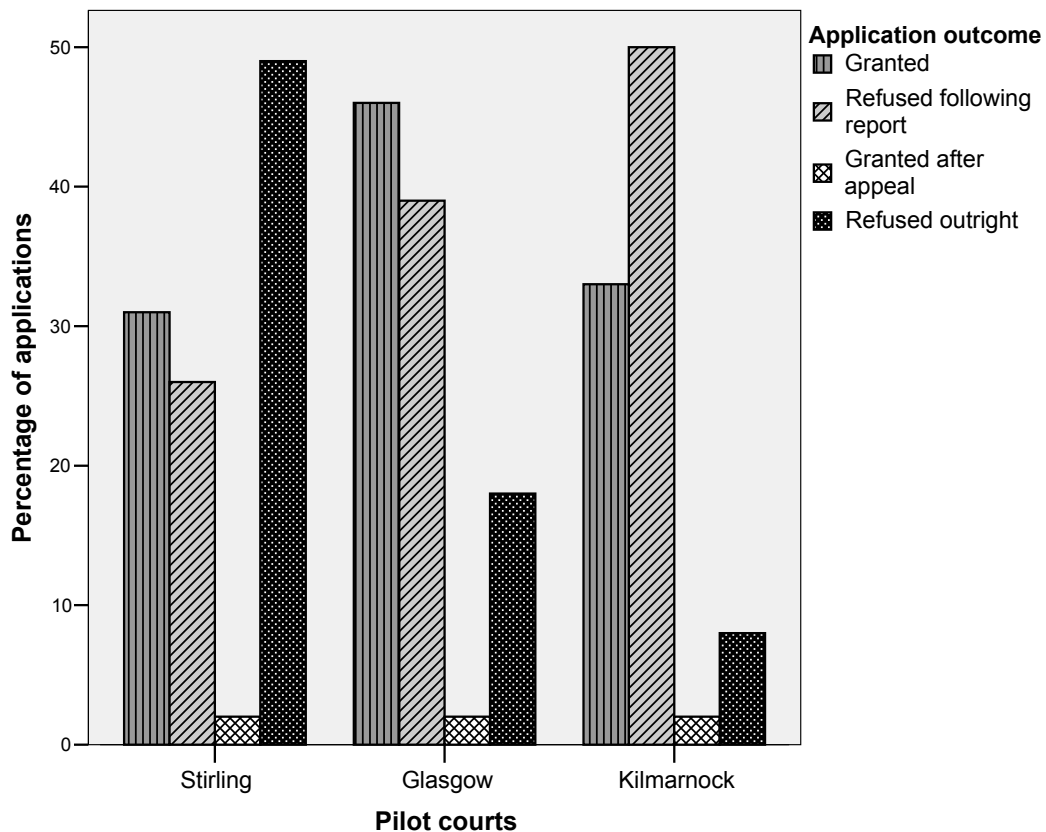
3.34 Figure 3.1 below gives a breakdown of the different outcomes of applications per court based on whether or not suitability reports were called for. The fact that the number assessed as *suitable* for EM bail (186) and the number granted EM bail (116) are not compatible, suggests that there are other criteria than ‘suitability’ at work which may influence decisions made about the appropriateness or otherwise of EM bail in specific cases. These are discussed in the following section.

3.35 Forty-one per cent of the 116 successful EM bail applications came from Glasgow Sheriff Court, 28 per cent from Stirling and 30 per cent from Kilmarnock. Since the vast majority of court business in Scotland is generated from Glasgow Sheriff Court, this finding suggests a relatively low number of applications overall in Glasgow. However, given early problems for defence agents and bail officers alike in this city, the application and conversion rate is perhaps not surprising.

3.36 The proportion of overall applications made in summary versus solemn courts in Glasgow is 50 per cent summary and 50 per cent solemn; in Kilmarnock 47 per cent summary and 53 per cent solemn; and in Stirling 73 per cent summary and 27 per cent solemn. The smaller number of applications in Stirling solemn proceedings suggests that defence agents in that court may be less confident of applying for EM bail in such potentially high tariff cases.

3.37 In relation to applications which resulted in EM bail orders being granted, in Glasgow, 67 per cent emanated from summary proceedings, in Stirling 34 per cent and in Kilmarnock 38 per cent. Although few applications were made in Glasgow, where they were made in a summary court, two-thirds of them were granted by the sheriff, compared with approximately one third in the other two sheriff courts. Thus, the conversion rate from applications to EM bail orders granted in Glasgow summary courts is significantly greater than in Stirling or Kilmarnock ($X^2 = 13.461$, $p < 0.001$).

Figure 3.1 Outcomes of EM bail applications per court



Reasons for granting or refusing EM bail following a suitability report

3.38 Currently, sheriffs are under no obligation to give their reasons for being minded or otherwise to remand in custody or bail an accused. Equally, there is no official recording of a sheriff’s reasons for granting or refusing EM bail, although the Scottish Executive’s pro forma has a section relating to reasons for refusal or granting of EM bail at the additional hearing. Options for refusal on the pro forma are that a) the accused was not suitable; b) the premises were not suitable; c) the householder was not cooperative and d) other (to be specified). Whilst such data on reasons for granting or refusing EM bail were not recorded in 274 of the 306 applications (90%), information on why EM bail was refused was recorded, albeit in a limited form, in the remaining 32 cases. The majority of these (23) merely recorded ‘accused not suitable’ and in 5 specific cases, the householder or victim were mentioned as not being willing to cooperate. Other reasons cited included accommodation being unsuitable (e.g., homeless hostel or bed and breakfast accommodation) or previous convictions/gravity of the offence. Two pilot areas suggested that their high homelessness rate amongst offenders and accused may impact on finding suitable accommodation for those wanting to apply for EM bail, although it is likely that where an area has access to bail hostels or other homelessness projects, the capacity to use EM bail will be enhanced if such premises are suitable. Indeed, hostels and other multi-occupancy premises have been able to effectively accommodate electronic monitoring equipment for both bailees and convicted offenders alike.

Changed circumstances between first and second hearings

3.39 There are several reasons why circumstances may change in the period between calling for suitability reports and granting EM bail, including a change of sheriff or a change of circumstances of the accused or the case. In terms of the former, in some courts the custody sheriff changes weekly and there is a greater chance that it will be a different sheriff who reads the report once received. Tables 3.10a and 3.10b below show the number of applications according to the sheriff both calling for and reading the suitability report. Although the pro formas contain no information on specific sheriffs, it has been possible to ascertain from a sub-sample of 83 complaint files the number of cases where the same sheriff presided over both hearings.

Table 3.10a Number of applications by sheriff at each hearing (all suitability reports)

	Stirling applications		Glasgow applications		Kilmarnock applications		Total
	Granted	Refused	Granted	Refused	Granted	Refused	
Same Sheriff at each hearing	4	1	5	2	4	9	25
Different Sheriff at each hearing	8	6	4	7	14	19	58
Total	12	7	9	9	18	28	83

3.40 Table 3.10a shows the number of applications where a known sheriff called for a suitability report. Although one would assume that Glasgow Sheriff Court would be more likely to have a different sheriff at each hearing, this was not the case in terms of EM bail hearings, but this may be because of a higher proportion of applications in the domestic abuse court which has dedicated sheriffs. In Stirling and Kilmarnock just under a third of applications are heard by the same sheriff following suitability reports. In Kilmarnock, it is more likely than in Stirling and Glasgow that the same sheriff at both hearings will refuse an application following his/her own calling for a suitability report. However, this may well be because the report suggests the premises or accused are inappropriate for electronic monitoring. Thus, in Table 3.10b, only those suitability reports deemed suitable are included, thus factoring out the possibility that a sheriff refused EM bail at the second hearing as a result of unsuitable reports.

Table 3.10b Number of applications by sheriff at each hearing ('suitable' reports only)

	Stirling applications		Glasgow applications		Kilmarnock applications		Total
	Granted	Refused	Granted	Refused	Granted	Refused	
Same Sheriff at each hearing	4	0	5	1	4	5	18
Different Sheriff at each hearing	8	3	4	4	14	13	46
Total	12	3	9	5	18	18	64

3.41 From Table 3.10b, it would seem that if the same sheriff presides over both hearings, the application is granted in 72 per cent of cases (13 of 18) but if a different sheriff presides over the second hearing, 57 per cent of cases (26 of 46) are granted. Stirling and Glasgow sheriffs appear to be more likely to grant EM bail following their *own* calling for reports, while Kilmarnock sheriffs were less so. One Sheriff estimated that he would be on the bench to read the subsequent report in approximately 70 per cent of his cases, but where this was not possible, another sheriff suggested that they could ‘alert’ the second sheriff to the additional hearing (albeit more easily in a smaller sheriff court) and informally explain their reasons for calling for a report. When a second sheriff reads the report, additional factors may influence the decision making as to whether EM bail is appropriate. The second sheriff does not always have a written record on the complaint as to why standard bail was originally opposed or why the first sheriff was minded to call for a suitability report. Another Sheriff voiced concerns about whether visiting sheriffs who call for suitability reports were fully aware of the rationale and criteria of EM bail pilots *per se*:

“The situation has occurred where I have had to dispose of an application where another sheriff – not our resident sheriff – had asked for [a suitability report] and I have refused it on the basis that I wouldn’t have, in any circumstances, considered it in the first place.”

3.42 However, even in cases where the same sheriff reads the report as calls for it, it is not always the case that EM bail will be granted, because of possible changed circumstances in the intervening period since the first hearing. For example, new information may come to light at the second hearing regarding new offences, warrants or changed circumstances of the accused or potential victim; the premises may prove to be unsuitable or the householder (or victim) may refuse to cooperate with the conditions of EM bail. However, there does seem to be a difference in sheriff decision making between the various courts, notably in Stirling where there seems to be less inclination to take risks with EM bail: this court has the lowest conversion rate and the lowest number of EM bail applications emanating from solemn proceedings.

3.43 It would seem that the conversion rate could be increased by improved publicity, a greater confidence in the scope of EM bail and more systematic communication between court professionals in order to maintain better continuity between decisions made at the first and second hearings, although the authors of this report are mindful that sheriffs are independent of each other and other court processes and possible changed circumstances of cases also make it difficult to sustain continuity of decision making over time.

Repeat applications

3.44 Although there were 306 applications made in the first 16 months of the pilots, 32 applicants made applications on two or more different occasions: 28 applied twice and 4 applied 3 times. These applications were made in respect of different charges brought during the 16 months of the pilot evaluation. In respect of the applications made twice, the majority of these were refused on both occasions. However, it was

possible for EM bail to be granted within days of a first application having been refused, possibly because of the application being heard by a different sheriff or resulting from appeal. From the records, it would seem that 5 accused who had successfully completed EM bail the first time were given EM bail a second time, often within days or weeks of the first order finishing.

THE PROCESS OF APPEAL

3.45 The bail appeal court is held from Tuesday to Friday at 9.00am in Edinburgh High Court to hear appeals initiated both by the Crown and the Defence. Judges in the High Court sit intermittently as Bail appeal judges. This generally makes judges less familiar with the EM bail pilot scheme and thus more dependent on their clerks, or indeed the advocates depute or counsel, for guidance in relation to appeals relating to EM bail. Of the total of 306 applications for EM bail during the first 16 months of the pilots, only 2 known cases were subject to a Crown appeal (i.e., the procurator fiscal appealed against the granting of EM bail having already opposed standard bail). In one case the Crown appeal was refused after 4 days and EM bail was granted. In the other case the Crown appeal was upheld and EM bail was thus refused. Both these appeals were held within 4 days of the second hearing and during this time both accused were remanded in custody. If there were indeed only 2 Crown appeals (if database records are accurate), given that the Crown originally opposed standard bail in all 116 cases subsequently granted EM bail, it is perhaps surprising that only 2 such cases were taken to appeal by the Crown. This acceptance of the granting of EM bail suggests either a) that procurators fiscal are confident of its ability to protect the public pending trial or b) that they prefer not to appeal decisions made by the court, and in effect, therefore, defer to the judgement of the sheriff. Given the scepticism of some procurators fiscal about the value of EM bail generally (see Chapter 5), the latter reason seems more likely.

3.46 Information relating to 26 known defence appeals was examined of the total of 306 applications. In 9 of these cases, the defence was appealing against refusal of standard bail, in 5 cases against refusal of EM bail and in 7 cases against refusal of both standard bail and EM bail. In 5 cases the reason and type of appeal was not recorded. In 8 cases, appeals were successful and 6 were then granted EM bail and 2 granted standard bail with a curfew. Table 3.11 identifies the proportion of defence appeals per sheriff court.

Table 3.11 Defence appeals by sheriff court

Court from where defence appeal was made	Appeal upheld	Appeal denied	Total
Glasgow	2	6	8
Kilmarnock	2	3	5
Stirling	4*	9	13
Total	8	18	26

* Two of the Stirling appellants were granted standard bail with a curfew.

3.47 As with Crown appeals above, and with the same proviso about the accuracy of the recorded numbers, defence agents did not appeal refusal of bail (EM or standard) in the vast majority of cases where an EM bail application was refused outright or following suitability reports. Further research on defence agent perceptions of appeal procedures and their outcomes may throw some light on this seeming acceptance of the likelihood of custodial remand in many cases.

3.48 Procedurally, it is up to the clerk of court to inform the judge at a standard bail appeal hearing if an EM bail application is pending a suitability report; likewise, it is up to the sheriff court to minute the fact that an additional hearing for EM bail is imminent on the papers sent to the appeal court. Although this did not always happen early on in the pilots, the procedure had since been tightened. If the judge upholds an appeal against refusal of EM bail, the clerk of court would then phone as well as e-mail the relevant sheriff court (and through them Reliance/Serco) to inform them of that decision. The clerk of the High Court would also e-mail an EM bail order to the prison and the accused should be released that same day to await installation of the equipment.

3.49 Where standard bail is granted on appeal, any EM bail order in place as a result of the initial refusal to grant standard bail will be automatically cancelled. Depending on the timing of these 2 processes (EM bail being granted and an appeal against refusal of standard bail being upheld), there may be resource implications for not only the social work department who wrote the suitability report and Serco who fitted the equipment, but also for the Scottish Court Service who processed the paperwork. For example, the suitability report will be surplus to requirements if the appeal is upheld. Equally, the tag and equipment will have to be removed from the bailee's house if fitted prior to the appeal against refusal of standard bail. If numbers increase, an additional hearing which would otherwise have been unnecessary and the associated paperwork could prove time-consuming for court staff.

3.50 Where the Crown appeals standard bail at the first hearing and that appeal is upheld, the accused cannot then apply on appeal for EM bail. This is due to the Appeal Court in Edinburgh being outwith the pilot sites and, therefore, not currently in a position to make an EM bail order in its own right. Equally, the Appeal Court cannot impose EM bail of its own volition in cases of appeal against refusal of standard bail, unless an application for such had been made by the defence agent and refused at the time of the original hearing (although it can call for suitability reports and grant EM bail in cases where the accused appeals against the refusal of EM bail without a suitability report having been called for). One Sheriff suggested that the legislative procedures should be amended to allow EM bail to be granted by the Appeal Court irrespective of whether it was applied for in the sheriff court, although this respondent acknowledged that in the event of a roll-out of EM bail nationally, such provision would be available to the appeal court as a matter of course. It is understood that the decision to exclude the Appeal Court was taken following consultation with the Crown Office and Procurator Fiscal Service and the Scottish Court Service to avoid instances where accused from outwith the pilot courts might be inadvertently granted EM bail.

3.51 Regarding the timing of appeals, some defence agents will not appeal against custodial remand until after the outcome of the additional hearing, and they are more likely to accept the granting of EM bail rather than to appeal against refusal of standard bail. Appeals against refusal of standard bail tend to happen within 2 days although there is no stipulated time in the legislation. Crown appeals, on the other hand, *have* to be heard within 72 hours. Several respondents suggested a change of timing of appeals so that the standard bail appeal is heard prior to or concurrently with the application for (or the granting of) EM bail. In the early days of the pilots, sheriff courts tended to adjourn an additional hearing for EM bail if an appeal against standard bail was imminent, in order to find out the outcome of that appeal. If EM bail was then granted, defence agents may have been less inclined to pursue an appeal against standard bail. Defence agents in particular were concerned by the adjournment of a standard bail appeal pending the outcome of an EM bail application as it may be perceived as denying an accused a fair hearing for standard bail. Whilst one defence agent suggested that the appeal court ‘should simply put that [EM bail application] out of their mind’ when considering appeals against refusal of standard bail, a court official suggested that:

“[Appeal court judges] would mostly [adjourn] it because at the end of the day, the sheriff knows more about the case than the judge and the judge is really only there to decide whether or not the sheriff erred in his decision in the court of first instance. So if the sheriff decided to continue it for a suitability report to consider tagging bail, then the judge would really feel, well that’s in the sheriff’s best interests to do that and say: ‘well, let the sheriff do what he’s going to do and then we can revisit it should they appeal against that decision.’”

3.52 This question of priorities and timing – whether EM bail should be granted prior to a standard bail appeal - will need to be revisited should EM bail be rolled out nationally, as it may have legal and financial implications. .

THE USE OF SECTION 24A(2)

3.53 Section 24A(2) of the Criminal Procedure (Scotland) Act 1995 has been inserted to allow the sheriffs and High Court judges in the pilot areas to impose EM bail ‘*ex proprio motu*’ (at their own discretion) where a person has been charged with or convicted of murder or rape and a decision has been made to grant bail. This means, in effect, that irrespective of whether or not a defence agent applies for EM bail on behalf of his/her client, the sheriff or judge can impose electronic monitoring as an additional condition of bail. This part of the legislation has not been used to date in the pilot courts, even though there have been 22 cases eligible for EM bail under Section 24A(2). These have been dealt with under Section 24A(1) and are broken down in Table 3.12 below:

Table 3.12 Murder and rape offences considered for EM bail

Offences	EM bail granted	EM bail refused	Total
Murder	5	5	10
Rape	0	1	1
Total	5	6	11

3.54 In one murder charge, standard bail rather than EM bail was granted following suitability reports. One Sheriff did report contemplating the imposition of EM bail in a rape case, but, because of the circumstances of the case (the accused was geographically remote from the victim), decided that such an additional safeguard was not necessary.

3.55 In terms of possible reasons why Section 24A(2) may not be used so readily in the pilot courts, one sheriff suggested that EM bail and indeed standard bail *per se* in murder and rape cases may not be used because of the record of offending, but s/he suggested that the accused still had the right to appeal this decision:

On what basis would a sheriff [use Sect. 24A(2)]?... The reality is, people charged with murder, the Crown are invariably opposed to bail... so the prospect of them getting bail at all is not high... if a sheriff refuses somebody bail for murder, they exercise their right to appeal to a High Court judge to see whether he will overturn the sheriff... it would then be a matter for the High Court judge... to decide whether he would be minded to grant bail and if so, to impose a 24A(2) condition.

3.56 Although Edinburgh Appeal Court is outwith the pilot sites, it is nevertheless possible for Appeal Court judges to impose EM bail under Section 24A(2) in cases where appeal against refusal of standard bail in a pilot court has been heard. This provision has likewise not been used in the first 16 months of operation of EM bail pilots. One possible reason for this was raised by a clerk of court, namely that an accused person would need to be released from the Appeal Court sitting in Edinburgh on a non-electronic movement restriction condition (i.e. standard bail with curfew conditions) pending the suitability report. This would have implications for the accused person's guaranteed re-appearance in court for the second hearing 5 days later, but an additional condition has since been created which can be added manually to the bail order requiring the accused to return to subsequent hearings as directed by the judge.

3.57 Although Section 24A(2) has been described by one respondent as 'an additional tool to strengthen bail', it was suggested by several respondents that the high risk and serious nature of murder and rape offences are such that this additional condition would be unlikely to be well used by sheriffs and some sheriffs themselves confirmed this.

3.58 Another issue raised by one sheriff in particular was the fact that where standard bail is *not* opposed by the Crown, it was less likely that sheriffs would be minded to impose an additional condition *ex proprio motu*. As one defence agent argued, imposing EM bail following the acceptance by the Crown of standard bail would only amount to ‘tinkering’, and would not be deemed appropriate by many sheriffs and/or judges. So it is implied that sheriffs will concur with the view of the procurator fiscal in relation to bail, as one sheriff clerk depute explained:

“The court expects the Crown, as an independent prosecutor, to voice concerns of the community... if the prosecutor does not voice concerns, then there is no reason why the court should be awkward about it... if there is no opposition to bail by the Crown, then the sheriff may be taking a personal interest that they shouldn’t be taking.”

3.59 In that respect, it was raised by one sheriff and one counsel for the defence that perhaps the Crown should actively raise the issue of Section 24A(2) with a sheriff or judge, rather than vice versa. As the Sheriff pointed out:

“[Procurators fiscal] may not mention [Section 24A(2)] because they think it’s a matter for the court and not for them, and the court has been so used to dealing with it on the basis of conditions proposed by the Crown that the court doesn’t, itself,... think of it... It could be a proposal to the Crown Depute... that they might suggest it but I think the Crown may have a difficulty about it because the Crown view may simply be... ‘we are going to oppose bail here’.”

3.60 It was suggested by one sheriff during the course of the evaluation that the Criminal Proceedings etc. (Reform) (Scotland) Bill which has been passed by Parliament will firmly place the final decision on bail in the hands of the court. This means that even in cases where the Crown does not oppose bail, the court can decide to impose custodial remand. Arguably in such circumstances, Section 24A(2) could more readily be used by sheriffs as an additional tool of standard bail in cases of rape and murder where they are minded to impose bail. However, in the meantime it may be worth considering how greater discretion can be given to the Crown, as well as to the sheriff, to put forward a motion for EM bail under Section 24A(2) in offences of rape and murder. Whilst it was not possible in this evaluation to tease out the reasons why Section 24A(2) has not been used to date, the Scottish Executive may wish to consider this suggestion as one possible way of tightening bail conditions in these cases.

CONCLUSIONS

3.61 In the first 16 months of operation, applications were known to have been made for EM bail in 306 out of 6,914 (4.4%) potentially eligible cases across the pilot sites: 108 in Stirling, 105 in Glasgow and 93 in Kilmarnock. The application rate was particularly low in Glasgow where despite having 80% of all potentially eligible cases, EM bail was applied for in just one in 50 cases, as oppose to over a fifth of cases in Stirling and one in 10 cases in Kilmarnock.

Of those 306 applications, 116 were granted EM bail, comprising a reduction of 1.7 per cent of all custodial remands, while 75 were refused outright at the first hearing and 115 were refused following receipt of suitability reports. All of these applications came under Section 24A(1) legislation and included 22 cases of murder, attempted murder, rape and attempted rape which, although eligible, were not subject to Section 24A(2) restrictions. Section 24A(2) legislation was not deemed altogether necessary by professional respondents, indeed was described as ‘tinkering’, where the Crown does not oppose standard bail in murder and rape charges.

3.62 The vast majority (94%) of applicants were men and the mean age was 26. Those with fewer presenting offences and those with charges of violence, disorder and breach of bail were more likely to be granted EM bail, and most of the successful applications were from accused charged in the summary rather than the solemn courts. Those who were refused EM bail without the sheriff calling for a suitability report had a significantly higher number of previous offences (15.70) than those who were refused EM bail following a suitability report (9.27) and those who were granted EM bail after a suitability report had been completed (9.35). This suggests that offenders with more extensive offending histories are less likely to be considered appropriate for EM bail. Ironically, however, those with a history of breaching bail are *more* likely to be considered appropriate for EM bail.

3.63 The process of referral for EM bail has operated relatively smoothly over the course of the fieldwork period, although numbers have not increased significantly in the first 16 months. The relatively low application rate over the 16 months of the fieldwork period was suggested by some respondents to be a result of limited awareness amongst out-of-town defence agents and visiting sheriffs regarding the existence and procedures of the pilots. Such criticism could be stemmed by increased publicity amongst relevant agencies and increased liaison between sheriffs and defence agents about the availability of EM bail. This could also apply to the Appeal Court sitting in Edinburgh, where EM bail applications could perhaps be more accessible both for the prosecution and defence agents in cases going to appeal.

3.64 Where suitability reports were called for, the average length of the custodial remand pending such reports was 5.7 days, although it was possible in four cases to complete suitability reports on the day of the first hearing. Although requested in 75 per cent of cases, some 67 per cent of all suitability reports were in effect surplus to requirements because of the low conversion rate, which will have cost implications. However, suitability reports serve an important function in determining the suitability of the accused and the premises as well as confirming the cooperation of the householder. To reduce the time spent on remand in custody pending reports, it may be worthwhile exploring whether more reports could be collated on the day of the first hearing, thus precluding the need for a custodial remand. Were this not feasible, then arrangements within the court setting could be formalised to allow bail officers to conduct interviews with accused prior to their being transported to prison pending the second hearing, in particular in relation to those applications emanating from solemn proceedings where the bail officer may not know of the application until the accused has been remanded in custody pending a suitability report.

3.65 The conversion rate from an application for EM bail to EM bail being granted is also relatively low. EM bail is granted in 38 per cent of *all* applications; in 50 per cent where suitability reports are called for; and in 62 per cent where suitability reports considered EM bail appropriate. A change of sheriff between the first and second hearings may have an impact on whether or not EM bail is granted following a suitability report and one suggestion which might increase the conversion rate is for there to be a presumption to grant EM bail at the second hearing if the suitability report is satisfactory, *unless* extenuating circumstances to do with the case or the accused have arisen between the first and second hearing which make EM bail subsequently inappropriate. Certainly, if EM bail is to become an option for the courts in reducing the custodial remand population across Scotland as a whole, this conversion rate needs to be increased as a matter of priority.

CHAPTER FOUR THE OPERATION OF EM BAIL

INTRODUCTION

4.1 Whilst Chapter 3 included all applicants for EM bail, this chapter focuses on those who completed EM bail during the pilot period, namely April 2005 to July 2006. This comprised 63 individuals, a sub-sample of 54 per cent of the total number of accused granted EM bail during the first 16 months of the pilots.

4.2 This sub-sample cannot be said to be representative of all 116 EM bailees but can give a flavour of what might happen to people on EM bail both in terms of failure to comply and outcomes of breach and trial for the original offence. They had similar characteristics, in terms of age and gender, as the overall sample of those granted EM bail. This chapter describes the types and lengths of EM bail orders, explores failures to comply/breach and gives the outcomes of trials and breaches following an EM bail order. It also explores operational issues and communication between and within the key agencies.

4.3 Once an EM bail order has been granted there are 5 ways in which it may be varied (reviewed) or brought to an end (revoked). First, it may run its course until the accused appears in court for trial and is sentenced or acquitted. Secondly, it may (but not necessarily) be terminated because of a failure to comply with its conditions – for example, as a result of breach action taken by the procurator fiscal. Thirdly, it may be varied or revoked at a bail review hearing, because of changed circumstances in the accused person's life or changed perceptions of the risk s/he poses. Fourthly, the accused may be arrested and remanded in custody on a new offence. Finally, the accused may be sentenced for an outstanding charge which may result in the EM bail order being revoked.

FEATURES OF EM BAIL ORDERS

Restriction 'to' and 'from' a place in EM bail orders

4.4 Fifty-two bailees of the 63 completed cases (83%) were given EM bail orders restricting them *to* a specific address; 9 were restricted *from* an address and 2 were restricted both to and from an address. Of the 9 restricted from an address, 8 emanated from Glasgow and one from Kilmarnock. Of the 8 from Glasgow, 4 were known to present with domestic abuse charges. The two combined orders (restricting both to and from an address) were also made in Glasgow and both were known to present with domestic abuse charges. Domestic abuse cases were sometimes dealt with by orders restricting *from* a particular address. It is unclear why so few orders were made which restricted from rather than to a place, given that not only domestic abuse but also arguably certain assault charges and shoplifting charges could be dealt with in this way. Bail officers and victim support agency staff voiced concerns about the usefulness of this particular condition, appreciating that it provided an additional measure of surveillance of potential offenders, but doubting that it would guarantee that the accused would abide by the restrictions imposed or that victims would feel

comfortable about having the equipment in their home. It was also suggested by one respondent that often incidents of domestic abuse do not necessarily result in the victim wanting to end the relationship (by excluding the accused from her house) or even to press charges, resulting in her not being amenable to housing the equipment.

4.5 In the 52 cases where the accused was restricted to an address, the most common restriction was from 7pm to 7 am (18), and a further 6 were restricted from 6pm until 6am. In the remaining 28 cases the accused were restricted generally overnight but the curfews varied from person to person, e.g., 3 were restricted from 7.30pm to 7.30 am and another 8 were restricted from 8pm until 8am. In some cases the second half of the day was also restricted, e.g., 1.30 pm until 7.30 am and in another case, the curfew was from 3pm until 12 noon (21 hours). A further 5 accused were restricted to their home address for 24 hour periods, although one of these was granted 2 6-hour breaks in curfew 2 days a week, in order to attend college. Of the 9 accused who were restricted *from* a place, 8 of these cases were 24 hour restrictions and the other was between 7pm and 7am.

Reviews of EM bail conditions

4.6 Six EM bailees had been recorded as having review hearings to attempt to change the conditions of their EM bail orders, either their bail address or because of changes in circumstances (e.g., employment) and in one of these cases there were 2 review hearings. Not all of these 6 individuals had completed a period of EM bail at the time the fieldwork had ended and in none of the cases was there a record of why the change of conditions had been requested. The outcome is known in only 3 cases, and each of these was successful. Two of these review hearings were to vary the curfew times (one was held 2 weeks after starting the EM bail order and the other 8 months after starting) and the third was to change the 'restricted to' address, after 7 months.

4.7 When an EM bailee wishes to change the conditions of his/her bail order, there are specific legislative requirements which have to be followed and procedures are in place for this to happen. The defence agent should contact the clerk of court who will set a date for a review hearing no sooner than 5 days hence and will request a further suitability report. The bailee should either be remanded in custody pending this report or remain on electronic monitoring at the original address until the review hearing. The Procedure Manual states that if an accused wants to change his/her address then the bail officer must make contact with the new householder in the same way as in the original application, in case there are any problems with the new address in terms of suitability of the premises or the particular circumstances of the accused. The defence agent also needs to ensure that the sheriff knows s/he is dealing with an EM bail review request and that, pending that decision, the accused should remain at the original address where possible. It is not unusual for bailees to want to notify a change of bail address, but this not only has workload implications for the clerks of court and other court personnel (and also, down the line, for Reliance/Serco, removing and reinstalling equipment) but also cost implications as well.

4.8 It is perhaps surprising that only 6 EM bailees were known to have had review hearings out of the total of 116 EM bailees. As will be seen below, failures to comply with EM bail conditions included not being able to comply with curfew restrictions and having householders withdraw consent. It would seem plausible that requesting a review hearing could, in such circumstances, enable curfew times to be modified or potential new addresses to be negotiated. It may well be that defence agents and/or their clients are not fully aware of the option to review EM bail conditions, and that this type of awareness raising might lessen the likelihood of failures to comply resulting in breach proceedings being brought.

FAILURES TO COMPLY AND BREACH

4.9 Breach of EM bail can only be decided by the court, following notification of ‘failures to comply’ by the monitoring company to the police and by the police to the procurator fiscal. In total, 44 (70%) of the 63 EM bailees allegedly failed to comply with their orders, while 19 (30%) undertook a period of EM bail without coming to the attention of the police.

4.10 Table 4.1 below shows the number of failures to comply with EM bail conditions during the fieldwork period per individual. As can be seen from these figures, 30 per cent of accused completed a period of EM bail without being recorded as coming to the attention of the police, whilst 33 per cent failed to comply only once.

Table 4.1 Number of failures to comply with EM bail

No. of failures to comply	No. of bailees	%
None	19	30
One	21	33
Two	9	14
Three - five	10	16
Six - eight	4	6
Total	63	100

4.11 Because there are various elements involved in what is recorded as a ‘failure to comply’ with an EM bail order, it is necessary to tease these out before considering the types of action taken which may or may not result in breach. Failures to comply consist of ‘voluntary’ and ‘involuntary’ actions on the part of the bailee or the householder. Voluntary failure to comply includes:

- Failure to install the equipment because the accused is not available
- Wilful damage of the equipment (strap tamper or case tilt)
- Not returning for a curfew period
- Leaving during a curfew period
- Being absent without leave
- Entering a restricted area
- Arrest for a further offence or breach of bail

4.12 Involuntary failure to comply includes:

- Mitigating circumstances such as hospitalisation or an inability to remain under curfew because of an emergency
- Withdrawal of consent for the equipment by the householder.

4.13 If the equipment fails or is set off accidentally rather than being wilfully damaged, this is not included in our assessment of ‘failures to comply’, although such incidents will be reported to the police by Reliance/Serco concurrently with the monitoring company investigating a possible equipment fault. A further report will be sent to the police should equipment sensitivity or failure be confirmed as the *sole* reason for the alarm being triggered. Certainly, from the bailee interviews, it was suggested that a recorded failure to comply could result from over-sensitive equipment as well as from wilful damage *per se*.

4.14 It seems that it is the younger age group that has most difficulty complying with EM bail conditions. As one young EM bailee respondent at interview commented: “I just couldn’t be bothered sticking to the terms”. Twenty-three (79%) of the 29 bailees aged 20 and under allegedly failed to comply with one or more conditions of their bail order, whereas only 21 (62%) of the 34 in the 21+ age group allegedly failed to comply with one or more conditions. Those with presenting offences of disorder, violence and bail aggravation were more likely to fail to comply compared with those presenting with theft or drug offences. Indeed, those accused with presenting offences involving bail aggravation (31 of the 44 EM bailees who allegedly failed to comply) are the most likely to fail to comply with EM bail conditions.

4.15 There was no significant difference in failures to comply across the three sheriff courts, in terms of age or bail aggravated presenting offences, with Glasgow EM bailees failing to comply at least once in 62 per cent of cases, Kilmarnock in 77 per cent of cases and Stirling in 76 per cent of cases.

4.16 Forty-four per cent of initial failures to comply happened within the first 2 weeks of an EM bail order being made. Nine accused were recorded as having failed to comply within the first week, 9 in the second week, 8 in the third week and 7 in the fourth week of starting their order. Thereafter, the numbers who fail to comply for the first time reduces. These initial failures to comply consisted of leaving during a curfew time, not returning at start of curfew, entering a restricted zone, strap tamper, failure to install the equipment and householder withdrew consent.

4.17 The numbers and frequency of failures to comply of a voluntary or involuntary nature are given in Table 4.2. Often EM bailees were involved in more than one type of incident. It is not possible to gauge the extent to which these infringements were consciously made or because of mitigating circumstances (i.e., voluntary or involuntary failures to comply), since this is often not recorded by the monitoring company and cannot be cross-checked with police files.

Table 4.2 Type and frequency of failures to comply

Failures to comply	No of bailees	No. of incidents	Total no. of incidents
Left during curfew	20	In 12 cases the accused left once, in 4 cases twice, in one case 3 times and in 3 cases 4 times	35
Did not return	18	In 11 cases the accused was late for curfew once, in 5 cases twice and in 2 cases 3 times	27
Strap tamper or case tilt	17	In 14 cases this happened once, in 2 cases twice and in one case 3 times	18
Householder removed consent	9	In each case this happened once, and in one case consent was removed by the person whose address the accused was restricted <i>from</i> .	9
Failure to install	6	In each case this happened once	6
Absent without leave	6	In each case this happened once	6
Entered restricted area	3	In each case this happened once	3

4.18 The vast majority of failures to comply were directly linked to the electronic component of the EM bail order, either from being recorded as not keeping to electronically monitored curfew times (without the equipment such incidents of breaking a curfew would arguably have gone undetected by the police if an offence was not seen to be committed) or from interfering with the equipment. In order to ascertain whether the most common reasons for failing to comply – leaving during a curfew or failing to return for a curfew – were in any way related to more stringent restriction times (as opposed to mere electronic detection), the number of hours that these accused were restricted to an address was calculated. The majority of failures to comply with curfew times were curfewed for 84 hours per week, which was the most common curfew time given. Seventy-four per cent of these EM bailees were recorded as having failed to comply at least once compared with 46 per cent of those curfewed for 168 hours per week, but this is not statistically significant. Therefore, there was no apparent link between the number of restriction hours and an accused person’s ability to comply with the curfew requirements.

4.19 It would thus seem that failures to comply were not influenced by the number of hours of curfew but merely by the fact that the equipment triggered a police notification when curfews or other conditions were infringed.

4.20 Table 4.3 below shows the weekly curfew lengths of accused persons and whether they failed to comply. The table also shows the most common curfew length as 12 hours per day (84 hours per week), most often from evening until morning, e.g., 8pm until 8am. The shortest length of time an accused was curfewed during the week was 56 hours (a curfew from 9pm until 5am) and the longest was a 24 hour curfew 7 days a week, of which there were 11 in total, although only 3 of these were restricted *to* an address, with the other 8 restricted *from* an address. One restricted from an address was only for 12 hours overnight.

Table 4.3 Hours of curfew by failure to comply

Hours of curfew per week	No. of bailees		Total
	No failure to comply	Failed to comply at least once	
56.0	1	1	2
70.0	0	1	1
77.0	1	2	3
81.5	0	1	1
84.0	9	29	38
90.0	0	1	1
112.0	0	1	1
132.0	0	1	1
147.0	1	1	2
150.5	0	1	1
156.0	0	1	1
168.0	6	5	11
Total	18	45	63

4.21 The difficulties for bailees and families alike from 24 hour curfews to an address were raised at interview, notably by defence agents. Two of the 3 24-hour orders to date have emanated from Stirling with the third from Kilmarnock. Of the 3 cases restricted to an address for 24 hours, one successfully completed his period of EM bail without any failures to comply, whereas one of the other 2 failed to comply once and the other twice. Whilst 11 bailees in total have been curfewed for 24 hours a day (168 hours a week) throughout the pilot period, 8 of these were curfewed from a place rather than to a place. Glasgow Sheriff Court granted 7 of these 8 24-hour curfews to remain away from an address, possibly as a result of the sheriffs in the domestic abuse court in Glasgow seeing the benefits of EM bail orders for victims.

4.22 Of the 9 orders restricting EM bailees from an address, only 3 failed to comply. However, numbers are too small in these cases to make any claims about the success or otherwise of the equipment in promoting compliance with exclusion zones. However, fuller information is given below on the circumstances of these 3 cases of non-compliance in restricted from orders. In all 3 cases records suggest that no proceedings were brought.

- In the first case, the accused had been charged with breach of the peace following a domestic abuse incident. He entered the restricted area for a period of 4 minutes, 30 days after being granted EM bail. No action was taken by the police and no report was sent to the procurator fiscal. This incident was the individual's only reported failure to comply throughout the bail period.
- In the second case, the accused failed to comply on 3 occasions, the first being when he entered the restricted area 6 days after being granted EM bail. He then was absent without leave a week later and was also fitted with a new tag twice, the second time to a different address.

- The third accused failed to comply once for entering the restricted area 7 days after being granted EM bail. He had initially been charged with a breach of the peace following a domestic abuse incident but was found not guilty 28 days after being granted EM bail.

Action taken by the police following failure to comply

4.23 With EM bail as opposed to other electronic monitoring orders, Reliance/Serco have to report such failures to comply to the police by telephone within 15 minutes of the alarm being triggered and by fax within 2 hours. The police have 2 courses of action available to them: a) to take no further action because the failure to comply was either involuntary or accidental or b) to arrest the bailee for voluntary failure to comply. As with breach of any other bail condition, it is up to the police whether to report the breach to the procurator fiscal. It is then the role of the procurator fiscal to mark cases as breach of bail where deemed in the public interest.

4.24 Responding to failures to comply may depend on other priorities at the time of notification, but they will be dealt with as a matter of urgency by police officers, not least because of the accuracy and immediacy of the electronic component. While it was acknowledged that there may be some instances where the police could use discretion in determining whether or not an EM bail condition had been infringed (i.e. if someone had inadvertently stepped outwith the boundaries of their restriction area), the police generally left it to the procurator fiscal to decide how to deal with it and indeed one Procurator Fiscal confirmed that the police ‘do things by the book’. One police officer highlighted the sensitivity of the issue for the police when dealing with an order of the court, irrespective of the circumstances:

“The discretion is...it’s a bail condition that’s set by the court and that kind of limits us as far as discretion goes, you know...it depends on what the person tells us at the time but really the vast majority of cases are going to be dealt with as a custody...almost regardless of what they say.”

4.25 In order to assess the extent of police involvement in failures to comply incidents, a sample of 66 telephone calls made by Reliance/Serco to Strathclyde Police (39 calls relating to Glasgow and Kilmarnock areas) and Central Police (27 calls relating to Stirling area) were scrutinised through a search of the Police database for telephone contact between the monitoring company and the police switchboard. This search included information on the reasons for calls, timescales for responding to incidents, the number of officers involved, the time taken to resolve the issue and the outcome of the incident. The 66 calls generated a total of 77 suspected failures to comply by EM bailees.

4.26 Table 4.4 below gives the reasons recorded on police files for the notification of failure to comply. In 11 cases 2 or 3 reasons for failure to comply were recorded per case but for the majority (55 of the 66 calls) there was only one incident of failure to comply.

Table 4.4 Reason for telephone contact between Reliance/Serco and the police

Reason	No.
Left during curfew	24
Did not return	20
Strap tamper or case tilt	15
Accused on legitimate business elsewhere	4
Power failure notification	3
Absconded	3
Not available or refused to be tagged	3
Householder withdrew consent	2
Discrepancy in bail conditions*	2
Entered restricted area	1
Total	77

* In one of these incidents, the accused was mistakenly bailed to 2 addresses at the same time, and so was always breaching at one of them.

4.27 In 36 of these calls, the time lapse between the phone call by Reliance/Serco and the dispatch of police officers to deal with the situations varied from 3 minutes to just under 12 hours (this latter time was due to the notification being about a problem with the equipment rather than an infringement by the accused). The number of police officers involved in responding to all 66 phone calls also varied from no officers being involved in 26 cases to 6 officers being involved in 2 cases, as shown in Table 4.5 below.

Table 4.5 Officers involved in failure to comply notifications

Number of officers involved in each incident	No.
No officers involved	26
One officer	8
Two officers	24
Four officers	6
Six officers	2
Total	66

4.28 The above table shows that in 39 per cent of cases sampled, no police officers were involved beyond the switchboard operator. In the 2 cases where 6 officers were involved, both accused had absconded and in one case it took 54 hours to arrest the accused; however, it could well be that these 6 officers were involved consecutively (because of changes of shift, for example) rather than concurrently.

4.29 The length of time recorded for actual disposal and closure of a case resulting from these phone calls ranged from less than one hour (19 cases) to, in one case, 264 hours with a median average time of 4 hours. However, in the case taking 264 hours, there was a note on file that the incident was 'cleared up' in 3 hours, involving 4

officers, but actual closure of the case may have happened following the report to the procurator fiscal and disposal of the case by the Crown.

4.30 In 14 of these 66 phone call incidents, a report was sent to the procurator fiscal and in 13 cases the bailee was arrested. Fifteen such calls, however, were recorded as ‘for information only’ by the police. These are instances where the monitoring equipment had recorded an infringement but, following clarification with the bailee, the monitoring company verified this was not a case of non-compliance but informed the police nevertheless, as per their contractual obligations. Faults with the equipment or a power failure were recorded in 3 cases.

4.31 It should be stressed that not every failure to comply necessarily results in the police reporting the incident to the procurator fiscal or the procurator fiscal initiating breach proceedings. In a minority of cases recorded following the above 66 calls, no further action was taken by the police. In 8 of these cases, the accused apparently left the restricted to address on one or more occasions and in 6 cases, the accused was recorded as failing to return for a curfew. These would have been instances where the police used their discretion not to report incidents to the procurator fiscal presumably because of mitigating circumstances, even though these were obvious infringements detected by the equipment.

Action taken by the procurator fiscal following failure to comply

4.32 Data on initiated breach proceedings were accessed via the offices of the procurator fiscal in each area. Whilst the monitoring company has no discretion in whether or not to notify the police of any suspected failures to comply, and police and thereafter the procurators fiscal may choose to take no further action. Thus, these data do not necessarily match the number of recorded instances of failure to comply described earlier. As outlined in Table 4.6 below, these data apply to 68 cases of potential breach by a total of 31 bailees: 11 of the 29 EM bailees in Glasgow who had completed; 9 of the 13 in Kilmarnock⁶ and 11 of the 21 in Stirling. The percentage in brackets in the total column represents these 31 EM bailees as a proportion of the total number of closed cases per pilot area. Each instance of breach proceedings may include one or more allegations of failure to comply with bail conditions and/or of new offences.

Table 4.6 Breach proceedings brought by the procurators fiscal

No of times breach proceedings were brought against an EM bailee	No. of cases in Glasgow	No. of cases in Kilmarnock	No. of cases in Stirling
Once	8	2	4
Twice	3	3	4
Three times	0	1	2
Four times	0	1	0
Five times	0	1	0
Seven times	0	1	0
Nine times	0	0	1
Total	11 (38%)	9 (69%)	11 (52%)

⁶ Although there was a record of one further case in Kilmarnock where breach proceedings were brought, the full case history was not available.

4.33 Procurators fiscal initiated breach proceedings on 68 occasions relating to 31 individuals accused of a total of 124 incidents of new offending or infringements of bail conditions, although the majority of EM bailees in all areas had only one instance where breach proceedings were brought. It is not possible to identify whether these breaches, where confirmed, resulted in EM bail orders being revoked or continued until trial for the original offence. As can be seen from the above figures in brackets, Kilmarnock was the court most likely to initiate breach proceedings (69% of all completed cases), compared with Stirling (52%) and Glasgow (38%).

4.34 In terms of new offences, Table 4.7 below lists the number of new offences recorded on the Crown Office and Procurator Fiscal Service’s databases for Glasgow, Kilmarnock and Stirling where breach proceedings were instigated. Again, the figures in brackets in this table denote the number of EM bailees accused of committing new offences on EM bail as a percentage of the total number of EM bailee completers per pilot area.

Table 4.7 Number of new offences associated with breach proceedings

New offences whilst on EM bail (excluding breach of bail)	No. of cases in Glasgow	No. of cases in Kilmarnock	No. of cases in Stirling
One	3	2	0
Two	1	2	4
Three	0	0	1
Four	1	1	1
Five	0	0	1
Six	0	1	0
Fourteen	0	1	0
Sixteen	0	1	0
Total	5 (17%)	8 (62%)	7 (33%)

4.35 Again, Kilmarnock had the highest proportion of new offences recorded by those who had completed EM bail, followed by Stirling and then Glasgow. Whilst Kilmarnock and Stirling had a similar proportion of cases of new offences compared with breach proceedings overall, Glasgow had a much lower incidence than the other two areas of new offending compared with breach of other conditions of EM bail orders.

4.36 Whilst the majority allegedly committed one or 2 new offences whilst on EM bail, numbers are too small and the period of study too short to make any assumptions in relation to offending on bail more generally. Likewise, it was not possible to determine whether the alleged infringements of the bail orders (e.g., new offences) which led to breach proceedings being brought were made during or outwith the periods of restriction. If failures to comply were made during restriction periods, there is obviously more likelihood of the accused being detected, not least because of a lack of an electronic alibi.

Action taken by the courts following failure to comply

4.37 Whilst Table 4.1 showed that 44 EM bailees failed to comply in 104 separate instances as recorded by the monitoring company, of these, 31 EM bailees had breach proceedings brought against them by procurators fiscal. Table 4.8 below shows the reason for breach proceedings being brought against these 31 individuals.

Table 4.8 Reason for breach proceedings being brought

Court	New offence only	Breach of bail conditions only	Both	Total
Glasgow	3	6	2	11
Stirling	1	4	6	11
Kilmarnock	2	2	5	9
Total	6	12	13	31

4.38 The following two tables show the number of incidents and number of bailees involved in breach of bail conditions (Table 4.9) and those involved in new offences (Table 4.10), where known, for these 31 EM bailees. It should be borne in mind that these figures only relate to those EM bailees who were charged with breach of bail or a new offence within the jurisdictions of Glasgow, Kilmarnock and Stirling. Breach proceedings on those who were charged with a new offence or breach of bail outwith the pilot areas cannot be collated, since their records will be held in outlying Crown Office and Procurator Fiscal Service offices.

Table 4.9 Outcomes of breach proceedings for breach of bail

Number of breach proceedings	Found guilty	Found not guilty	No proceedings	Trial pending	Total
Number of instances	29	5	13	6	53
Number of bailees	18	5	10	2	35*

* 7 bailees account for two outcomes each, one for three outcomes and the remaining 18 bailees had one outcome only.

Table 4.10 Outcomes of breach proceedings for new offences

Number of breach proceedings	Found guilty	Found not guilty	No proceedings	Trial pending	Total
Number of instances	29	18	17	9	73
Number of bailees	12	6	8	3	29*

* 4 bailees account for 2 outcomes each, 3 for 3 outcomes and the remaining 12 bailees had one outcome only.

4.39 Where breach proceedings were brought against those charged with breach of bail conditions, such breaches related specifically to the electronic monitoring component of the order, which included leaving during a curfew, tampering with the strap, returning late for a curfew and entering a restricted area. The majority were as a result of breaking curfew conditions, although it cannot be deduced from this that the electronic monitoring component *per se* was the precipitating factor in these cases coming to court. It can be as likely that such failures to comply, as with standard bail curfew conditions, come to the attention of the police in the course of their duties, as a result of other police surveillance operations or possibly as a result of a ‘tip off’ from a member of the public. Equally, where breach proceedings are not brought, this does not imply a finding of not guilty but may mean that the evidence was insufficient or other circumstances precluded the case from going to court. Being unable to interrogate the Crown Office files in these cases, because of Data Protection issues, it is not possible to determine whether the lack of evidence or circumstances were in any way related to the electronic component of the EM bail order or because of other judicial requirements.

4.40 Table 4.11 shows the disposals following a guilty verdict for breach of bail conditions. It should be pointed out that not every breach results in a revocation of the EM bail order and outcomes of breaches can range in severity from no further action to imprisonment. Certainly, 3 sheriffs and 3 procurators fiscal at interview suggested that sheriffs’ decisions in such cases depended on the circumstances of the breach as to whether to remand the person in custody, fine them, give them standard bail or continue with the EM bail order.

Table 4.11 Sentences given following guilty verdicts for breach of bail

Sentence	Glasgow	Stirling	Kilmarnock	Total
Imprisonment	4	2	8	14
Admonishment	1	4	0	5
Fine	0	1	1	2
Community Service	1	1	0	2
Deferred sentence	0	1	0	1
Referral to Reporter	1	0	0	1
Sentence not known	1	3	0	4

Perceptions of the electronic monitoring component

4.41 There were mixed messages coming not only from the quantitative data about breach but also from discussions with respondents. Whilst some felt that EM bail would increase the possible breach rate, because of the fact that they were dealing with high tariff, high risk individuals, others felt that the breach rate on EM bail would be either the same or less than on standard bail because of the electronic movement restriction. Either way, most agreed that if someone was going to fail to comply, it would tend to be in the first few days of an EM bail order, although as was seen earlier in this chapter, most accused fail to comply for the first time within the first month of an order. Respondents also suggested that such failures to comply were ‘transparent’, in other words readily identifiable by the sophistication of the monitoring equipment.

4.42 Five of the 31 EM bailees and family members interviewed suggested that there had not been any problems with the equipment. The majority of bailee and family respondents, however, had experienced a range of problems with the monitoring equipment. In the case of 13 respondents, these problems appeared significant and ranged from false alarms being set off allegedly inadvertently by people or pets in the vicinity of the box and alleged technical problems with the monitoring boxes and/or straps themselves.

4.43 In some instances, over-sensitive EM equipment can result in Reliance/Serco reporting failures to comply where there was no obvious wilful infringement of the conditions of EM bail. From bailee and family interviews it would seem that the equipment sometimes triggered an alarm accidentally which resulted in Reliance/Serco staff and the police visiting monitored premises both day and night. For at least 3 families, difficulties with the equipment, which may arguably have resulted from their own actions, had been such that police were called out late at night. These call outs were said to be distressing to the respondents and had, in one case, led to a parent asking for the equipment to be removed. Equally, there was some criticism of monitoring staff in one area at least where certain family members felt that the staff were not particularly helpful when contacted to ask for advice regarding court appearances or other commitments during restriction periods. It should be noted that the monitoring company can only act to install or remove equipment if the company is in receipt of an order from the court and the monitoring staff are not able, therefore, to modify the periods of restriction or silence the equipment because of court appearances. The fact that the alarm was therefore triggered despite notifications to the company by the family resulted in many families feeling aggrieved or frustrated by the equipment and the process. Equally, equipment can be in place erroneously: for example, one bailee reported being tagged for several days beyond the period stipulated by the court order because the monitoring company had not removed it when required (perhaps because of a lack of notification from the court), and another bailee was reportedly tagged at 2 addresses simultaneously.

The length of EM bail orders

4.44 The length of EM bail orders varied from 5 days to 217 days for the total sample of 63 completers, with a mean average of 62 days, a median of 46 days and a mode of 29 days. Thirty-seven per cent of EM bail orders were revoked within 40 days, 43 per cent were revoked within 90 days and the remaining 20 per cent were revoked between 91 and 217 days following the start of an EM bail order.

4.45 The length of an EM bail order may have a direct or indirect impact on one's ability to comply with its conditions. Because EM bail is a direct alternative to a custodial remand, it is deemed most appropriate that summary trials be heard within 40 days and solemn cases within 140 days of an accused being granted EM bail. However, during the course of the pilots, this proved unrealistic, especially for summary cases, because of pressure of court business and subsequent prioritising of cases. Adjournments are sometimes unavoidable, and EM bail, as with any other bail condition, is required to fit in with such court processes. Reasons for such adjournments include: forensic laboratories needing longer than 40 days to test for

drugs, witnesses not being contactable, the needs of vulnerable witnesses or children being accommodated, evidence or productions being amassed, videos or DVDs being prepared, more urgent cases being given priority on court time, and legal aid issues being negotiated. In practice, therefore, it cannot be guaranteed that EM bail summary cases will be heard in the stipulated 40 days.

4.46 Judges and sheriffs welcomed the additional clause in the legislation to allow a case to be heard within 40 days for accused persons on EM bail as well as those remanded in custody. One Sheriff lamented the “culture of adjournment” within the court system and felt that a 40 day limit was preferable. Whilst Glasgow is the busiest sheriff court overall, it was also in this instance able to process EM bail orders relatively timeously. Only 10 per cent of their EM bailees spent more than 90 days on bail compared with just under a third of EM bailees in Kilmarnock and Stirling. However, it was suggested at interview by one respondent that Glasgow Sheriff Court does not have a ‘culture of adjournment’ because they try to ensure a faster throughput of cases.

4.47 While recognising that delays to trials are necessary to ensure ‘justice’ for the client and victim, defence agents in particular were wary of their clients being kept on EM bail for longer than the stipulated 40 day period for custodial remand prisoners – possibly because of the potential to fail to comply, although as the figures above suggest, some accused can manage lengthy periods on EM bail without coming to the attention of the police.

4.48 There was no significant increase in failures to comply by number of days on EM bail, suggesting that failures to comply are related to factors other than length of bail – e.g., age of accused, offending propensity, current circumstances, etc. Length of EM bail orders will also vary according to how the court responds to a breach of EM bail, whether by fining the person, continuing the EM bail order or possibly remanding the accused in custody.

4.49 The 23 EM bailee respondents had been on EM bail for varying lengths of time at the time of interview although many could not stipulate the exact time. Five reported having been on an order for under one month, whilst 6 suggested it had been for between one and 2 months. Five suggested their orders were for between 2 and 4 months, and 2 for between 6 and 8 months. One of the reported difficulties facing both bailees and family members was the uncertainty about pending court cases and the length of time that the electronic monitoring equipment was likely to be in place not least because the trial date, although set at the time of the second hearing, may well be postponed for the reasons cited above. However, 2 family members indicated that when they had given their consent to have the bailee in their home, they had not envisaged that the monitoring would continue for as long as it did. If they had known the length of EM bail in advance, they reported that they would not have given their consent. Indeed, as was seen earlier in this chapter, 9 householders were reported to have withdrawn consent for the monitoring equipment in their house. Out of 44 EM bailees who failed to comply, this is perhaps not as large a proportion as one might expect, given the difficulties for household members in accommodating not only the accused on an intensive basis but also the equipment for often lengthy periods. Certainly, family members at interview indicated that if the EM bailee was

unemployed and spent prolonged periods at home (particularly where curfew conditions were lengthy) then this could cause additional tensions within the household. Three EM bailee respondents, however, who themselves had responsibility within the household (e.g., as parents) indicated that they felt that the restriction to the home had been helpful, requiring them to avoid situations which may have led to potential offending. Nevertheless, the success of the pilots must certainly be attributable in part to the goodwill and resilience of the families housing the monitoring equipment.

4.50 The proportion of EM bail orders that were revoked at the time of the trial for the original offence was 81 per cent of all EM bail orders (51 of the 63 completed). In 12 cases (19%) EM bail orders were revoked prior to trial for other reasons. In 2 of these latter cases the accused died before the end of the bail period. In 5 cases the householder removed consent, in 4 cases the accused was remanded in custody on another charge and in one case the accused had the bail order revoked after breaching his EM bail order 4 times in as many weeks.

4.51 Table 4.12 below gives the number of days between the initial application for EM bail and the trial outcome for a sub-sample of EM bail completers (28) and a sub-sample of those refused EM bail and remanded in custody during the fieldwork period (45), to enable a comparison to be made for the two groups between lengths of time on bail or remand prior to trial.

Table 4.12 Time from EM bail application to trial outcome

Time from initial EM bail application to trial outcome (in days)	EM bail granted and completed	EM bail refused	Total
1-30	4 (14%)	15 (33%)	19
31-60	12 (43%)	15 (33%)	27
61-90	4 (14%)	9 (20%)	13
91-120	3 (11%)	2 (5%)	5
121-150	4 (14%)	1 (2%)	5
151-180	0 (0%)	3 (7%)	3
180+	1 (4%)	0 (0%)	1
Total	28 (100%)	45 (100%)	73

4.52 Whilst 43 per cent of EM bail applicants and 33 per cent of those refused EM bail waited 31 - 60 days for trial, those remanded in custody having been refused EM bail were more than twice as likely to have their trials heard and sentence passed within 1-30 days compared with those granted EM bail. This suggests that those remanded in custody are at an advantage in having their trials heard sooner than those given EM bail.

4.53 In Chapter 3, it was noted that some respondents, defence agents in particular, felt that an advantage of EM bail was that the accused was in the community and thus more readily available to prepare for his/her impending trial. Whether this availability impacts on the preparedness or otherwise of the defence in gathering the necessary evidence and witness statements cannot be gauged from these data, although the

longer both custodial remand and bailed individuals wait for their trials to be heard, the greater the resource implications. Further research on lengths of remands (both custodial and bail) would enable an examination of the likely impact of length of remand on preparation and timing of trials and the subsequent cost implications.

Outcomes of trials for the original offence

4.54 Data on the outcome of trials for the original offence, where trials had completed and outcomes were known, were mainly gathered through complaint files or COP1 database records, backed up by data held by Reliance/Serco. These are given in Table 4.13 below, and relate to 46 EM bailees, 36 who were refused EM bail following suitability reports and 25 who were refused EM bail outright. Outcomes depend entirely on the sheriff and the circumstances of the case, rather than on bail *per se*. Nevertheless, it is interesting to note the differences in outcomes between those accused granted and complying with EM bail compared with those refused it and remanded in custody.

Table 4.13 Final disposals for the original offence for those granted and refused EM bail

Final disposal for original offence	EM bail granted and completed	EM bail refused following suitability report	EM bail refused outright
Custody	14 (30%)	19 (53%)	16 (64%)
Community-based disposal	9 (20%)	8 (22%)	5 (20%)
Not guilty	10 (22%)	3 (8%)	3 (12%)
Deferred for good behaviour	6 (13%)	1 (3%)	0 (0%)
Fine	5 (11%)	2 (6%)	1 (4%)
Admonished	2 (4%)	3 (8%)	0 (0%)
Total	46 (100%)	36 (100%)	25 (100%)

4.55 Those granted EM bail had fewer previous offences than those refused EM bail outright, and this is reflected possibly in the fact that the completers in this sample were less likely to receive a custodial sentence than those refused EM bail outright, and marginally less likely to receive a custodial sentence than those with similar previous offences who were refused EM bail following a suitability report. Community-based disposals were equally likely to be given to all 3 groups, whilst EM bailee completers were more likely to have a sentence deferred for good behaviour than those refused EM bail. The completers were also more likely to be found not guilty for the original offence.

4.56 However, when failures to comply are factored into the equation on final outcomes, the figures suggest that there is a correlation between failing to comply with EM bail and likelihood of custody as a final sentence for the original offence. Again it should be stressed that the numbers are small and not statistically significant. One caveat on these data is that although EM bailees are seen as potentially high risk at the time of application for EM bail, often with lengthy offending histories (up to 57 previous offences), their period on bail should bear no relation to the outcome of the

final trial for the original offence. Evidence presented at trial and other potentially mitigating circumstances are the determining factors in findings of guilt or innocence and in sentencing. These data are presented only to demonstrate that many EM bailees, although high tariff in relation to bail, are often lower tariff in relation to sentencing, and that such sentencing is not consistent across or necessarily within the pilot courts.

AGENCY CAPACITY AND INTER-AGENCY COOPERATION

4.57 From the outset of these pilots, with the setting up of the thorough consultation process described in Chapter 1, it has always been emphasised by respondents that inter-agency cooperation and information sharing is crucial to the success or otherwise of the exercise. It is apparent from this evaluation that the successful implementation of EM bail has indeed been based on the close cooperation and mutual understanding of the various agencies, as described below. Inter- and intra-agency arrangements described below relate specifically to the police, social work department, the Scottish Court Service, the Crown Office and Procurator Fiscal Service and Procurator Fiscal Service and defence agents. Although the Scottish Prison Service (SPS) is included as having cost implications for EM bail in Chapter 6, it was not deemed necessary to explore inter-agency or workload issues with SPS representatives in relation to EM bail *per se*.

Training and guidelines

4.58 All participants in the EM bail pilots had received relevant training, although additional training in relation to bail legislation and the implementation of EM bail was not seen as necessary for the majority of court-based professionals involved in the pilots. Discussions with judges and sheriffs revealed that they were satisfied with the advice given to them by clerks of court or other court personnel in specific procedural matters relating to EM bail. For the police, information and guidance on EM bail was largely ‘cascaded’ through the Association of Chief Police Officers, which compiled its own written Standard Operating Procedures, intended for use as a practice template for the pilot areas and other Scottish forces. However, no formal internal training on EM bail was currently deemed necessary within the Police Force. Equally, the Crown Office and Procurator Fiscal Service issued their own guidance to staff prior to the pilots commencing, although court personnel generally were used to adapting to changes to legislation or court procedures and tended to learn the new processes ‘on the job’. Likewise, the Scottish Court Service respondents did not suggest needing further training following the initial Scottish Executive presentation (see below) and the guidance given in the Procedure Manual. Control centre staff at Reliance/Serco had to learn new procedures to deal with EM bailees, which differed from the procedures used with RLOs, for example, not least in only having 15 minutes to notify the police if and when a violation occurs. This initially created a high degree of anxiety among control centre staff, particularly as EM bailees seemed at the start of the pilots to be generating a lot of work because of failures to comply. In terms of social work training, not all bail officers were social work trained, but this was not seen as an impediment to them writing suitability reports, although where child

protection issues arose during the course of assessing someone's suitability, the bail officer would double check the circumstances with a senior manager. No ongoing training was currently deemed necessary other than the standard induction of new staff.

4.59 The presentations given by Scottish Executive personnel alongside staff from Reliance prior to the pilots commencing were seen as a useful training tool in explaining the implementation of EM bail. However, in terms of the legislation and procedures, there has been a mixed reaction to the Procedure Manual produced by the Scottish Executive which laid down the stipulated practice for all agencies involved and contained specific extracts from the new legislation with explanatory notes. Whilst some respondents thought it was 'excellent', others pointed out certain inaccuracies or omissions: 'not every eventuality has been considered', as one defence agent put it. However, the Steering Group and Local Liaison Group members have worked closely with the Scottish Executive to ensure that the manual is clear, accurate and up to date, and considers as many eventualities as possible which arise during the course of the pilots.

Agency workload implications

Police

4.60 Whilst all police respondents generally felt that their current workload was manageable, they also suggested that if EM bail was applied more widely, this would have staffing and wider resource implications for the service. EM bail has created a new responsibility for the police, which when combined with other recent developments such as ASBO enforcement and multi-agency partnerships to deal with sex offenders, has put increased pressure on the force generally. It is likely that the police will have an increased workload in relation to EM bail because of the cumulative effect of increasing numbers being tagged in the community over the course of the pilot period and the subsequent impact that increasing acts of non-compliance will have on their ability to respond. However, it is a more reactive service (awaiting notification of non-compliance from Reliance/Serco) than the proactive policing required to monitor non-electronic curfews.

Social Work Department

4.61 The only agency which received additional resources from the Scottish Executive to implement the EM bail pilots was the social work department in each geographical area, because of the anticipated increase in workload for bail officers in writing suitability reports for the courts which they would not otherwise be doing in respect of accused on bail. Anticipating exact workloads was a difficult task given the uncertainty around the potential uptake of EM bail. In Stirling, (where a bail information scheme was already in place) one full-time bail officer was appointed with part-time clerical assistance. In Kilmarnock, 2 part-time bail officers were appointed to undertake the additional work and these posts were contracted out to SACRO which already had the contract to undertake bail supervision in the area. In Glasgow (which also has a bail supervision scheme in operation), 2 additional full-

time bail officers and a full-time clerical worker were appointed to cover both the sheriff and the high courts. These new workers were not dedicated staff for EM bail but shared all bail responsibilities with existing bail officers. Given the lower than anticipated application rate for EM bail, new bail officers were able to diversify and work with all aspects of bail, including bail information and supervision schemes.

Scottish Court Service

4.62 One agency that stated they currently experienced increased pressure on staff resources as a result of EM bail was the Scottish Court Service, where clerks of court have increased paperwork to prepare, including Scottish Executive pro formas, whilst also trying to notify bail officers regarding interviewing accused prior to the latter being transported to outlying prisons. Clerks of court are also the first port of call for Reliance/Serco monitoring staff who need updated information on changes to EM bailee circumstances or additional hearings. The computer system (COP1 or COP2) used by the Scottish Court Service is not designed to electronically minute additional conditions of bail as there is only a standard bail template on the system. Thus, additional conditions must be entered into the system prior to the accused leaving the court building, and this additional administrative exercise can prove time-consuming. Likewise, it was regretted by one clerk that the computerised system that they use does not have the capacity to include research-based statistical returns for the Scottish Executive, which might have eased the pressure both on time and memory for clerks of court who deal with EM bail cases. Should EM bail be rolled out nationally, and indeed if further pilots of pre- or post-sentence options are evaluated, it would certainly be cost-effective to ensure compatibility across and within the various agency databases for research purposes and for the system to be able to flag up key stages in the process.

Crown office and procurator fiscal service

4.63 Crown Office and Procurator Fiscal Service respondents suggested that their workload increased only as a result of a larger number of cases being called at the second hearing in custody courts (where suitability reports had been asked for) and marking any additional cases for breach. However, whilst one procurator fiscal considered EM bail to be ‘resource-intensive’ for all agencies involved, none of the procurators fiscal interviewed felt under increased pressure as a result of the extra workload currently, not least because numbers on EM bail were relatively small and because procurators fiscal were present in court anyway for all hearings, irrespective of EM bail applications or breaches. Nevertheless, the increased business of the court as a result of EM bail applications or breaches will inevitably lengthen the day and therefore have resource implications.

Defence agents

4.64 Most defence agents interviewed felt that it was easier for them to represent their clients personally in the smaller courts than the larger ones, although one defence agent suggested that, even in a court as large as Glasgow, they tend to be able to cover most eventualities and to be there to represent their clients when required, as one defence agent explained: ‘The art of practising at the criminal courts is... you go

into one court... ask someone to hold it back or continue it and you run to another court'. However, some defence agents were concerned that any increased numbers of EM bail applications may impact on the quality of work undertaken by the duty solicitor, who may not, in such circumstances, have the time to check potential EM bail addresses for new cases appearing from custody. Equally, in terms of second hearings, although there is a duty solicitor present in the court every day, it is not within their remit to cover second hearings for EM bail, which means a defence agent needs to represent the applicant at the second hearing. Whereas in, for example, the domestic abuse court pilots and the youth court pilots, special measures were put in place to ensure that defence agents were financially covered for any extra work entailed, this was not the case originally with the EM bail pilots. In respect of EM bail, legal aid was not amended in order to take into account the additional court hearing once the suitability report came in. As of June 2006 legal aid in respect of EM bail was introduced by the Scottish Legal Aid Board to allow defence agents to charge £50.00 for the additional hearing. Given the fieldwork for this evaluation finished at the end of July 2006, it was not possible to measure what, if any, potential impact this change had on defence practice.

Inter-agency cooperation

4.65 Early consultation between the Scottish Executive and the key agencies involved in the pilots was seen as crucial in developing the scheme and enabling a smooth and cooperative process of implementation. Once the model for EM bail had been established by the National Steering Group (NSG), Local Liaison Groups (LLGs) were set up to address any issues which may arise. The NSG and LLGs were seen very positively by all partner agencies, with one commenting that it was one of the most extensive consultation exercises he had seen in relation to a pilot exercise; whilst a number of other respondents commented on how receptive the Scottish Executive was to the concerns of, and suggestions from, the agencies involved. There was a general consensus that the LLGs were particularly helpful in dealing with local difficulties or unforeseen issues surrounding implementation or operational practice. Equally, both the NSG and LLGs were considered to be important in determining points of contact and establishing lines of communication to facilitate inter-agency co-operation. These groups were viewed as important in terms of fine-tuning, consistency of operation and the establishment of good practice across all 4 pilot courts. Nevertheless, the common denominator between the 3 LLGs was the Scottish Executive's representatives who ensured that each LLG was informed of the deliberations of the other 2. There is a fear, however, that the consistency of practice and learning from mistakes that the NSG and LLGs encouraged during the pilot period will be lost in the event of a national roll out, which could result in variations in practice, a lack of sharing of information and advice, and the potential for criticisms of inconsistency and incompatibility between sheriffdoms, police forces and local authority social work departments.

4.66 Reliance/Serco were involved from the outset in the planning and implementation of the pilots and this was seen as a positive step to include them in the preparatory work alongside other agencies. Respondents indicated that discussions were candid and open but because the membership of the different local groups varied

somewhat (for example, only Kilmarnock had a Sheriff represented on the LLG), the degree and depth of mutual understanding that participants acquired varied somewhat. As one respondent mentioned:

“The very fact that we had a Sheriff on [the LLG] in Kilmarnock as opposed to [Glasgow and Stirling], I think helped provide us with more focus and a more reasoned debate about why a Sheriff would want to use bail or not as the case may be, and that has been lacking on the other 2 groups.”

4.67 Communication difficulties, although minimal overall, were most apparent between Reliance/Serco and the police and between Reliance/Serco and the clerks of court, mainly because the monitoring companies are unable to use their discretion and are therefore dependent on these 2 agencies for guidance and instruction. The reason for this is that the monitoring company is required to deliver the monitoring service to support the court order, and does not have statutory decision making powers. Nevertheless, all respondents felt that inter-agency cooperation generally was good, and indeed was consolidated by the good relationships and communication fostered within the National Steering Group and LLGs. Such cooperation was helped in Stirling and Kilmarnock in particular by the proximity of the various agencies to each other, and the close knit nature of the community within these relatively smaller urban areas. Although Glasgow was a much larger city, the criminal justice community itself was relatively close knit and enabled effective communication between the various partners involved in the pilots.

CONCLUSIONS

4.68 A total of 63 bailees completed an EM bail order during the first 16 months of the pilots, with the majority of these being men (58 male versus 5 female bailees), and on average 26 years old. Those aged 20 and under were more likely to be granted EM bail than those aged over 21, with 46 per cent of completers aged under 20. Although accused aged 20 and under were more likely to be granted EM bail, they were also more likely to fail to comply with one or more conditions (79%) than the over 21 age group (62%). Likewise those whose presenting offences included breach of bail/bail aggravation were less likely to comply (72%) but were more likely to be granted EM bail. Thus, EM bail may be being targeted at a group less likely to comply, may be less likely to curtail potential offending and may even exacerbate any further offending because of bail aggravation in cases where applicants are young or have a previous history of breaching bail.

4.69 Accessing quantitative data on the various reasons for revocation of an order proved difficult because such information was not kept in a readily accessible form. However, it was possible, through various databases, to gain an overall picture of the reasons for and results of failures to comply and final outcomes. Failures to comply with an order comprise voluntary non-compliance (e.g., wilful damage to the monitoring equipment) and involuntary non-compliance (e.g., hospitalisation) with the requirements of the order. Just under two thirds (44 out of 63) of the EM bailees failed to comply with their orders on at least one occasion and over two-fifths of

these failures to comply happened within the first 2 weeks of an order. There was no apparent increase in failures to comply by length of time on EM bail, and equally, although curfew times were often lengthy (e.g., 24 hours 7 days a week), there was no apparent link between the number of hours of curfew and the ability of the accused to comply with the order. These findings suggest that failures to comply are not necessarily linked to the EM bail order per se (its conditions or overall length) but to extraneous factors such as age, circumstances or offending history. Likewise, many failures to comply result from the electronic component which, if not present, would less likely be detected and result in breach proceedings being brought. There is a question, therefore, over the possibility that EM bail is creating additional conditions that are setting accused up to fail, not least if they are young and find curfews difficult to comply with.

4.70 Restricted from conditions on EM bail orders were rarely used during the period under study and it may be worth considering whether these might be more effectively promoted in respect of charges relating to an obvious victim (for example, domestic abuse) or geographical area (for example, shoplifting), rather than restricting the accused to his/her own house for stipulated periods. However, if these types of order were to be used more readily, it would be important to liaise with such householders about the circumstances of the case and their views about the accused. Again, accused persons may be set up to fail if they are excluded from the home of someone with whom they have an ongoing relationship, irrespective of whether that person was the victim of that particular charge. Likewise, it may be possible to deflect instances of failure to comply by promoting the use of reviews more with defence agents and accused alike. Reviews of EM bail conditions were rarely used and yet are a potential mediating force for changing the conditions of an order, such as the timing of curfews or the bail address.

4.71 In terms of operational issues, respondents indicated that EM bail had not significantly increased the workload of any one agency involved in the pilots, not least because numbers have overall been relatively low and manageable. However, all agencies implied that their workload would increase and become more resource intensive if EM bail was rolled out nationally and if numbers granted EM bail increased significantly. However, currently, Serco, clerks of court and the police have the greatest workload because of the potentially cumulative effect of increasing applications, orders and revocations. Initial consultation and subsequent liaison between the Scottish Executive and key stakeholders was seen as both crucial and effective in the implementation of the pilots. Both the National Steering Group and the Local Liaison Groups were important in establishing inter-agency communication and cooperation and in keeping abreast of any difficulties or inconsistencies within and between the pilot sites. Such coordination could well be dissipated in the event of a national roll-out and it may well be worth retaining such a national coordinating function on a permanent basis if at all feasible.

CHAPTER FIVE PERCEPTIONS OF THE EFFECTIVENESS OF EM BAIL

INTRODUCTION

5.1 Although the original research specification did not stipulate short-term effectiveness as a key aim of this evaluation, the research team nevertheless investigated this at interview, in terms of public safety, potential offending on bail, and intimidation of witnesses.

5.2 As mentioned in Chapter 1, the key objectives of EM bail are:

- to reduce the use of custody for those accused deemed eligible for electronically monitored bail who would otherwise have been remanded in custody;
- to offer additional security to the general public against the likelihood of offending or intimidation of witnesses by accused people who are seen as a potential risk if not remanded in custody.

5.3 This chapter explores whether or not the various stakeholders in the EM bail pilots believed that the addition of EM bail as a direct alternative to custodial remand adequately addressed these aims, and their views are contrasted, where appropriate, with the quantitative data. This chapter is based not only on the quantitative and qualitative data from the pilot courts, but also presents pertinent data from the 3 comparison sheriff courts and can thus draw certain conclusions on the overall effectiveness of EM bail versus standard bail or custodial remand in other sheriffdoms.

PERCEPTIONS OF APPROPRIATE APPLICANTS FOR EM BAIL

5.4 At interview, professional respondents often gave their views about the appropriateness or otherwise of certain 'types' of accused, which may enhance or reduce effectiveness of EM bail. Various groups emerged as being less capable of complying with EM bail. These included problem drug users, whose often chaotic lifestyles, offending to feed a habit and state of mind were such that punctuality regarding curfew and exclusion times might present difficulties for them. Whilst there may well be no correlation between substance misuse and offences of drug possession or dealing, it was suggested in Chapter 3 that 83 per cent of those presenting with drug offences were refused EM bail, but the 17 per cent who were granted it were less likely to infringe the conditions of their EM bail order than those presenting with other offences.

5.5 Whilst some professional respondents commented on serious presenting offences being a disincentive to granting EM bail, 2 procurators fiscal, 2 defence agents and 3 sheriffs all commented that it was the previous record of the accused rather than the presenting offence which should be the determining factor in whether or not to grant EM bail.

5.6 Most respondents felt that EM bail was a useful option for those who were working or had caring roles or family commitments, as a custodial remand would inevitably disrupt employment or family responsibilities. Six of the bailee respondents were in employment at the time they were given the order, and in these cases restriction conditions had been arranged to allow them to attend their place of employment and sometimes relatively complex arrangements had been put in place to allow for shift work. This was seen as one of the positive benefits of EM bail by professional respondents, bailees and family members alike. Several sheriffs also felt that young people in particular should be offered the opportunity of EM bail, although in practice it seems from the data that it is young people who are less likely to comply with their EM bail conditions.

REDUCING THE USE OF CUSTODY

5.7 As can be seen from Table 5.1 below, during the same period as the fieldwork was undertaken and in the same courts, out of a total of 6,914 cases where the accused was refused standard bail and therefore potentially eligible for custody, there were 6,910 remand receptions (with 4 cases resulting in EM bail being granted on the day of application). When measured against the 306 applications from that same population who applied for EM bail (applications consisted of 4.4% of all custodial remand receptions, excluding the four individuals whose EM bail application was heard on the same day), and against the 116 granted EM bail (1.7% of all charges resulting in custodial remand), it would seem that EM bail is not having a significant impact in terms of reducing the custodial remand population.

Table 5.1 Total numbers of custodial remands and bail orders by court

Court	Total number of custodial remands Apr 05-Jul 06	Total number of bail orders Apr 05-Jul 06
Glasgow Sheriff Court	5,515	14,956
Kilmarnock Sheriff Court	892	3,498
Stirling Sheriff Court	503	1,650
Total	6,910	20,104

5.8 In Scotland, legislation for EM bail has specifically ensured that it is only considered once a sheriff has decided to remand an accused in custody, thus maintaining it as a high tariff and strict alternative to custodial remand. Whether this is the case can only be assessed by comparing certain characteristics of those granted EM bail with those refused it and remanded in custody and through an assessment of outcomes in the comparison courts (see below).

5.9 The majority of respondents felt that EM bail was indeed a ‘last resort’ application, even though some respondents suggested that accused eligible for EM bail tend to be ‘on the margins’ or ‘borderline cases’ between standard bail and custodial remand. Of the 190 accused persons who did not receive EM bail (of the

total of 306 original applications in the first 16 months of the pilots), 170 of these were remanded in custody pending trial, 18 were given standard bail with or without special conditions and the remaining 2 were released prior to the second hearing for EM bail. These figures certainly suggest that the majority who are refused EM bail will be remanded in custody pending trial.

5.10 As was seen in Chapter Four, Table 4.10, in terms of custodial sentences, 30 per cent of EM bailees who complete their orders are given custodial sentences, compared with 53 per cent of those refused EM bail following a suitability report and 64 per cent of those refused EM bail outright. However, without being able to disaggregate the original offences and previous offending histories, it is difficult to make any conclusions from these figures as to whether EM bailees are less or more likely to be treated differently than their counterparts on custodial remand.

5.12 In terms of the length of custodial sentence for those subsequently imprisoned for the original offence, Table 5.2 below shows the breakdown for those granted and those refused EM bail. These recorded lengths of custodial sentences were stipulated by the sheriff at the point of sentence and do not take into account any backdating of sentences to allow for periods on remand.

Table 5.2 Stipulated length of final custodial sentence

Stipulated length of final custodial sentence (days)	EM bail granted	EM bail refused	Total
30 - 90	4 (29%)	13 (37%)	17 (35%)
91 - 180	6 (43%)	17 (49%)	23 (47%)
181 +	2 (14%)	3 (9%)	5 (10%)
Not recorded	2 (14%)	2 (6%)	4 (8%)
Total	14 (100%)	35 (100%)	49 (100%)

5.13 There is a marginal difference in length of custodial sentence for those granted (29%) and refused (37%) EM bail where sentences were under 90 days, but little difference between the two groups for those given 90-180 day sentences. However, assuming that the majority of those refused EM bail would have had their sentences backdated to when they were first remanded, then it would seem that those refused EM bail spend less time overall in custody for the original offence. This is discussed in greater detail in Chapter 6 in relation to costs.

OFFERING ADDITIONAL SECURITY

Improving public safety

5.14 Nine professional respondents (3 sheriffs, 3 clerks of court and 3 procurators fiscal) suggested that EM bail was unlikely to increase public safety, although defence agents were generally confident that it could. Among the minority of those who thought it may increase public safety, 2 believed it was more beneficial to the immediate victim than to the wider public. Whilst one Sheriff suggested that EM bail

was ‘a much more formal method of policing’ than standard bail, s/he did not feel it offered greater reassurance to the general public in this context. One Sheriff was at pains to dispel the false expectations of public safety that might be created by EM bail, because of misplaced confidence in its ability to protect:

“It might increase the public’s *perception* of their safety but it has to be remembered that in general terms, unless you impose it on a 24 hour basis, there will be times when they’re not confined within their house.”

5.15 Comparing it more to custody than to standard bail – which indeed was a more accurate comparison given its role as a strict alternative to custodial remand – one respondent suggested that EM bail could potentially *increase* the risks to the public:

“I don’t see how it would increase public safety. In fact, arguably it would decrease public safety because the public would be safe when people are locked up... I don’t think the tag, because it doesn’t physically restrict people, I don’t see how it can be seen as... increasing public safety.”

5.16 It is not only time outwith curfew periods, however, that poses a risk. It is arguable that tagging is not incapacitative even in respect of the times when the accused is officially confined to their home: the tag does not physically constrain them as custody does and if EM bail is not deemed effective in curtailing offending, it will not necessarily be considered favourably by sheriffs. As one Sheriff commented:

“It may be that [if] it doesn’t seem to work or it’s perceived as not working, it’s not protecting the public and in that case, sheriffs wouldn’t use it... public safety is the prime consideration.”

5.17 The strongest support for EM bail as a means of increasing public safety came from police officers, defence agents and bail officers. Three police officers thought that it was more likely to increase public safety than standard bail:

“It’s another tool in the tool box as far as I’m concerned that should be getting used. I sleep quite happily at night knowing someone’s tagged in their house – and they’re not in mine.”

5.18 One bail officer suggested that imposing restrictions from a place was a particularly useful way of improving public safety (although as noted in Chapter 4, these were little used in the EM bail pilots with only 11 orders of this type being completed in the first 16 months):

“I think that the electronic monitoring is maybe a more powerful form of controlling curfews and people staying away from places that they’re bailed to stay away from. So I think that that possibly does increase the level of safety for vulnerable people and the control of people who possibly could be violent to others or contravene their bail in some way.”

5.19 As will be seen in Annex 1 which explores the press coverage of electronic monitoring and bail, electronic monitoring generally does not have a good public image and its credibility has been seriously undermined by negative press coverage of rare cases where things have gone wrong. This was exemplified during the course of the pilot evaluation when one EM bailee who was charged with murder was taken off EM bail in order to spend time on holiday abroad. This case stirred up fears about public safety and a questioning of public confidence in bail generally.

Reducing offending

5.20 Although bail is a pre-sentence order of the court where the accused has yet to be found innocent or guilty of the specific offence with which s/he has been charged, there is nevertheless a broad assumption that giving an accused bail is likely to result in ‘further’ offending, whether this be perverting the course of justice by intimidating witnesses or committing an offence whilst awaiting trial. There is an inherent assumption amongst professionals and the public alike that bail should therefore be as incapacitative as possible.

5.21 For example, it was suggested by a sheriff and a bail officer that a 5 day custodial remand pending a suitability report (irrespective of whether EM bail was subsequently granted) impressed upon the accused how serious their situation was, and made it more likely that they would comply if granted EM bail. The bail officer explained: ‘I think maybe the custodial experience does bring it home to people that it is a direct alternative’, and this point was reiterated by the Sheriff:

“Sometimes that’s useful in itself, the fact that the person’s had a few days in prison and when they’ve come back, we’re told that this person’s really been chastened by the whole experience, and will certainly comply with EM bail.”

5.22 This view suggests that EM bail could be used as a deterrent to the accused rather than as a precautionary measure for public protection, even though guilt has not as yet been verified. It would thus have the potential to ‘netwiden’ in such cases. However, that said, the majority of EM bailees did have a history of repeat offending which EM bail could possibly curtail pending trial. As was seen in Chapter 3, those granted EM bail had an average of over 9 previous offences on their record, although 9 per cent had no record of previous offending.

5.23 However, there was scepticism amongst court-based professionals in particular about compliance and offending rates on EM bail, and procurators fiscal in particular were concerned that EM bail could not give the kind of assurances that remand in custody could. One procurator fiscal commented:

“I think it’s in the public interest that he turns up for his trial, he doesn’t terrorise the witnesses and the trial happens quickly... Alternatively it may be that this person has carried out a whole series of crimes, that it’s quite clear that he’s going to carry on offending until he’s forcibly stopped... or it may be that this person’s just out of prison and clearly not changed their ways... Or it might be that they are on bail for 3 or 4

other cases... Those are the reasons. There's none of them rectifiable by him having a tag on his leg for this person to be kept off the streets."

5.24 Bailees themselves seemed more positive about the effectiveness of EM bail in ensuring compliance with bail conditions, as the following young EM bailee commented:

"I've just been on it for 4 months but it's quite good cos when I was on the tag, all my pals were getting into trouble and I would have just been out and getting into trouble too".

5.25 Ten of the EM bailees or family members interviewed indicated that the monitoring equipment made it more likely that the accused would comply with the conditions of bail:

"You can't go out, stuff like that, and do what you normally do with the tag on you know. But I'd rather have it anyway than being up in the jail. So I was fine with it".

5.26 However, 6 reported significant difficulties in meeting the conditions of the order, either due to offending or failure to comply with the restrictions imposed and information is not available for the remaining cases. Twelve EM bailees indicated that they had not committed any offences whilst on EM bail, although a further respondent stated that s/he had committed an offence on bail and was subsequently remanded in custody.

5.27 Four police respondents suggested that EM bail exerted more control than standard bail because of the transparency of the electronic component, and 2 believed that it would produce greater levels of compliance with restriction periods, which might in turn result in lower rates of offending, as one police officer explained:

"So tagging is way better than certainly curfew bail on its own. There's no real policing of it by us which is obviously to the benefit and allows us to do other things and it does have a big impact on the individual as well. They know that if they decide to go away for the evening, they're going to get caught where somebody on curfew can take their chance."

5.28 However, 3 police respondents questioned whether EM bail would be adhered to any more readily than standard bail especially by those with a chaotic lifestyle. Frustration was expressed about individuals being granted any kind of bail when they were likely to continue offending, especially in relation to cases of domestic violence:

"We manage it and we do our best... [but] this is another example of... where legislation's come out... primarily in terms of trying to protect individuals but also reduce the prison population, but in actual fact it's given the police another headache to try and actually make sure it works."

REDUCING INTIMIDATION OF WITNESSES

5.29 The vast majority of respondents considered that accused people would intimidate witnesses if they wanted to, irrespective of wearing a tag, although one suggested that if a bailee was restricted from a victim's address, this may offer an added incentive to stay away from him/her. It was suggested by various professional respondents that intimidation could happen in various forms: through third parties or via text messaging or phoning; from the confines of a prison, while on custodial remand; and within the court prior to trial. For one professional who had knowledge of intimidation occurring from within prison using proxies, being out on bail, tagged or otherwise, nonetheless was felt to make it easier 'to actually manage that intimidation'.

PERSPECTIVES OF VICTIMS' REPRESENTATIVES

5.30 Victim Information and Advice (VIA) is part of the Crown Office and Procurator Fiscal Service. It provides information and advice to victims and witnesses about how the criminal justice system works and what they should expect when going to court; it keeps victims and witnesses informed of progress on their cases; and puts victims and witnesses in touch with other agencies where appropriate.

5.31 VIA workers at interview doubted whether EM bail benefited identifiable victims or the general public. Perceptions of tagging more generally left these workers with low expectations of its effectiveness:

“My concern is whether the conditions are tight enough and also whether the accused will comply... If somebody's gonna breach their bail conditions, they'll breach it.”

5.32 VIA workers were sceptical of the value of EM bail in protecting victims of crime, but one victim agency worker tried to see both sides of the argument, and considered that EM bail in a domestic violence context could prove to be a positive step towards rehabilitation, because it left the accused with more scope for changing his behaviour than prison:

“The advantages are... that if a prisoner is remanded then we and the woman will breathe a sigh of relief that they are off the streets, but there is still an issue about whether he is actually taking responsibly for what he has done.... if he is tagged then at least the sheriff and woman can see if he's going to behave himself. In a way, I think that's quite helpful.”

5.33 Several respondents raised the issue of victims' rights, sometimes generally, sometimes in relation to privacy and intrusion issues in particular. Two procurators fiscal suggested that EM bail may have the potential to infringe householders' or victims' rights, given the intrusion of having equipment in their own homes. Respondents who represented victims often felt particularly strongly about the message that granting EM bail sent to victims, however unintentionally, and that the

implications of EM bail should be explained more clearly to them. In one incident, the victim misunderstood the curfew conditions imposed on the accused and was unhappy about seeing the accused in a restaurant, albeit outwith the restriction period. The VIA worker explained:

“She was very, very distressed because her understanding of him being tagged was that, you know, he would be very closely monitored and had to stay within a certain area and things like that and it hadn’t crossed her mind that she could just walk in somewhere and he’d be sitting there. “

5.34 A further incident involved the tagging of someone accused of murder which severely coloured the understanding of EM bail by both the victim’s family and VIA, with the latter commenting in that respect that ‘the human rights of victims are being hung out to dry’. However, in cases where the victim is asked to have monitoring equipment in their home also (to restrict an accused *from* an address), they have the opportunity and the right to refuse to agree to such a condition. It is then up to the sheriff to either refuse EM bail or to impose a restricted *to* condition only.

5.35 Victims’ views of electronic monitoring and bail generally tend only to be drawn upon by the media in particular when such views are negative. As highlighted in Annex 1, this is an emotionally powerful means of criticising the philosophy and practice of electronic monitoring and bail. Any assessment, therefore, of the effectiveness of EM bail needs to bear this in mind: notably that the press puts a particularly negative slant on stories about EM bail and these in turn influence the views of the public at large.

COMPARISON COURT OUTCOMES

5.36 As mentioned in Chapter 2, a matched sample of 191 individuals from Edinburgh (130), Linlithgow (36) and Greenock (25) was drawn upon in order to ascertain the extent to which the availability of EM bail in the pilot courts influenced sheriff decision making in terms of granting bail versus custodial remand, breach proceedings and final outcomes of cases. The comparison sample was matched with the 116 individuals granted EM bail in the pilot courts on age, gender, type of court (summary and solemn), presenting offence(s) and previous offending history.

Outcome of first hearing for the comparison sample

5.37 Whilst 116 accused were granted EM bail in the pilot courts, having been refused standard bail in favour of custodial remand, the matched sample in the comparison courts were remanded in custody in only a small proportion of cases. Of the 191 accused in the comparison courts, 45 (24%) were remanded in custody. The remaining 146 accused were either given standard bail (in 100 cases – 52%) or were ordained to appear for trial (in 46 cases – 24%). Table 5.3 gives this breakdown by court.

Table 5.3 Comparison courts: Remand status by outcome of first hearing

Court	Remanded	Bailed	Ordnained	Total
Edinburgh	26 (20%)	74 (57%)	30 (23%)	130
Linlithgow	12 (33%)	12 (33%)	12 (33%)	36
Greenock	7 (28%)	14 (56%)	4 (16%)	25
Total	45(24%)	100 (52%)	46 (24%)	191

5.38 Although these comparison courts, like the pilot courts, have a relatively strong tendency towards the use of custody rather than community-based alternatives, the above figures suggest that being bailed or ordained is generally preferred by sheriffs for accused pending trial.

5.39 When the type of proceedings are taken into account, namely whether summary or solemn proceedings, there is still a high propensity towards the use of bail for those accused appearing in solemn proceedings, with 75 per cent being bailed pending trial compared with 25 per cent being remanded in custody. There were no matched accused in the comparison courts who had been charged with murder or rape between April 2005 and March 2006. However, there were three attempted murder charges, all of which were granted standard bail with conditions; these conditions included not to approach the victim, not to approach a specific area and to attend an identity parade when requested.

5.40 Table 5.4 below shows the number of presenting offences for 188 of the 191 accused in the comparison courts.

Table 5.4 Comparison courts: Number of presenting offences by outcome of first hearing

No of presenting offences	Remanded	Bail	Ordnained	Total
One	21 (24%)	42 (49%)	23 (27%)	86 (100%)
Two	10 (22%)	22 (48%)	14 (30%)	46 (100%)
Three	8 (25%)	18 (56%)	6 (19%)	32 (100%)
Four or more	6 (25%)	16 (67%)	2 (8%)	24 (100%)
Total	45 (24%)	98 (52%)	46 (24%)	188 (100%)

5.41 The above figures suggest that there is no link between the number of presenting offences and the sheriff's decision whether to remand the accused in custody, grant standard bail or ordain the accused to appear. As was seen in Chapter 3, several professional respondents suggested that the number and seriousness of presenting offences were not necessarily influential factors in sheriff decision making, but that the previous offending history was more likely to influence the decision as to whether to remand an accused in custody or grant bail, with or without conditions. Indeed, when a loglinear analysis was applied to the frequency data in the comparison sample using categories of age group (4), no of presenting offences (4), previous offending history (4) and outcome of first hearing, the analysis found an interaction

between number of previous offences and the outcome of the first hearing where the Sheriff decided to remand, bail or ordain an accused.

5.42 In the comparison sample, in an attempt to examine any potential relationship between age, number of presenting offences, previous offending history and the outcome of the first hearing (remanded in custody, bailed or ordained), a loglinear analysis was applied to the frequency data (see Annex 4). A relevant association was found between number of previous offences and outcome of first hearing (L.R. Chisq. = 133.124, $p < 0.05$). Tables 5.5 and 5.6 below show in more detail the numbers of previous offences by outcome of the first hearing for the comparison and pilot courts respectively.

Table 5.5 Comparison courts: Number of previous offences by outcome of first hearing

Number of previous offences	Outcome of first hearing			Total
	Remanded	Bailed	Ordained	
None	2 (11%)	13 (72%)	3 (17%)	18
1 - 5	10 (13%)	47 (59%)	23 (29%)	80
6 - 10	12 (31%)	18 (46%)	9 (23%)	39
10+	21 (42%)	19 (38%)	10 (20%)	50
Total	45 (24%)	97 (52%)	45 (24%)	187

5.43 Table 5.5 shows that in the comparison sample those accused who had an offending history of 6+ previous offences are more likely to be remanded in custody (37%) pending trial than those who present with 1-5 previous offences (13%) or no previous offences (11%). This difference is statistically significant ($X^2 = 18.879$, $p < 0.01$).

Table 5.6 Pilot courts: Number of previous offences by whether EM bail granted

Number of previous offences	EM bail granted	EM Bail refused	Total (n=276)
None	12 (44%)	15 (56%)	27
1 - 5	41 (46%)	49 (54%)	90
6 - 10	20 (36%)	36 (64%)	56
10+	34 (33%)	69 (67%)	103
Total	107 (39%)	169 (61%)	276

5.44 However, whilst the same pattern emerges in the pilot courts (Table 5.6) - namely that there was a pattern between the number of previous offences and whether EM bail was granted - this was not statistically significant. It would thus seem that the comparison sample follows a pattern of higher numbers of previous offences leading to remand and lower numbers of previous offences leading to standard bail. By looking at a cross-tabulation of those who were granted EM bail versus those who were refused EM bail according to their offending histories, it would seem that in the pilot courts there was a pattern of higher numbers of previous offences leading to

remand, and that those accused were more likely to be refused EM bail. However, this was not statistically significant.

Final outcomes for the comparison sample

5.45 Tables 5.7 and 5.8 below show the length of time from first hearing to trial outcome for those in the pilot sample who were granted and refused EM bail compared with those who were ordained, bailed and remanded in custody in the comparison sample.

Table 5.7 Pilot courts: Length of time from first hearing to trial outcome

Days	Pilot sample	
	EM bail granted (n=28)	EM bail refused (n=45)
1-30	4 (14%)	15 (33%)
31-60	12 (43%)	15 (33%)
61-90	4 (14%)	9 (20%)
91-120	3 (11%)	2 (4%)
121-150	4 (14%)	1 (2%)
151-180	0 (0%)	3 (7%)
180+	1 (4%)	0 (0%)
Mean no of days	69.68	55.73

5.46 There was no statistically significant difference between those granted EM bail and those refused EM bail when the mean lengths of time from first hearing to trial outcome were compared. It should be borne in mind in this analysis of length of time on bail or remand that although the trial might *start* within the stipulated time period of 40 days for those remanded or on EM bail, the trial itself may take longer and if reports are called for pending disposal, the period until eventual trial outcome could be weeks rather than days hence.

Table 5.8 Comparison courts: Length of time from first hearing to trial outcome

Days	Comparison sample		
	Remanded (n=28)	Standard bail (n=56)	Ordained (n=44)
1-30	16 (57%)	-	8 (18%)
31-60	8 (29%)	7 (13%)	1 (2%)
61-90	1 (4%)	9 (16%)	6 (14%)
91-120	-	10 (18%)	13 (30%)
121-150	1 (4%)	10 (18%)	3 (7%)
151-180	-	3 (5%)	6 (14%)
180+	2 (7%)	17 (30%)	7 (16%)
Mean no of days	48.00	147.64	115.05

5.47 A one-way Anova Test compared the mean length of time from first hearing until trial outcome and showed a significant difference across the 3 groups in the comparison courts ($F = 13.819$, $p < 0.001$). A post-hoc Scheffe Test showed where these differences lay. There is a significant difference ($p < 0.001$) in the number of days awaiting trial outcome for those granted standard bail and those remanded and between those remanded and those who were ordered to appear.

5.48 For those appearing on summary proceedings, of which there were 120 known cases in the comparison courts, the mean number of days pending trial outcome was 105 days, in the range 0 – 415. For solemn proceedings, of which there were 11 known cases in the comparison courts, the mean number of days pending trial outcome was 147 days, in the range 0 – 413.

5.49 In terms of the length of custodial disposals, which were known in 45 cases in the pilot courts and in 26 cases in the comparison courts, it would appear that the pilot sample of accused who received custodial sentences for the original offences were given significantly longer sentences (a mean of 121 days) compared with those in the comparison courts (a mean of 93 days). This difference was statistically significant at $p < 0.05$. Given that those remanded in custody will have their sentence backdated to the start of their period on remand, they will thus serve much shorter sentences in custody following trial than EM bailees. This is discussed further, from a cost perspective, in Chapter 6.

5.50 The matched sample in the comparison courts were more likely to be given a monetary disposal of a fine (44% compared with 11% granted EM bail) or a community-based disposal (probation, for example) (33% compared with 20% granted EM bail), and less likely to be given a custodial disposal (22% compared with 30% granted EM bail). It is difficult to gauge whether the culture of these comparison courts was such that community-based or monetary disposals were used more often, but it should be borne in mind that both the pilot courts and the comparison courts were matched partly because they all have a relatively high rate of custody.

CONCLUSIONS

5.51 Given that 116 of the total of 306 applicants for EM bail were granted, there was a reduction in the custodial remand population of 116 during the fieldwork period. The 116 granted applications comprised just 1.7 per cent of the overall custodial remand population during the period of the fieldwork. However, of the 190 who applied for but did not receive EM bail, 170 of these were remanded in custody pending trial, thus suggesting that EM bail is operating as a direct alternative to custodial remand even if its impact is minimal overall.

5.52 Whilst EM bail could be seen as a direct alternative to custodial remand at the application stage, if someone is found guilty of breach, they may not necessarily be given a custodial sentence but could be granted standard bail or fined, depending on the circumstances of the breach and/or the views of the presiding sheriff. Likewise, the original EM bail order may still continue until the trial for the original offence. Where the final outcome of the trial for the original offence was known, those who

had completed a period of EM bail were more likely to receive fines or have their sentence deferred for good behaviour than those who were refused EM bail. However, 30 per cent of EM bailees are given custodial sentences, compared with 57 per cent of those refused EM bail. Without being able to disaggregate the original offences and previous offending histories, it is difficult to make any conclusions from these figures as to whether EM bailees are less or more likely to be treated differently than their counterparts on custodial remand in terms of final outcome.

5.53 The evaluation period does not allow for the collection of substantive data on offending whilst on bail, or reconviction rates. Accordingly, it is not possible to evidence that EM bail increases public safety through a reduction of offending and intimidation of witnesses. However, only a minority of respondents felt confident at interview that bail with an additional condition of electronic monitoring was able to reduce offending or intimidation of witnesses.

5.54 When compared to a matched sample from Edinburgh, Greenock and Linlithgow Sheriff Courts in the period April 2005 to March 2006, it would seem that the pilot courts have a stronger tendency towards remand in custody for such accused (56% of applicants were subsequently remanded in custody) than their counterparts in the comparison courts, where 24 per cent of the matched sample were given custodial remands pending trial. This is perhaps surprising given that the levels of offending histories of both samples were matched, as were the presenting offences. In the absence of the unlikely event that sheriffs in the pilot courts are 'up-tariffing' accused so as to be able to take advantage of the EM bail option, it can only be surmised that there is a different culture of remand in the comparison courts, one that favours bailing or ordaining accused pending trial.

5.55 Likewise, the comparison sample were at an advantage in terms of how long they spent on remand pending trial. Whereas the pilot group spent a mean average of 70 days on EM bail, those remanded in the comparison courts spent a mean average of 48 days pending trial, and these latter periods on remand would be taken into account in any final custodial sentence, whereas the EM bail period would not be taken into account. Final outcomes for the comparison group were also less severe than for those in the pilot courts – 22 per cent of the comparison sample received a custodial sentence for the original offence compared with 30 per cent of the pilot sample. This issue of the length of time on EM bail and the length of any custodial sentence has quite striking implications for the cost effectiveness of EM bail, as will be seen in the following chapter.

CHAPTER SIX ECONOMIC EVALUATION OF ELECTRONIC MONITORING AS A CONDITION OF BAIL

INTRODUCTION

6.1 Electronic monitoring has the potential to add to the range of bail and community-based sentencing options available, but its effectiveness and costs need to be compared with those of alternatives. The focus of this chapter is on the costs of EM bail.

6.2 The primary aim of this part of the evaluation was to compare electronic monitoring as a condition of bail with remand in custody in terms of costs and impacts. The measurement of the latter is not straightforward in this field. Ideally, the outcomes of different interventions or conditions would be expressed in terms of offending behaviour, public perceptions of safety and so on. It was not possible to employ such an approach here because of time and funding constraints. Instead we have employed more of an ‘administrative’ approach, couching effectiveness in terms of the processing of remand following the approach employed earlier in chapters. We conducted a cost analysis which examined the costs of achieving a given level of outcome, making comparisons between alternatives.

METHODS

Economic decision model

6.3 The approach taken was to build a decision model, the structure of which was finalised following extensive discussions with the Research Advisory Group. The analysis is based on an approach that maps the paths taken by individuals through the criminal justice system during their remand periods, the probabilities of subsequent events occurring and the economic consequences of alternatives. The main benefit of using a decision model is that it enables complex processes and activities to be broken down into component parts, each of which can then be further broken down and analysed in detail before being recombined in a logical, quantitative and transparent way to estimate – in this case – the economic consequences of different courses of action and different experiences. The ultimate purpose is to identify which of the options provides better value for money.

6.4 The decision model shows the paths that individuals charged with summary offences take through the criminal justice system in Scotland after the court rejects an application for standard bail. This model does not include solemn cases such as rape or murder charges. It also does not include appeals against refusal of standard bail, because the focus of the analysis is on the comparison between EM bail and custodial remand.

Model structure

6.5 The following provides a brief explanation of the structure of this standard decision model which was used to identify costs and probability parameters. Each triangle in the illustrated model is referred to as an ‘end node’ and indicates the point at which the flow of events ends in the analysis. Each circle is a ‘chance node’ from which emanate further options/paths that the accused can take with specific (estimated) probabilities of those events occurring.

EM bail standard model

6.6 For didactic purposes, the decision model is shown in two parts, although the process is a continuous one. The first part (illustrated in Figure 6.1) starts from the point at which a court rejects standard bail. At this juncture the individual can either make a request for EM bail or not make a request. If no request for EM bail is made following refusal of standard bail, the individual will be remanded in custody until trial, unless an appeal is lodged. If an application for EM bail is made, the court will use information provided by the suitability report when considering the application for EM bail.

6.7 If the application for EM bail is not considered, the individual may decide to appeal to the High Court, in which case they will be remanded in custody until the appeal is heard. If the appeal to the High Court is successful, then EM bail will be granted. If the appeal is unsuccessful, EM bail will obviously be refused and the individual will be remanded in custody until trial for the primary offence. A similar sequence of events will occur should the court be minded to consider the application for EM bail after the request for EM bail is made. In such cases, the individual will then be remanded in custody for what was found in this study to be an average of 5.7 working days until the suitability report is produced. An additional diet is needed in this case to consider the suitability report. There is the possibility that the EM bail application may not be successful, in which case the individual will tend to be remanded in custody until trial. If, on the other hand, the EM bail application is successful, and if the individual complies with the EM bail conditions (see below), then they will remain in the community on EM bail until their trial is heard.

6.8 The second part of the model (illustrated in Figure 6.2) identifies the paths associated with a failure to comply. Individuals granted EM bail may or may not comply with the conditions set. Failures to comply can include the following:

- a) the individual absconds;
- b) the individual commits a new offence; and
- c) the individual voluntarily or involuntarily fails to comply.

Figure 6.1. The EM Bail process

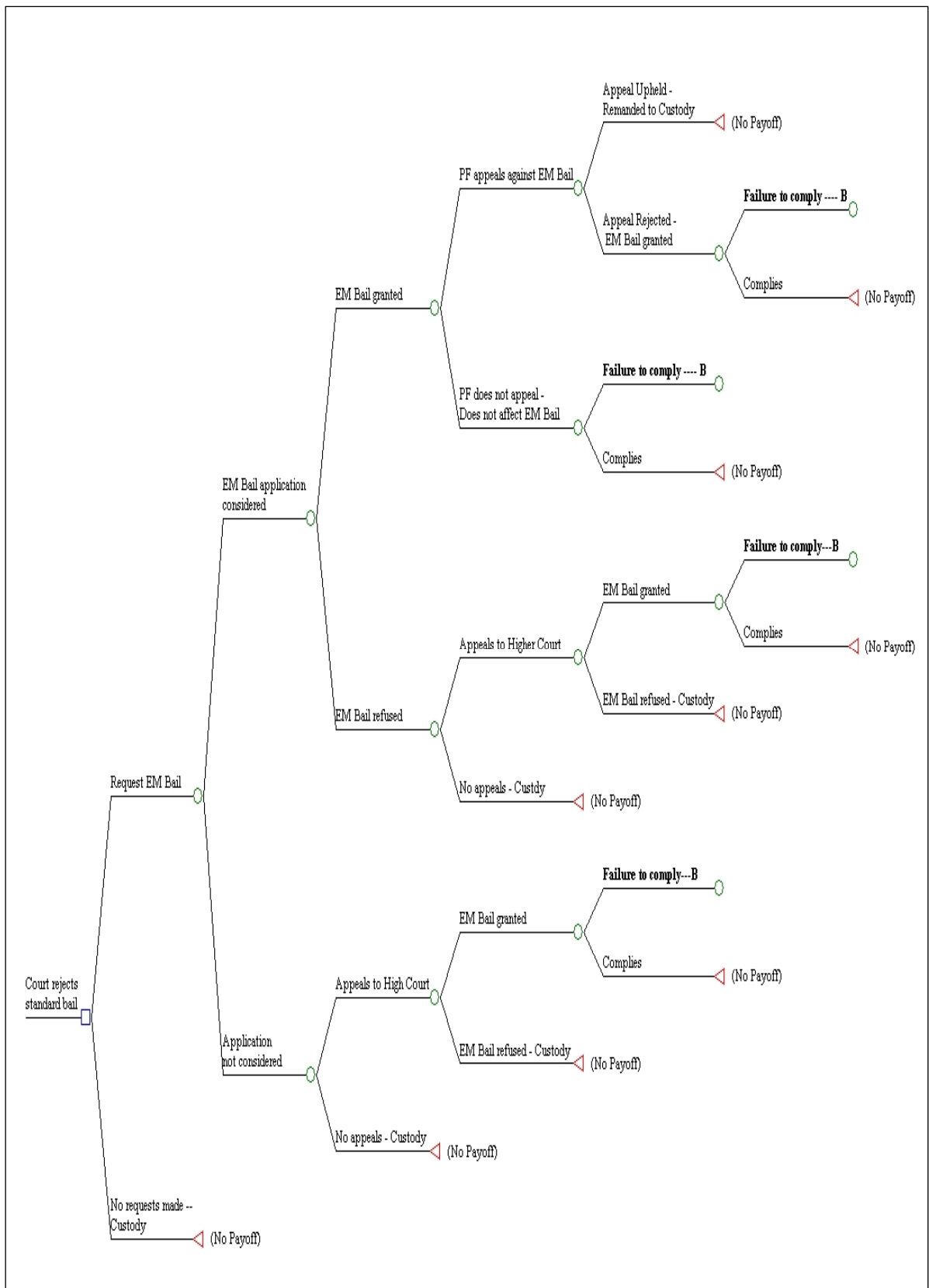
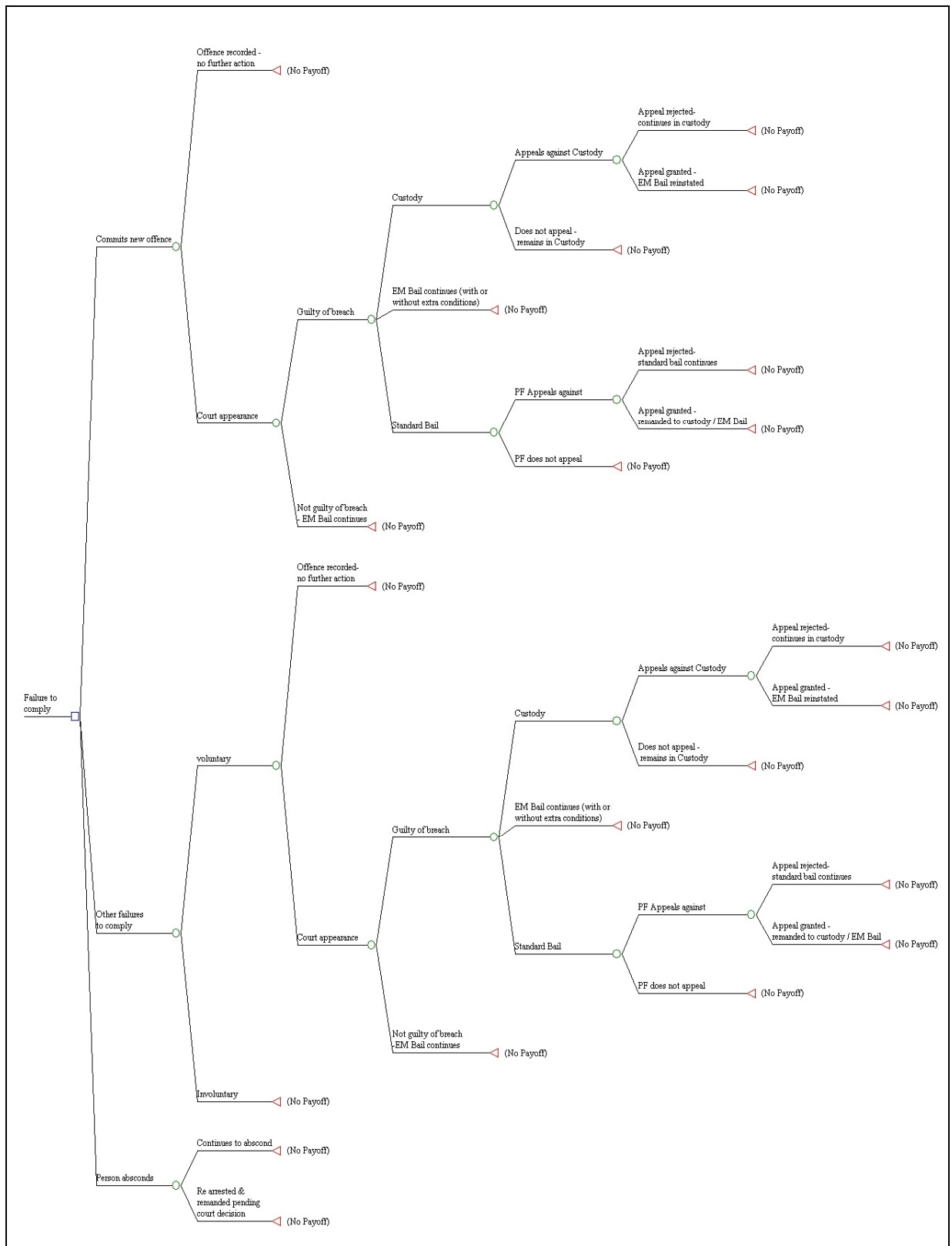


Figure 6.2 Failure to comply



6.9 Individuals who abscond may elude capture for the duration of the pilot or they may be re-arrested and remanded in custody until the next court appearance when the court can decide whether to grant EM bail or remand the individual in custody until trial. If an individual commits a further offence, the police might record the offence and take no further action, in which case the individual goes back on EM bail until the trial is heard for the original offence. Other failures to comply can be either voluntary or involuntary. Voluntary failures to comply include cases where an individual is re-arrested on an outstanding warrant for an alleged offence other than that for which they were originally charged. The police might record the alleged offence and take no further action, in which case the individual continues on EM bail until trial for the original offence. There may also be a court appearance to assess the individual's guilt of breach. If found guilty of breach the individual can either be remanded in custody until the trial for the primary offence, continue on EM bail (with or without extra conditions) or be put on standard bail until trial. If the individual is found not guilty of breach, EM bail could continue until the trial diet. Involuntary failures to comply can occur if someone is in hospital for an extended period or a householder withdraws consent to cooperate. EM bail may be reviewed and/or continued in these cases.

COST AND PROBABILITY

6.10 The above paths will have probabilities of occurrence and costs associated with them. These costs were estimated in this study following established principles and methods. The primary study perspective was the public sector, which determined the range of costs to be measured. Consequently, only resources paid for by the government and their agencies were included in the base analysis. The public agencies included in the analysis are the Scottish Court Service, sheriffs, the Crown Office, defence agents, Scottish Prison Service, the Scottish Executive, social work departments and the police. A second perspective was also examined in which the cost consequences of crime (during the bail period) are included alongside the public agency costs.

6.11 Costs are measured at 2004/2005 price levels. If appropriate costs for this period were not already available they were calculated specifically for the study, and costs from previous years were inflated using an appropriate index.

Sources of information

6.12 Various sources of information were used to develop the model, and to estimate the comparative cost of EM bail versus remand in custody. The Procedure Manual on Electronically Monitored Movement Restriction Conditions in Bail Orders (Scottish Executive, 2005c) was one of these sources of information and was the starting point for the development of the model structure. Consultations were held between officials at the Scottish Executive, members of the Research Advisory Group and the research team to identify possible events (for a typical case) from the point at which an application for standard bail was refused, and the application for EM bail was made, to the point where the applicant's trial was heard.

Cost parameters for analysis

6.13 The costs associated with EM bail can be divided into a number of activities, although the process is a continuous one. The main activities identified are:

- Application
- Appeals
- Failure to comply
- Monitoring

6.14 The costs associated with custodial remand and bail were estimated using data from publicly available sources. Costs incurred by each agency have been included under each of the main activities identified. However, not every agency will play a role in every event associated with EM bail. The unit costs calculated in this way and used in the analysis are shown in Table 6.1 and explained below.

Application

6.15 Those agencies most likely to be involved in the application stage of the process are the Crown Office, Scottish Court Service, social work departments, defence agent, sheriff, and Scottish Prison Service.

6.16 The procurator fiscal or a depute will consider the report from the police and decide whether it is appropriate to initiate proceedings, and if so in what form. If proceedings are to be undertaken against the individual, support staff prepare case papers for court. The procurator fiscal or depute would then appear in court to present the case. If a continued bail hearing is fixed, support staff will prepare the case papers for the procurator fiscal who will again have to appear in court and make an oral presentation. The unit cost estimate for the procurator fiscal is £175 per case for the application stage.

6.17 EM bail cases would have their first motions in either the summary or solemn court. If a suitability report is called for, then the cases are continued for an average of 5 days. The solemn court keeps their own cases if reports are called for. For the purposes of the following analyses it was assumed that the cost for the extra hearing in the solemn court is the same as that in the summary court. The extra hearing to consider the EM bail application usually lasts between 5 and 10 minutes. The estimated cost per case for the extra court hearing associated with a decision for an EM bail application in the summary court is £142 per case and in the solemn court £189 per case, with an average of £166 between both courts.

Table 6.1 Summary of costs per case incurred by various agencies

	Cost per case, unless stated (£)	Source
Scottish Court Service - application - appeal - failure to comply	£166 £331 £166	Scottish Executive 2005d Curtis & Netten, 2005
Sheriff - application - appeal - failure to comply	£164 per hour £218 per hour £164 per hour	Personal communication, McDonald (2007)
Defence Agent (Legal Aid) - application - appeal - failure to comply	£50 £250 £250	Amendments under the Criminal Legal Aid (Summary Justice Pilot Courts and Bail conditions) (Scotland) Regulations 2006; Amendments under The Criminal Legal Aid (Fixed Payment) (Scotland) Regulations 2004. This applies to all work done in connection with an application for bail subject to a movement restriction condition under section 24A of the 1995 Act, and is included as £50 for the application
Procurator fiscal - application - appeal - failure to comply	£175 £175 £333	Glasgow COPFS Finance Department Derived – details given in text
Social work department - application	£16	Derived - details given in text
Police - failure to comply	£1,207	Derived - details given in text
Prison service – remand in custody for: - 72 hours - 5.7 days - 39.6 days	£273 £519 £3,607	(www.scotland.gov.uk/hmip/docs/pvl-03.asp) Curtis and Netten, 2005

6.18 There was some degree of variability in who produces the suitability reports across the pilot sites. In Glasgow and Stirling, reports are written by social work department bail officers, while in Kilmarnock SACRO has been contracted to produce them. In Stirling, the social work department employed one full-time bail officer and one part-time clerical officer for 20 hours per week. These are discussed separately under sensitivity analysis (see para 6.51 below).

6.19 Interviews with the accused can often be conducted in the holding cells at the court and tend to last between 20 and 30 minutes. It takes on average 20 minutes to write the report at an estimated cost per case of £13.49. However, if it is not possible to conduct the interview in the holding cells at the court, the interview is conducted while the accused is on remand. Depending on the prison to which the accused is remanded, travel and interview time can be approximately 40 minutes if within the area, but if outside the area it can take up to 3 hours for the bail officer to travel to the accused and back. A conservative estimate of the cost to the social work department including travel is £27 per case for interviews conducted in prison; but the figure can be as high as £74 per case if the maximum travel time is considered.

6.20 It was suggested in Chapter 3 that between 70 and 100 per cent of interviews with accused are conducted in the holding cells. We have therefore taken the above costs and weighted them to account for the likelihood of the interview being conducted in holding cells as opposed to in prison, taking the mid point of the range (85 per cent) for our base case analysis. The weighted cost per suitability report is estimated at £16.

6.21 While the suitability report is being produced the accused is remanded in custody. As we have shown in Chapter 3 in relation to the referral process, this takes on average 5.7 days, with a maximum observed time on remand of 27 days. For this average of 5.7 days, the estimated cost is £519 per case.

6.22 A sheriff would preside over the EM bail application at second hearing. The average time taken for the second hearing and the reading of the report by the sheriff is estimated to be 10 minutes. The estimated cost per hour based on the number of sitting days per annum is estimated at £164.

6.23 The defence agent representing the accused under legal aid will receive a minimum of £50 per case for all work done in connection with an EM bail application. The recent amended legislation which allows an additional fee for the second hearing took effect from 12th June 2006; however, sources in Glasgow suggest no claims had been submitted up until November 2006. Nevertheless these costs are included in the current analysis to capture the likely costs if EM bail is rolled out nationally.

Appeals

6.24 The main parties involved in appeals are: the Scottish Court Service, defence agent, procurator fiscal, sheriff and the Scottish Prison Service. Appeals against

refusal of EM bail are made to the Appeal Court in Edinburgh, and such an appeal hearing usually lasts about 5 minutes. For those granted EM bail after an appeal there is an additional hearing at the High Court where the accused is brought from custody the next day to have the procedures explained in court. This usually lasts for about 10 minutes. The cost per hour of the sheriff's time used in the analysis is £218. The average cost per case for the Scottish Court Service going to appeal is £331. During the bail appeal process the procurator fiscal or depute appearing in court submits a bail appeal report to the Crown Office. An advocate depute and a Crown Office Trainee attend the high court hearing. During the appeal court hearing, the Advocate makes oral presentations and the judge considers the issue of bail. After the hearing, the trainee telephones the results of the bail appeal to the relevant procurator fiscal office that submitted the bail appeal report. We have used the average cost per case in the preparation of each custody case as a proxy for handling bail appeals. However there are caveats around the use of this estimate given that information on handling bail appeal work is not usually recorded in a manner that permits meaningful unit cost estimation. Actual case costs may be higher or lower depending on the circumstances of the case. The unit cost estimate of the input by the procurator fiscal used in the analysis is £175 per case.

Failure to comply

6.25 When a failure to comply with EM bail is recorded, the accused is only at this stage potentially in breach of the order. However, Reliance/Serco is required to notify the police, and the administrative arrangements by the police have been assumed to take between 20 and 30 minutes following notification of the failure to comply. Usually, two police constables are sent to investigate and that investigation can last 2-5 hours. If the accused cannot be traced within 72 hours, the police will submit a report to the procurator fiscal asking for a warrant to be raised for the arrest of the accused. Where a warrant has been raised the case would then be allocated to a police officer to deal with. It is assumed that the investigation by the police can take between 7 and 10 days. The cost to the police per case for failure to comply is thus estimated at £1,207. This estimate does not include any office overheads, allocation for police vehicles and equipment.

6.26 The hearing for failure to comply is presided over by a sheriff; the cost per hour of this sitting is £164.

6.27 The procurator fiscal can instigate breach proceedings against the accused where it is believed that this is justified. For breach proceedings following a failure to comply the cost to the Crown Office depends on the court in which the proceedings take place. We have assumed that the sheriff court is where the majority of cases are conducted and have therefore used this in deriving our estimate. The cost per case in the sheriff court is £333 per case.

6.28 A defence agent would usually be present at the court hearing for breach of bail. Assuming this work is carried out in the sheriff court, the cost per case to the Defence is estimated at £250. This figure represents all work done in connection with ordinary breaches of bail where professional services are provided in relation to

proceedings in the Sheriff Court (Scottish Statutory Instruments 2004/23 Criminal and Legal Aid (Fixed Payments) (Scotland) Amendment (No. 3) Regulations 2004).

Monitoring

6.29 Monitoring and installation charges to the Scottish Executive by the monitoring company over the pilot were obtained and used to derive an average cost per case. These are net amounts invoiced and include any discounts given to the Scottish Executive. The total charge over 16 months for 101 people was £153,158, equivalent to an average charge of £1,516. Total charge data for those on EM bail was extracted from invoices sent to the Scottish Executive.

Probability parameters

6.30 Using data obtained from the agencies involved in the pilots, probabilities were derived, and these are given in Table 6.2. The data are obtained from the sample of 306 applications for EM bail. Difficulties already noted in earlier chapters in obtaining quantitative data which required cross-referencing of information for triangulation purposes meant that there is necessarily some uncertainty about the probabilities used.

6.31 Seventy five per cent of the cases had their application for EM bail considered by the Sheriff, and 52 per cent were not granted EM bail. Of those granted EM bail, as is to be expected, the majority (98%) had a positive suitability report. In very few cases (2%) the procurator fiscal or depute appealed the decision to grant EM bail. Of the 26 cases examined where the defence appealed there was a 77 per cent chance the appeal would be refused.

6.32 In the majority of cases (67%), there were no failures to comply where the Crown appealed the granting of EM bail. However, this probability should be treated with caution due to the small numbers on which data were available. In the cases where there were no appeals to the granting of EM bail, in 67 per cent of cases there was one or more failure to comply: 32 per cent had one failure to comply, 22 per cent had 2-4 failures to comply and 13 per cent had 5-7 failures to comply. In 31 per cent of the cases there was a new offence leading to a court hearing. In 14 per cent of the cases the accused on EM bail absconded.

Remand

6.33 The elements for costing remand were data on the average number of days on remand for those who were refused EM bail and remanded in custody and an estimate of the cost per day on remand. The mean number of days remanded was 56 (median 43). The cost per day for remand was derived using data on the cost per prisoner place for the financial year 2003/2004 and inflated. The cost per day per case was estimated

Table 6.2 Summary of probabilities used in the model

Application	Probability
Probability of having application considered	0.75
Probability of remand in custody without application and after application	0.66
Probability of being granted EM bail after application	0.48
Probability of not being granted EM bail after application	0.52
Probability of a positive suitability report for those granted EM bail	0.80*
Probability of a negative suitability report for those granted EM bail	0.12*
Probability of a positive suitability report for those not granted EM bail	0.25
Appeals	
Probability that procurator fiscal appeals granting of EM bail	0.02
Probability that procurator fiscal does not appeal granting of EM bail	0.98
Probability that appeal by procurator fiscal is upheld	0.50**
Probability that appeal by procurator fiscal is denied	0.50**
Probability that defence appeals where EM bail not granted	0.08
Probability that defence does not appeal where EM bail not granted	0.92
Probability that appeal by defence agent is upheld	0.24
Probability that appeal by the defence agent is denied	0.77
Failure to comply	
Probability of failure to comply where EM bail is granted after appeal by procurator fiscal	0.33***
Probability of not failing to comply where EM bail is granted after appeal by procurator fiscal	0.67***
Probability of not failing to comply where EM bail is granted after no appeals	0.33
Probability of having 1 failure to comply where EM bail is granted after no appeals	0.32
Probability of having 2-4 failures to comply where EM bail is granted after no appeals	0.22
Probability of having 5-7 failures to comply where EM bail is granted after no appeals	0.13
Probability of failure to comply by types:	
Absconds	0.14
Involuntary	0.06
Voluntary	0.49
New offence recorded	0.31

* Eight per cent were not recorded as either suitable or unsuitable

** The sample size on which probabilities were derived is 2 people.

*** The sample size on which probabilities were derived is 3 people.

at £91⁷. These data were used to derive an average cost per accused for those on remand over the duration of the pilot of £5,096.

6.34 There is asymmetry between EM bail and custodial remand at the sentencing stage. If someone is remanded into custody and subsequently convicted and given a custodial sentence, then under section 210(1) of the CP(S)A 1995 the court must take into account the time spent on remand in custody awaiting trial or sentence. This usually means that the sentence is ‘backdated’ to the start of the remand period. On the other hand, there is apparently no legal requirement to consider time spent in custody when sentencing someone who was on EM bail. If the custodial sentence for someone previously remanded in custody is longer than the period spent on remand, then the cost of the latter effectively becomes zero when making comparison with EM bail. We will take this into consideration later in the chapter.

Analyses

6.35 TreeAge Pro software (TreeAge Software - Data 4, Inc., Williamstown, MA) was used to conduct base analyses of the model. The expected costs of EM bail and remand in custody were derived by combining the data on cost to each agency with the probabilities of events occurring.

6.36 In addition to the costs to the various agencies estimated here, some costs of crime are borne by victims and society. Some victims have personal and property losses, others suffer physically and emotionally and may require the use of health services. There can also be lost income (to the individual) and lost productivity (to society) where victims have to take time off work.

6.37 Victim costs are difficult to quantify, but we were able to draw on a Home Office study that estimated the economic and social cost of crime against individuals and households (Dubourg *et al.*, 2005). We use average estimates of the cost consequence of crimes that occurred during the pilot (vandalism, theft and common assault). Using these data, we estimated the cost consequence of crime to be £843 per accused.

6.38 We present the base case analyses with and without these cost consequences of crime.

Sensitivity Analysis

6.39 There was some uncertainty and inherent variability around some of the parameters used in the base case analysis and so we conducted sensitivity analyses. Due to the variability in the parameters used in the analysis, sensitivity analyses were conducted on:

⁷ This figure is calculated from the Scottish Prison Service Annual Report and Accounts 2003-04 and was externally verified for the financial year 2003-04. It is based on the annual cost for prisons divided by the number of prisoners. The annual cost includes staffing costs, running costs and other current expenditure associated with the operation of the prison estate.

- Reduction and increase in percentage of interviews conducted in prison by the social work department
- Minimum and maximum days on remand pending suitability report
- Contracting out suitability reports to SACRO

6.40 For the base case analyses we used an average of 85 per cent of interviews being conducted in the cells, the remainder assumed to be conducted in prisons. It was suggested in Chapter 3 that between 70 and 100 per cent of interviews are conducted in the cells, and so we re-ran the analyses using 70 per cent and 100 per cent respectively.

6.41 It was assumed for the base case that the average time on remand while awaiting the suitability report is 5.7 days. However, reports can be produced in a minimum of the same day (in 4 cases) to a maximum of 27 days (in one case), during which time the individual is remanded. To assess the sensitivity of the results, we looked at this full range of experience, producing values between £91 for one day and £2,457 per case for a maximum of 27 days.

6.42 For the base case, we used a weighted average cost per case for the activities involved in preparing the suitability report. In Kilmarnock, this service is contracted out to SACRO. We assess the results using cost per case where the report is prepared by SACRO. The cost per report is based on the cost to the agency of providing this service in relation to the number of reports prepared over this period.

COMPARATIVE COSTS

6.43 We were interested in the expected cost associated with electronic monitoring relative to the expected cost of remand. This was investigated using a pruned version of the standard model populated by data from the pilot for costs, probabilities and length of time on remand for those refused EM bail. We report the results for two analyses excluding and including the cost consequences of crime.

Base case results: Comparative costs excluding cost consequences of crime

6.44 The base case results of the model after the 16 months of the pilots are shown in Figure 6.3 and Figure 6.4. On average, EM bail (£4,123) looks cheaper than remand (£5,096), although we have yet to take into account any backdating of subsequent custodial sentences for those on custodial remand. An accused making an application for EM bail through a defence agent is estimated to generate a cost to all agencies of £4,123. This reflects all of the extra costs incurred by the various agencies involved.

6.45 During the course of interviews conducted during the pilot, it was evident that the activities involved in piloting electronic monitoring do not have significant workload implications for agencies. Many agencies perform activities related to electronic monitoring as part of their regular duties. In Stirling and Glasgow, bail officers were employed to undertake activities associated with EM bail. This, however, is not the case in Kilmarnock where the production of reports was

contracted out; we will see the effects of this on the overall results later in this chapter. Generally, however, we were told that there was a minimal impact on the workload of most agencies, and therefore the contribution to costs is not high.

Figure 6.3 Comparison of costs over 16-month pilot – EM bail process

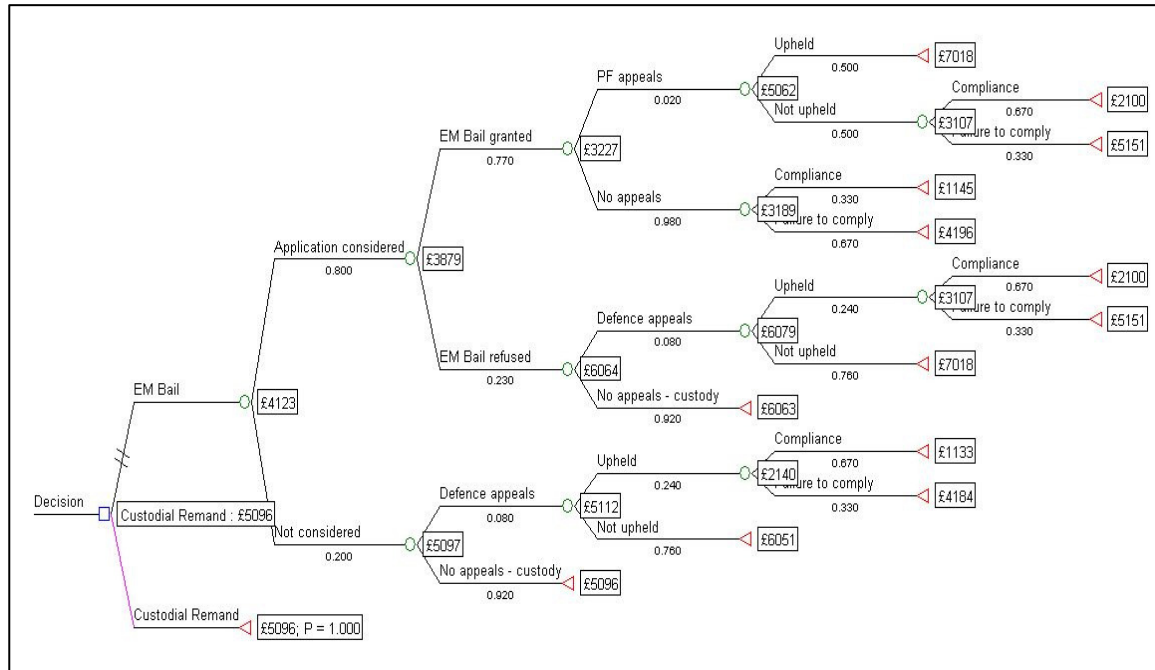
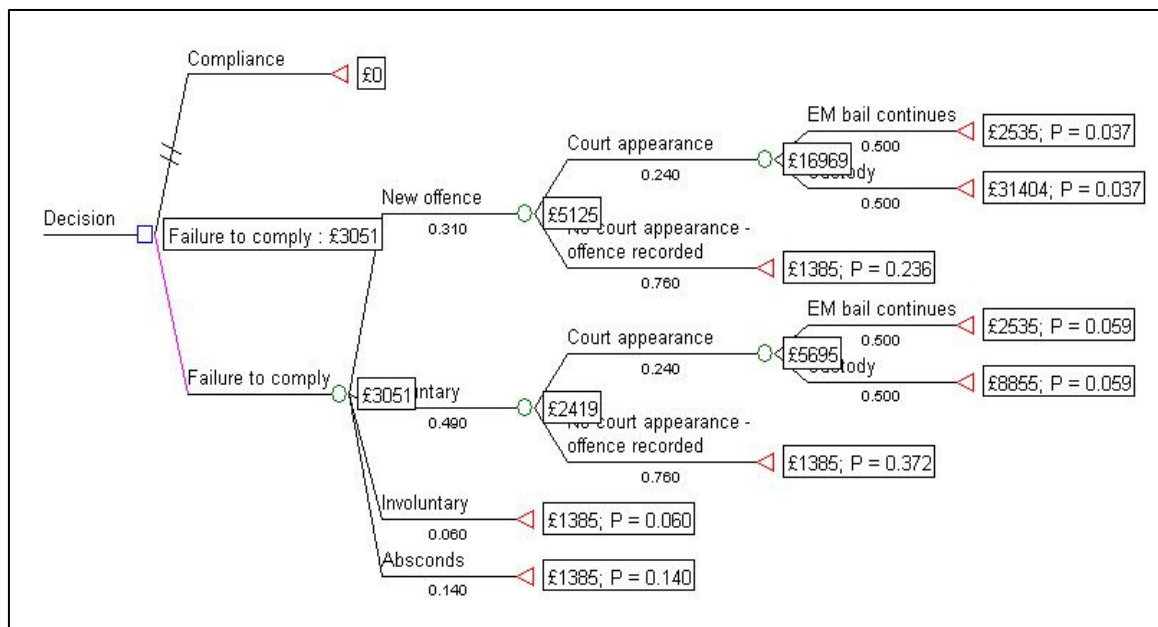


Figure 6.4 Comparison of costs over 16-month pilot - failure to comply



6.46 The cost differential between EM bail and custody also reflects the lower average cost of monitoring and installation negotiated by the Scottish Executive in 2006. If there were to be a substantial change in the uptake of electronic monitoring resulting in a marked increase (or indeed decrease) in the number of installations and the need for monitoring, this could alter the average cost to the monitoring company, and in turn could alter the charge to the Scottish Executive. More people on EM bail could make the processing of them more efficient, for all agencies potentially, which would reduce the average cost per case. On the other hand, if EM bail was extended to a wider number of people, there is also the potential that it could draw in more serious offenders and in so doing increase the risk of failure to comply, which would push up the average cost.

Base case results: Comparative costs including cost consequences of crime

6.47 In the model we included the cost of crime (during the bail period) resulting from a new offence. These are shown in Figures 6.5 and 6.6. The expected cost of EM bail when the impacts of crime were included was £4,230 compared to a remand cost of £5,096. In fact, even if we were to increase the weighted average cost of crime by a factor of 10, EM bail would still be cheaper than remand in custody, largely as a result of the small numbers in the sample who went on to commit a new offence while on EM bail. For those on remand, it is possible that while in custody they will engage in activities for which they will be reprimanded at the prison. It is assumed that no extra resources are needed to deal with this latter scenario, and hence there are no additional costs.

Sensitivity analysis on base analysis excluding cost consequence of crime

6.48 In the first sensitivity analysis we changed the percentage of interviews conducted in the cells from 85 per cent to either 70 per cent or 100 per cent. This made very little difference to the cost of producing suitability reports or the overall cost of EM bail. Under the 70 per cent assumption, the expected cost of EM bail was £4,124, and under the 100 per cent assumption it was £4,121.

6.49 We examined the sensitivity of the results to a change in the days spent on remand pending suitability reports for people who eventually got EM bail. EM bail becomes more costly (at £5,673) than remand when this number of days is set equal to the maximum observed length of 27 days. If the accused is held on remand for just one day, the expected cost of EM bail becomes £3,780. If someone were to be held for 19 days on remand pending a suitability reports, then the total cost of EM bail would be almost exactly equal to the mean cost for the custodial remand group (based on 56 days, the observed average) after a failed application for EM bail. Figure 6.7 illustrates the pattern of cost differences under different assumptions. It should be remembered, however, that no adjustment has yet been made for backdating of sentence length for the custodial remand group.

Figure 6.5 Comparison of costs over the 16-month pilot: EM bail process, including cost consequences of crime

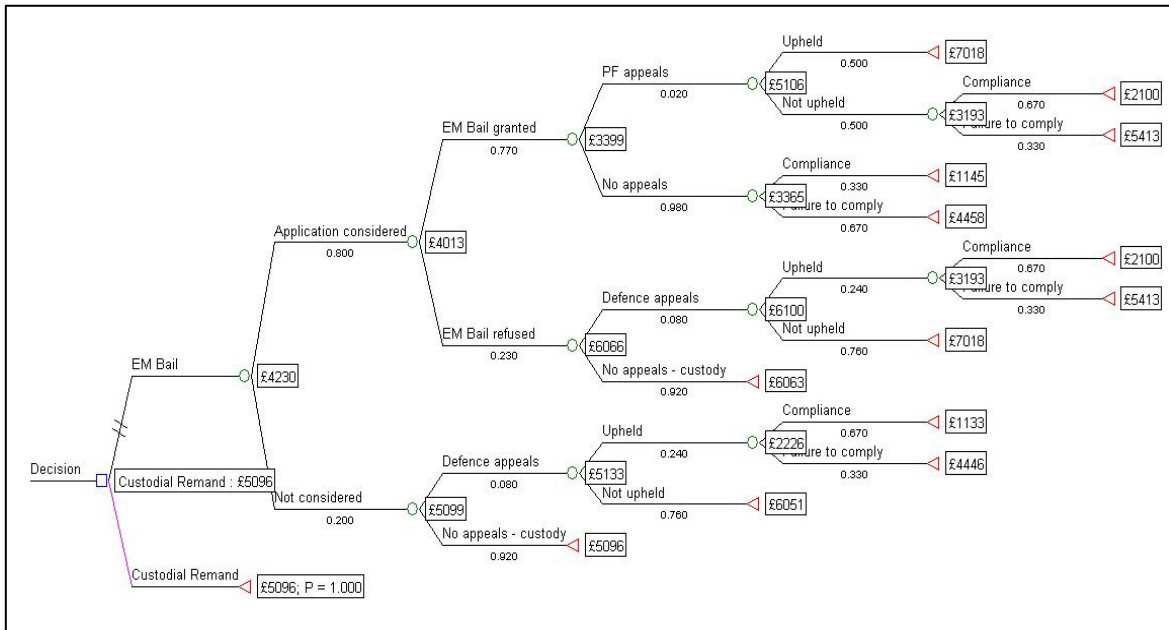


Figure 6.6 Comparison of costs over the 16-month pilot: failure to comply, including cost consequences of crime

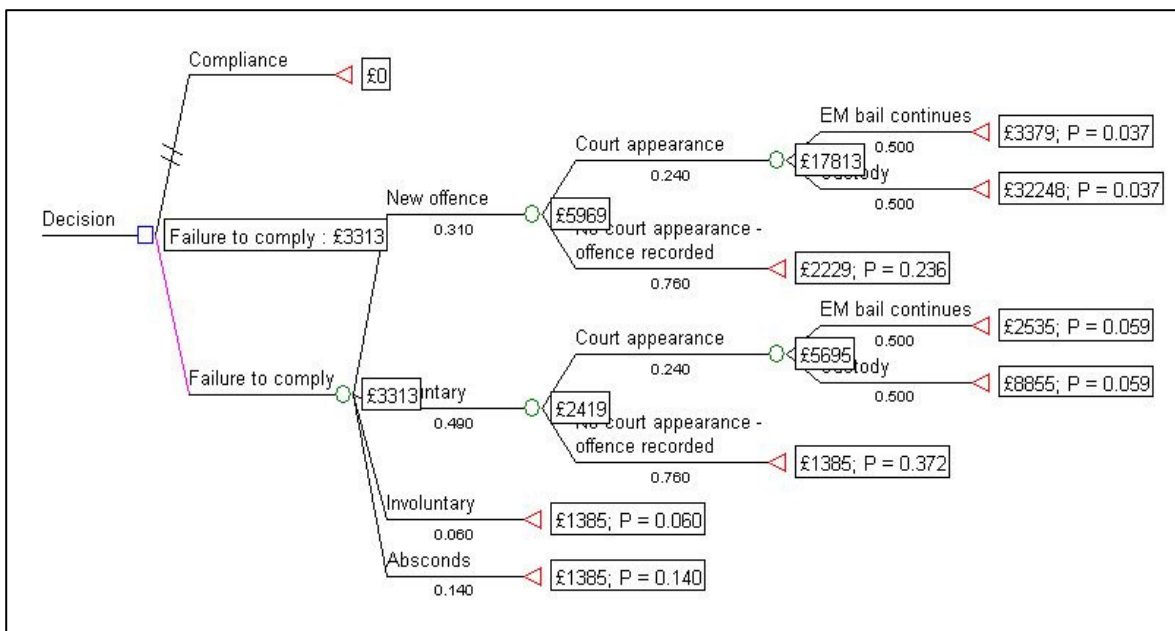
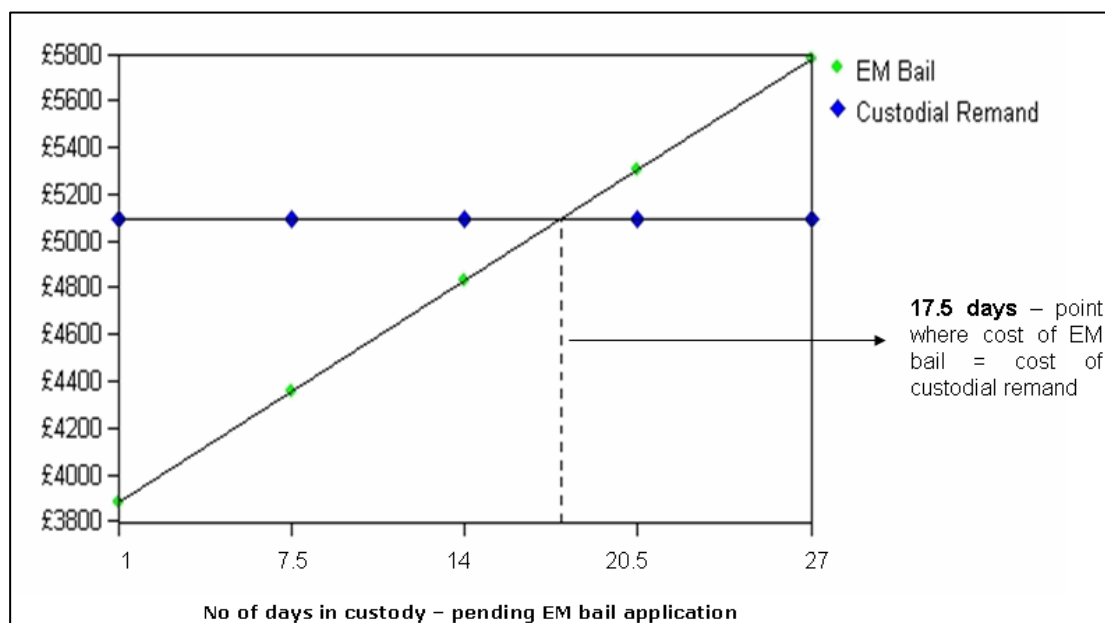


Figure 6.7 Sensitivity analysis for days on remand pending suitability report



6.50 The third sensitivity analysis used the cost per suitability report where this is prepared by SACRO. This results in a narrowing of the cost difference between the 2 options, although there are still cost savings to be accrued from EM bail. At a cost per case of £1,366, the cost of EM bail is now £5,203. The cost per case is high due to the low number of cases dealt with over the period of the fieldwork in Kilmarnock (52 cases). However, if the numbers of cases increased there are potentially economies of scale which might work through to a reduction in the price negotiated with SACRO.

6.51 We also examined the sensitivity of the results to a change in the costs of preparing the social enquiry report by bail officers at Stirling. This has a marginal impact on the costs to be accrued from EM bail over those if the social work department conducts the social enquiry reports at Glasgow. If bail officers in Stirling conduct 70 per cent of the interviews in cells the cost of EM bail is £4,121. However, if 100 per cent of the interviews are conducted in cells, the cost of EM bail is £4,119.

Sensitivity analysis including cost consequence of crime

6.52 There was no significant change in the results under these 4 sensitivity analyses when the cost consequences of crime are included. Under the third sensitivity analyses, if a person was remanded in custody for 17.5 days (during the application process) the cost of remand would be £1,602. The expected cost of EM bail would then be equal to the cost of custodial remand. Periods in custody pending the suitability report below 18 days will result in a cost saving with EM bail.

Final sentence

6.53 In this study it was not possible to measure the outcomes of EM bail and remand in terms of impacts on the individuals concerned, such as subsequent criminal behaviour, but we do need to be aware of the ‘destinational outcomes’ in terms of the sentence received at the final trial diet. The reason is the asymmetry mentioned earlier between custodial remand cases and individuals on EM bail. A custodial sentence is backdated to the start of the remand period for the former, but there is no legal requirement to backdate the sentence for someone on EM bail who is given a custodial sentence. When comparing the costs of the 2 options, the backdating of the sentence for one group effectively means that the period in custodial remand has zero cost (when looking at the wider picture) for someone subsequently sentenced to custody for a period greater than the time spent on remand.

6.54 We explored 3 sources to get information on the number or proportion of people who are remanded in custody and subsequently receive a custodial sentence. The first source was the data collected during the pilot: 170 of the individuals refused EM bail were remanded in custody, 18 got standard bail and 2 were released prior to the second EM bail hearing. We are only concerned in this study with those who were remanded. Sentence for the original offence is known for 61 of these people, 35 of whom (57 per cent) received a custodial sentence. Length of sentence is not known for 2 cases, but 13 were sentenced (before backdating) to 30-90 days, 17 to 120-180 days, and 3 to 230 or more days. For most of these custodial remand cases, the length of custodial sentence is greater than the average duration of custodial remand (56 days). It should be noted, however, that this group of custodial remand cases does not necessarily give us the ideal comparison, as these are people who applied for but were refused EM bail, and they might not be completely representative of everyone given custodial remand. (For information, mean sentence length was 118 days for cases in the pilot who were previously on custodial remand, compared to 130 days for the 12 cases who were previously on EM bail who got a custodial sentence.)

6.55 A second source of information was the Scottish Executive who advised us that approximately 50 per cent of people on custodial remand group get a custodial sentence (Scottish Executive, 2000: p. 11, p. 92). We do not have further information on this calculation.

6.56 Third, we looked at evidence reported on the Scottish Parliament website (<http://www.scottish.parliament.uk/business/committees/historic/justice1/2003.htm>) on the percentage of all remands who received a custodial disposal (Justice 1 Committee. 3rd Report 2003. Inquiry into Alternatives to Custody Volume: Evidence SP paper 826). The estimated custodial disposal for all remands in 1997 was 46.3 per cent. This estimate is close to those suggested by each of the other two sources.

6.57 We therefore have three different estimates for the proportion of custodial remand cases that subsequently receive a custodial sentence that effectively reduces their remand cost to zero: 57 per cent, 50 per cent and 46.3 per cent. We do not know whether the sentence would be backdated in every case, nor do we know exactly how the length of sentence compares with the time spent in custody while on remand.

However, from the information we have been given it seems reasonable to assume that a backdating is applied in every case, and that sentence length exceeds remand duration. Consequently, we are assuming that the calculated cost of custodial remand (£5,096) applies to only 43, 50 and 53.7 per cent of custodial remand cases, respectively. Using the first source of information to illustrate the calculation, we would then estimate – for the purposes of the comparison with EM bail – that custodial remand would cost on average £2,191 (= 0.43 x £5,096). Similar calculations can be done for the other two estimates of the percentage. Table 6.3 sets out the expected costs from these three alternative sources of information.

Table 6.3: Comparative costs between EM bail and custodial remand taking into account the backdating of custodial sentences

<i>For comparison: estimated cost of EM bail in base case = £4,123 And =£4,230 if consequences of crime on agencies are taken into account for offences committed during the bail period</i>	Estimated percentage of custodial remand cases that get custodial sentence	Estimated cost of custodial remand after taking backdating of sentence into account cost (£)
Source of information for calculation		
Pilot sample – those in custodial remand after being refused EM bail	57%	£2,191
Advice from Scottish Executive	50%	£2,548
Scottish Parliament Report	46.3%	£2,737

6.58 The last estimate in Table 6.3 can probably be discounted, based as it is on national data on all people charged and convicted across Scotland. Nevertheless, the conclusion from this estimate is in line with that from the other two, namely that custodial remand is much less expensive than EM bail (mean £4,123; and £4,230 if cost consequences of crime are included) when taking into account the backdating of custodial sentences. Indeed, so long as the percentage of custodial remand cases who receive a custodial sentence at final trial diet (of a length at least as great as the period spent on remand) is greater than 19.1 per cent, then custodial remand is less costly than EM bail (excluding cost consequences of crime). If cost consequences of crime are included, this ‘threshold percentage’ becomes 17 per cent.

Limitations

6.59 The analyses and estimates presented in this chapter have some limitations, particularly because they are based in part on assumptions that could not come from direct observational data, but which had to be made to produce the complete representation of the EM bail and custodial remand processes. The model is necessarily a simplification of the real world, but it provides a helpful representation that could be developed further if needed.

6.60 Another limitation is that, although the model uses data gathered from various sources during the fieldwork period, there were some difficulties with data collection which may affect certain parameters, such as the probabilities associated with Crown appeals and the seriousness and frequency of failures to comply. The data available were not always ideal for model-building purposes.

CONCLUSIONS

6.61 Given the increasing pressure placed by the remand population on the prison system in Scotland and the costs associated with housing prisoners who are untried and unconvicted at the time of imprisonment (Sentencing Commission, 2005; Scottish Executive, 2004), it is natural that increasing attention should focus on costs, particularly of alternatives to remand in custody.

6.62 In 2002, 19 per cent of the average daily prison population comprised prisoners detained on remand (Scottish Executive, 2004). This represents an increase of 3 per cent over 1994 estimates. This increase, coupled with the rising average period spent on remand, puts considerable strain on the prison system (The Sentencing Commission, 2005; HM Inspectorate of Prisons for Scotland, 1999). Increases in throughput contribute to increased remand costs. An annual estimate of £27.2 million for 1999 and an annual cost of £36 million for 2002 have been suggested for the remand population in custody (Safeguarding Communities Reducing Offending (SACRO), 2004; HM Inspectorate of Prisons for Scotland, 1999).

6.63 The model built in this study allowed us to represent the routes that an accused on EM bail would take through a number of processes until they reach the final trial diet. From this model and our collection of data to estimate probabilities and costs, we calculated that the average cost of EM bail is £4,123. If cost consequences of crime are included, relating to offences committed during the bail period, the mean cost becomes £4,230. The estimated mean cost for a custodial remand case is £5,096. Sensitivity analyses, making allowance for different values for some of the key parameters in the model, generally did not change this initial conclusion that the process of EM bail looks less costly than the process of remand.

6.64 However, this apparent cost difference does not take into account the differential treatment of time spent in custody during the pre-trial period: for people in custodial remand a subsequent custodial sentence is likely to be backdated to the start of the remand period. There is no equivalent backdating for EM bail cases. When comparing costs between EM bail and custodial remand, such backdating becomes pivotal because, under all suggested scenarios for the proportion of custodial remand cases that get custodial sentences at final trial diet, the cost ranking is reversed. For example, if 50 per cent of custodial remand cases are subsequently sentenced to custody, EM bail would be £1,575 more expensive per case. Overall, therefore, we conclude that EM bail is *more* expensive than custodial remand.

6.65 The pivotal element here is the percentage of custodial remand cases who receive a custodial sentence at final trial diet (of a length at least as great as the period spent on remand). If this is greater than 19.1 per cent, then custodial remand is less

costly than EM bail (excluding cost consequences of crime). Were the courts to change their sentencing patterns considerably, and/or if custodial sentences took into account time spent on EM bail or in custody pending suitability reports for EM bail, then this pattern of relative costs could be different.

6.66 It is difficult to be sure about the economic consequences of a national roll-out of EM bail. With expansion, it would be reasonable to expect economies of scale in some of the elements of the processing of cases, and particularly in the monitoring of individuals. This could reduce average costs per case (which might be translated into a lower price per case where services – such as monitoring – are undertaken by agencies under contract from a public body). Another reason for expecting costs to fall could be that processing arrangements would get more efficient in the use of staff time as experience grows. On the other hand, rolling out EM bail to all parts of Scotland could push up costs if some activities are more costly in rural areas (because of travelling time). A second reason for expecting costs to rise would be if EM bail was extended to a wider group of accused individuals, to include people with a higher risk of failing to comply with conditions.

CHAPTER SEVEN CONCLUSIONS

INTRODUCTION

7.1 In April 2005, the piloting of electronic monitoring as a condition of bail (EM bail) was introduced across 4 courts, the sheriff courts in Glasgow, Kilmarnock and Stirling and the High Court sitting at Glasgow. The Criminal Procedure (Amendment) (Scotland) Act 2004 introduced 2 additional provisions to ensure that EM bail was used as a direct alternative to custodial remand rather than being used more loosely as an additional tool in the armoury of bail. First, Section 24A(1) allowed for an accused person who has been refused standard bail to apply for bail with an electronically monitored movement restriction condition; and secondly, Section 24A(2) granted powers to the courts to impose an electronically monitored movement restriction condition without application from the accused, in petition cases involving rape or murder charges. The main aims of EM bail were:

- to reduce the use of custody for those accused deemed eligible for electronically monitored bail who would otherwise have been remanded in custody; and
- to offer additional security to the general public against the likelihood of offending or intimidation of witnesses by accused people who are seen as a potential risk if not remanded in custody.

7.2 This concluding chapter looks more critically at the extent to which those 2 main aims have been achieved and explores further the take-up rate of EM bail in Scotland to date and the importance of inter-agency collaboration and communication in promoting further usage of this alternative to custodial remand.

THE USE OF EM BAIL IN SCOTLAND

7.3 In the period April 2005 to July 2006, applications were made for EM bail in 306 out of 6,914 (4.4%) potentially eligible cases. These applications were made by 270 individuals (of which 238 applied only once and the remaining 32 accused applied more than once). Seventy-five accused had their applications for EM bail refused outright whilst the remaining applications were considered, resulting in 231 custodial remands of between 0 and 27 days pending suitability reports. Those reports suggested that 186 applications were suitable and of these, 116 applications were granted. The operation of EM bail over the 16 months of the fieldwork is focused on the 63 individual accused who were granted and completed a period of EM bail during the fieldwork period. One striking facet of the pilots, readily recognised by many stakeholders in the pilots, is the low numbers compared with the numbers being remanded in custody; granted EM bail applications comprised a reduction to the remand population of just 1.7 per cent. Although many of the respondents suggested factors which may well have contributed to this, it is difficult to give a definitive explanation as to why take up of this alternative to custodial remand has not been more in evidence.

7.4 It should be borne in mind that the relatively low numbers converting to EM bail orders cannot be deemed conclusive or otherwise of either effectiveness or viability of the pilots overall. Professional respondents at interview cited several possible reasons for the persistently low numbers applying for and actually granted EM bail:

- defence agents (especially those from ‘out of town’) and visiting sheriffs and judges were perhaps less aware of the availability and eligibility criteria for EM bail, suggesting a lack of publicity and overall awareness of the pilots;
- sheriffs often called for suitability reports but were not on the bench for the second hearing, with the result that a different sheriff may take a different view of the appropriateness of EM bail, irrespective of the suitability report, suggesting a lack of continuity in the referral process;
- given the seriousness and frequency of offending of those likely to be refused standard bail, it was possible that sheriffs would agree with the Crown that custodial remand was the only option that would ensure public safety, suggesting that it is the Crown rather than the court that needs to be convinced of the viability of EM bail;
- there was a general scepticism amongst most of the professionals about the merits of electronic monitoring *per se* as a way of ensuring control over, and surveillance of, accused persons.

7.5 The so-called conversion rate from applications to granting of EM bail is 38 per cent. Given the cost implications of the court process from application, through the compilation of suitability reports and concurrent remand in custody, to the final application being granted, this conversion rate is not cost-effective. Indeed, as was seen in Chapter 3, there are significant agency resources put into the referral process which are, in 62 per cent of cases (that are not converted to EM bail orders), subsequently wasted: for example, the second hearing and associated paperwork and the compilation of suitability reports. It was possible in a small number of cases identified during the evaluation for bail officers to compile a suitability report for the same day as the first hearing, thus precluding the need for a 5.7 day remand. If this could be managed more broadly, by enabling bail officers to have access to accused in the court and by making phone-based assessments of potential bail addresses, costs would be reduced dramatically for the courts, the social work departments and the prisons and may well result in a much higher conversion rate from ‘suitability’ to EM bail granted.

INTER-AGENCY COLLABORATION

7.6 The nexus of relationships between procurators fiscal, sheriffs, clerks of court and defence agents is often pivotal to decision making in respect of whether or not to remand an accused in custody pending trial. This has been demonstrated in several ways both in the referral process and in the operation of the pilots more generally, in

relation to the conversion rate, the appeal rate, the use of Section 24A(2) and the relationship between Crown and court.

7.7 First, as was seen in Chapter 3, the conversion rate from an application for EM bail to EM bail being granted is relatively low, with 38 per cent of all applications being granted; 50 per cent of those where suitability reports are called for being granted; and 62 per cent of those whose suitability reports considered EM bail appropriate being granted. It may well be that the reasons for this are changed circumstances of the accused or additional information on the charge(s) brought to the attention of the court in the intervening 5 day period during which suitability reports should be compiled; however, it was suggested by some sheriffs at interview that a different interpretation of suitability by a 'second sheriff' may be a determining factor. Nevertheless, analysis of the data does not suggest that a 'second sheriff' is that much more likely to refuse or grant EM bail at the second hearing than if they had called for the report themselves. Whilst appreciating the importance of judicial discretion in these matters, there nevertheless seems to be a lack of consistency of approach to EM bail in individual cases which could conceivably be ameliorated by increased communication between sheriffs, fuller record keeping of reasons for calling for reports and increased publicity about the availability of EM bail amongst visiting sheriffs. It was also suggested from two sources that there should perhaps be a presumption of EM bail being granted in cases where the suitability report suggests that EM bail would be appropriate, assuming that there are no changed circumstances in the intervening 5 day period that would suggest otherwise. However, if the above suggestion of same-day suitability reports could be taken on board, the issue of 'second sheriffs' would not arise.

7.8 Secondly, there has been little opposition by defence agents (or indeed perhaps accused themselves) to remands in custody pending trial during the course of the fieldwork period. It may well be the case that in such high tariff complaints, accused and their defence agents assume a custodial sentence will result and therefore prefer a custodial remand, the length of which is taken into account in the final sentence. However, this does not explain why those who apply for and are refused EM bail do not subsequently appeal that decision. Of the 306 applications for EM bail, information is available on only 26 defence appeals against refusal of standard bail, EM bail or both. It was suggested at interview that there may be a 'presumption of custodial remand' in certain cases which precludes defence agents from either applying for EM bail or appealing against refusal of bail, standard or electronically monitored.

7.9 Thirdly, section 24A(2) legislation has not been used to date in respect of rape and murder charges, even though eligible cases have been heard during the fieldwork period. Again, it was suggested at interview that professional discretion or integrity suggested that if the Crown did not oppose standard bail, there was no need for the sheriff/judge to add further conditions to a bail order, since the Crown was already acting in the public interest, and a sheriff/judge would respect that judgement. One option to increase the use of Section 24A(2) might be for the Crown and indeed the court to have greater powers to impose EM bail in such cases.

7.10 Finally, and particularly relevant to appeals and Section 24A(2) legislation cited above, whilst the independence of the judiciary has to be applauded, it should not preclude the need and desirability of close communication between the various professionals involved. This evaluation has highlighted sensitivities between sheriffs and judges and other parties involved in EM bail appeals in particular, but also in theory in Section 24A(2) provision, which need to be aired more proactively in order to avoid at best ‘second guessing’ whether EM bail is appropriate or at worst doing nothing untoward. Much of the process of EM bail currently requires ‘good faith’ rather than proactive negotiation between those involved in decisions about bail and remand, a level of communication and collaboration which could prove counterproductive and inefficient in the longer term.

7.11 The following 2 sections look in greater depth at the impact of the pilots on the 2 key aims of reducing custodial remands and increasing public safety.

REDUCING CUSTODIAL REMANDS

7.12 As was seen in Chapter 5, there was a reduction in the custodial remands of 116 accused during the fieldwork period. These 116 granted applications comprised just 1.7 per cent of the overall number of custodial remands in the pilot areas during the period of the fieldwork, which suggests a minimal impact of EM bail on the overall custodial remand population. The pilot courts were purposefully chosen because they had a high custody rate and comparison courts were matched on this criterion also. Therefore, there was always the risk that these courts would be difficult to influence in terms of their possible remand culture. However, from the comparison data collected outwith the pilot sites, it would seem that there is a remand culture in the pilot courts which is not matched in the comparison courts, given that the latter gave custodial remands to just 24 per cent of those appearing before them compared to the notional 100 per cent who applied for EM bail in the pilot courts.

7.13 It was noted in Chapter 5 that there was no evidence of netwidening or up-tariffing of accused in order to make use of electronic monitoring and that those given EM bail and those refused following suitability reports were similarly matched in being relatively high-tariff accused with lengthy offending histories, although less so than those refused EM bail outright. There is no reason why sheriffs would specifically seek to remand someone in custody so as to take advantage of the EM bail pilots; indeed there was overwhelming condemnation of such a practice and the low numbers would support such condemnation. However, it does seem that in the pilot courts compared to the comparison courts there was a much greater tendency to remand higher tariff accused in custody pending trial. This suggests that perhaps Glasgow, Kilmarnock and Stirling have a lower tolerance threshold for those accused with a lengthy offending history than their counterparts in Edinburgh, Greenock and Linlithgow, even though both sets of jurisdictions have a similar pattern of use of custody overall.

7.14 At the first hearing, it is likely to be the offending history of the accused that is the defining feature of those applications that are refused outright which suggests that accused with a higher number of previous offences are not being considered eligible for EM bail, even though it is a high tariff remand option for those refused standard

bail. However, at the second hearing, because there is little difference between those granted and those refused EM bail once suitability reports have been called for, it can only be a) the suitability of the premises, the circumstances of the accused and/or the agreement of the householders, or b) the opinion of the sheriff reading the suitability report, that is the defining feature of successful applications. Thus, the criteria for decision making must change between the first and second hearings, suggesting an inconsistency in practice which may conceivably account for the low conversion rate. Since option a) was not seen as an issue according to the completed pro formas, option b) – the attitude of sheriffs as to whether or not to grant EM bail following a suitability report – seems the most likely factor in determining the success or otherwise of EM bail applications.

INCREASING PUBLIC SAFETY

7.15 While it is not possible to provide the views of the general public on the operation and/or effectiveness of EM bail within this evaluation, an analysis of press coverage given in Annex 1 provides a strong flavour of the way in which this initiative is seen by the press, and how the public is informed – or misinformed - about EM bail. While the soundness of the principles behind bail and electronic monitoring are sometimes acknowledged, complementary and balanced accounts of actual success on bail or electronic monitoring are virtually non-existent in the press.

7.16 The most damaging press coverage received by the bail pilots – the relaxation of bail and electronic monitoring requirements so that a young man accused of murder could go on a pre-booked family holiday – arose as a result of the victim’s family going to a tabloid newspaper to say how upset they had been by this decision. The pilots could have done without such coverage, which reinforces the already prevalent sense that bail and electronic monitoring are misused (although in this instance the fear of offending on bail was not seen as an issue so much as being ‘soft on crime’). Single cases can have a disproportionately negative influence in the press and this must in some significant ways influence the attitudes not only of the public at large, but also the professionals involved, not least because one of the key roles they play is to protect the public. It is perhaps not surprising, therefore, that court-based respondents were sceptical of the ability of electronic monitoring to increase public safety, not least because an accused is still at liberty to offend irrespective of the imposition of an electronically monitored curfew. However, EM bailees and their families were more optimistic that the equipment and movement restrictions encouraged a more law-abiding lifestyle, although it was not possible in the time allowed and with limited access to the relevant databases to systematically monitor or analyse breach rates for those on EM bail compared with those on standard bail. However, the following section concludes on the propensity of the electronic component of EM bail to promote compliance with its conditions.

COMPLIANCE WITH EM BAIL

7.17 Eligible applicants for EM bail have an average of 9 previous offences and a high propensity for bail aggravated offending, and it is perhaps not surprising,

therefore, if they fail to comply with one or more of the conditions of EM bail, not least when it tends to be a younger age group that is granted EM bail. In 31 of the 63 completed bail orders, breach proceedings were brought against the accused, in 11 cases for infringement of bail conditions alone, and in 20 cases for charges including alleged new offences. If EM bail targets those who are less likely to comply, because of previous offending and a history of non-compliance with bail orders, then it is likely that breach rates will increase and exacerbate the problem that EM bail was originally trying to resolve, namely, to reduce custodial remands and to protect the public from those who offend on bail. In this regard, it is possible that EM bail orders – or more precisely, the electronic component of such orders – may be setting accused up to fail, since many failures to comply are failures to keep to the electronically precise curfew times or because of tampering with the equipment, issues which would not have arisen were these accused on standard bail conditions. This begs the question as to whether, in effect therefore, EM bail is drawing more people into the vicious cycle of stringent conditions leading to breach procedures leading to custodial remands and further charges. However, without a systematic interrogation of complaint files held in the courts following the outcome of breach proceedings for both the pilot and comparison samples, it is not possible to comment conclusively on the effects of EM bail *per se* on the likelihood of breach.

THE COMPARISON DATA

7.18 As mentioned above, the comparison sample from Edinburgh, Greenock and Linlithgow Sheriff Courts seemed to have a stronger tendency towards bailing or ordaining accused than their counterparts in the pilot courts. This is somewhat perplexing given that the courts were matched in terms of their use of custody, and the samples were matched on levels of previous and presenting offences. In the unlikely event that sheriffs in the pilot courts are ‘up-tariffing’ accused so as to be able to take advantage of the EM bail pilot option, it can only be surmised that there is a different culture amongst sheriffs in the comparison courts, one that prefers to bail or ordain accused pending trial.

7.19 The comparison sample and those refused EM bail in the pilot courts were also deemed to be at an advantage in terms of how long they spent on remand, in the minority of cases where custodial remand was imposed pending trial. For example, EM bailees spent approximately 3 weeks longer awaiting trial than those remanded in custody in the comparison courts, which in itself is not particularly problematic given that the EM bailees are at liberty during that time. But they are disadvantaged in that those remanded in custody pending trial will have those periods on remand taken into account in any final custodial sentence, whereas the period on EM bail is not taken into account. Final outcomes for the comparison group were also less severe than for those in the pilot courts – 22 per cent of the comparison sample received a custodial sentence for the original offence compared with 30 per cent of the pilot sample. Given that the comparison court sample was closely matched on demographic and offending history criteria, these findings suggest that it is court practices rather than the accused person’s offence or offending history that are the greater influence on trial outcomes.

THE COSTS OF EM BAIL

7.20 This issue of the length of time on EM bail and the length of any custodial sentence has quite striking implications for the cost of EM bail, as was seen in Chapter 6. Only if time spent on EM bail pending trial was taken into account in any subsequent custodial sentence would the costs of EM bail tend to be less than those of custodial remand. The overall cost to agencies per accused on EM bail was estimated at £4,123 as compared to £5,096 per case for those refused bail and remanded in custody. This suggests an expected cost saving of £973 per accused granted EM bail. However, this apparent cost difference does not take into account the differential treatment of time spent in custody during the pre-trial period: for people in custodial remand a subsequent custodial sentence is likely to be backdated to the start of the remand period. There is no equivalent backdating for EM bail cases. When comparing costs between EM bail and custodial remand, such backdating becomes pivotal because, under all assumptions that could be made in this evaluation about the proportion of custodial remand cases that get custodial sentences at final trial diet, the cost ranking is reversed. If, for example, 50 per cent of custodial remand cases are subsequently sentenced to custody, EM bail would be £1,575 more expensive per case. Overall, therefore, it is concluded that EM bail is *more* expensive than custodial remand.

OVERALL PERCEPTIONS OF EM BAIL

7.21 In terms of the overall credibility and legitimacy of EM bail as perceived by key stakeholders, respondents reported general agreement that the ideas behind EM bail were sound in principle, but there was an undercurrent of anxiety about whether it actually met its objectives in practice. There was an undisputed willingness to make the pilots work – to develop procedures which would make the application for, and the granting, monitoring and termination of EM bail a smooth judicial and administrative process - but there did not appear to be universal confidence in electronic monitoring as a means of constraining accused or reducing offending. The paradox was most marked amongst operational police staff who, on the one hand, were keen for the pilots to work because effective electronic monitoring would make their work supervising bailees arguably much easier, but on the other hand, doubted if EM bail would increase compliance with bail or reduce offending in the majority of cases. In this respect, respondents did not always perceive EM bail as being worthwhile. The greatest degree of scepticism towards EM bail was expressed, not surprisingly perhaps, by those professionals who worked with victims of crime.

7.22 It seems clear that if EM bail is to enjoy credibility and legitimacy with crime victims and the public more widely, then much more constructive and persuasive work needs to be done with victims' advocates and victim support organisations to counter negative impressions. It is a very steep irony that a group who are among the intended beneficiaries of EM bail should also be among its most severe critics. In this regard, it is suggested in Annex 1 that positive stories about community supervision of offenders and accused are needed in the press in order to instil in the public consciousness a sense of rehabilitation rather than punishment and understanding rather than fear. A further forum for such constructive images of electronic

monitoring might be an independent website which explained the processes and outcomes of EM bail amongst other criminal justice interventions, which reminded the public about the majority compliance rate with EM bail and its benefits in terms of maintaining family cohesion and social responsibilities.

CONCLUDING REMARKS

7.23 Judged purely in organisational and inter-agency terms, the pilots have been a clear success – respondents indicated that, in general, there was little or nothing that could have been done in order to create better outcomes than those achieved. It was universally agreed by key stakeholders that the pilots were well set up and the guidelines essentially sound. The inter-agency arrangements have worked well strategically to prepare the ground and maintain momentum, and at an operational level have not presented any significant problems. Where problems did arise, procedures were in place to enable agencies to work together to resolve them, most notably through the 3 Local Liaison Groups and the National Steering Group. These groups are considered essential to the ongoing and future success of EM bail in Scotland.

7.24 In the first 16 months of the pilot, applications for EM bail were made in 4.4 per cent of potentially eligible cases, and applications were granted for 116 accused, resulting in a 1.7 per cent reduction of the custodial remand population. This suggests that EM bail is not being seen among sheriffs and others in the criminal justice system as something which can have a significant impact on public safety, reductions in offending, victim protection or reduced incarceration rates. Whilst respondents overall (professionals, bailees and families alike) recounted their positive attitudes towards the principles of EM bail, the key to its success rests predominantly on the shoulders of the judiciary who indicated at interview that they accepted EM bail only as a mechanism which could prove useful in a limited number of cases.

7.25 EM bail has some obvious benefits both to accused and to society. It enables people who would otherwise be remanded in custody (with all the repercussions that that entails) to continue to live in the community with their families and, where appropriate, to continue in employment or to maintain their own tenancies. Given that in this sample alone (albeit numbers are small), 14 per cent of those on EM bail were subsequently found *not* guilty for the original offence, these benefits to accused and society alike are all the more important to take into consideration.

7.26 This evaluation suggests that the pilots have not fulfilled their aims of either increasing perceptions of public safety or reducing the custodial remand population in any significant way. Nor is EM bail necessarily cost-effective in attempting to fulfil these aims. This report is not saying, however, that EM bail has no value; on the contrary, it has intrinsic value as a means of imposing greater and more verifiable control over a defendant than ordinary bail. In this regard, EM bail can work, not least because individuals pending trial can maintain social commitments and family contacts that they might not otherwise have done if remanded in custody. However, unless a way can be found to make it more cost-effective, it is difficult to make the case for its continuance or expansion.

ANNEX 1 PRESS COVERAGE OF ELECTRONIC MONITORING AND BAIL IN SCOTLAND

By Mike Nellis

AIMS AND METHODS

The aims of the press analysis shifted during the first months of the research, as the issues became clearer. The initial primary aim was to ascertain the characteristics (themes and patterns) of newspaper reporting on the EM bail pilots, to judge the extent to which it presented, or departed from, a rational, rounded and responsible - good enough - account of this particular initiative. The secondary aim was to explain why the press coverage took the form it did. Once it became apparent that the EM bail pilots were not particularly newsworthy in themselves - but that *some* bail and *some* tagging decisions more generally were *very* newsworthy - the focus shifted away from appraising the papers coverage of the pilots to explaining why the coverage of tagging in particular was quite so negative - “negative” in this instance meaning inadequate and ineffective as a form of control over accused persons. The negative coverage of tagging implicitly challenged a key official assumption about EM bail, namely that it was a self-evidently “tougher rule for bail”, something more demanding than ordinary bail, an “additional measure to protect the public” (Scottish Executive 2005, para 22) which would thereby facilitate the reduced use of remands to custody.

This paper covers the period March 2005 to November 2006, from the leak of some of the Sentencing Commission’s key proposals on bail and custodial remand to *The Herald*, through the early operation of the EM bail pilots themselves to the “holiday abroad” scandal which broke in June 2006 and continued, in phases, until the accused involved were sentenced in November 2006. Most of the research involves collation and analysis of press cuttings from a sample of Scottish newspapers. The sample took in all Scotland’s indigenous daily papers (*The Herald*, *The Scotsman*, *The Daily Record*, *The Press and Journal*), and the Scottish editions of English-based papers (*The Sun*, *The Daily Mail*, *the Daily Mirror*, *The Daily Express* and *The Times*). Sunday newspapers were read more selectively, with a concentration on the broadsheets: attention was paid to Sunday redtops only when a bail or tagging story was either anticipated or known to have appeared there. The inclusion of the Glasgow-based *Evening Times* - as opposed to any other evening paper - was determined simply by its immediate accessibility to the researcher, and the relative inaccessibility of the others. While this is not a fully comprehensive, all-inclusive study of Scottish newspapers’ coverage of the EM bail pilots, there are no obvious reasons for thinking that reportage, editorialising and the cumulative narrative on bail and tagging would be significantly or substantially different in any of the excluded papers (the possibility remains of subtle and nuanced differences, but a strikingly different stance expressed in an excluded newspaper would probably have been deemed newsworthy by the others). Two local newspapers - the *Kilmarnock Standard*

and the *Stirling Observer* - were periodically examined because they reported on the courts in 2 of the pilot sites.

Many of the press cuttings used in the earlier part of the analysis were supplied by the Scottish Executive, later supplemented later by cuttings collected by the researcher, together with and information from both Reliance and Serco Monitoring Services. The cuttings consisted of news items and/ or editorials, and were augmented by press releases on the Scottish Executive website. The various items were initially read with the following themes and issues in mind:

1. The specific prominence given to tagging in the context of the overall bail and custodial remand reforms.
2. The use made by the press of official press releases.
3. The identification of key “news and comment” sources.
4. The use of human interest stories to bolster particular lines of argument.
5. The use of photographs and logos.

Content analysis of the selected newspapers was augmented by 4 face-to-face interviews with journalists (2 on the local newspapers in the pilot sites, 2 on national newspapers) - and a telephone interview with a fifth - to better understand what level of knowledge prevailed in the press about tagging, and what journalists themselves saw as the key issues in reporting it. In order to gain background knowledge the Executive’s perception of media issues relating to tagging, the civil servant with lead operational responsibility for electronic monitoring, and the head of communications team with responsibility for Justice Department matters were also interviewed.

Research utilising sources of this kind cannot go much further than describing and explaining why the press offers the account it does. In itself, it cannot reliably indicate what public opinion on EM bail is - or what the level of public support for it is likely to be, and it should not be read as such. (Only a public opinion survey would provide this information). Nonetheless, the kind of analysis summarised here does provide insight into the resources which have been fed into the public domain from ostensibly authoritative sources, on which “the public” then draw to make judgements. These are not, of course, the only media sources on which the public can draw - television, radio and internet news sites would have to be included in the analysis to give as full-as-possible a picture of the resources made available for the public to reflect upon. It needs also to be remembered that “the public” is segmented (to a degree) by age, gender, class, ethnicity and region - different “publics” are exposed to/ expose themselves to different media and may well interpret what is ostensibly the “same” news resource differently, according to their preconceptions, values and perceived interests. And lastly, variegated news media resources are not the only resource people draw on to make judgements - personal and local experience, and various entertainment media can play a part in shaping outlooks and judgements.

THE LIMITED PRESS COVERAGE OF EM BAIL

The first significant press reference to the EM bail pilots - before they were actually established - came in *The Herald* in March 2005, in a leaked story about the

recommendations of the Sentencing Commission's report "Use of Bail and Remand" due for publication in April 2005, the month the pilots began. The idea of EM bail was not in fact new at this point - a scheme was already running in England and Wales, and the idea of it had first been mooted in Scotland in a wide ranging consultation document on the future potential of electronic monitoring issued in October 2000. The Executive announced that it intended to pilot EM bail, and to clarify the law on tagging as a bail condition, in the White Paper on High Court reform. ("Tagging plan for bailed suspects" - BBC Online 18th August 2003). It is perhaps surprising that when news of the Sentencing Commission's intention to endorse the idea of EM bail was first leaked to the press, a few days ahead of publication of its official report, it was treated as something novel, out of the blue, without a history - rather than as something that had been deliberated upon for a considerable time.

Although stories about bail and tagging, as separate issues, are commonplace in the Scottish press, there has been very little coverage of the EM bail pilots as a specific topic. The following account identifies 6 stories about the pilots which were covered between March 2005 and November 2006: the latter date lies outside the official research period, but is included here because it was the endpoint of a story which had first been covered by the press in June 2006, about a bailed and tagged defendant who was temporarily (and controversially) granted permission to go on a family holiday.

1. The leak of the Sentencing Commission report on "Use of Bail and Remand"
2. The release of the Sentencing Commission report on "Use of Bail and Remand"
3. The early stages of the pilots
4. The first 77 EM bail orders
5. The "Holiday Abroad" story
 - a) The Revision of Bail Guidelines for Murder Suspects
 - b) Trial and Sentence

How might one account for the limited coverage of the pilots? It is due, firstly to the fact that until June 2006 their operation had not attracted sustained journalistic attention. Few journalists in fact knew of the existence of the pilots (as opposed to tagging more generally) and, in the absence of a dramatic, "human interest" controversy associated with them, the pilots had been too small an initiative to register as newsworthy. Of the 4 journalists interviewed for this research, 2 (one national, one local) had no knowledge of the pilots, while the other 2 had only vague knowledge and neither of these had a specific desire to write about them. The local journalists would only have written about EM bail if an individual had been granted it in their local court, and at the point of interview this had not happened. The 2 national journalists were more interested in policy stories (albeit with a human interest dimension) rather than individual cases. Both took the view that stories about the imposition of community penalties on individuals - probation, community service or tagging, for example, - would only appear in national newspapers if there was something anomalous or controversial to report, i.e. if the offence was in some way peculiar or if the penalty seemed unduly lenient. Stories about policy - for example, the general pattern of use of community penalties, although even they would need a pretext (the publication of annual official statistics, a new report or an Executive press

release) to trigger interest in it - were marginally more likely, and within this broad framework the EM bail pilots were not significant enough in themselves to be newsworthy.

This is surprising in one sense, because EM bail brings together 2 separate issues with which the majority of Scottish newspapers have been actively concerned, and on which they nowadays have predetermined, highly normative and formulaic ways of reporting - namely offending on bail and electronic monitoring. These interests in turn are exemplars of an ostensibly deeper and broader preoccupation with offending in the context of *any form* of penal supervision other than imprisonment - bail, parole or a community penalty such as probation or community service. This deeper and broader preoccupation is used to signal 2 things to the Scottish public. Firstly, it is used to warn them that they are being endangered by the (inappropriate, unjustifiable and sometimes incompetent) use of these measures by various "authorities" - sheriffs, parole board officials, social workers and/or Reliance (now Serco) - sheriffs in particular being deemed out of touch with public concern about crime.

The always unpleasant, occasionally catastrophic failures of supervision on which the press dwell bear witness to the fact that failures of judgement and practice do indeed occur, although what is always lacking is any sense of context or proportion, or any reference to "good news" - successful and effective instances of community supervision against which the significance of failure might be appraised. Secondly, the preoccupation with public endangerment is used by some newspapers as a vehicle for criticising, implicitly or explicitly, Executive criminal justice policies, in particular the perceived policy of seeking to "manage" (stabilise or reduce) the prison population.

It was always likely that if EM bail was to become spectacularly newsworthy - as it eventually did, in June 2006, - it would be framed in terms of the "formulae" that the Scottish press already apply, separately, to EM and to bail. Bail-in-general is persistently portrayed as a serious judicial/administrative problem in the Scottish press, based largely on the fact that there have been some cases of very serious offending while on bail. There is negligible defence of it as a judicial measure, and no indication that it is ever used successfully. While the broadsheets mostly avoid the blaming attitude that characterises the tabloids, they too have helped to create an expectation that certain types of offence are *by definition* inappropriate for bail. The cumulative impact of this sort of coverage - dwelling only on cases where serious offending has occurred - is to imbue the term "bail" with wholly negative connotations - at its weakest "leniency", and at its strongest, "risk" and "endangerment". In addition, the tabloids' accounts of bail use often imply a degree of deliberate offence or insult to the accused person's particular victim or victims, and - in the tabloids especially, but not exclusively - crime victims' voices (or their relatives) are given a special, "emotional" authority. If a crime victim can be shown to have felt let down by this or that decision of the court, the "argument" against that decision is significantly strengthened.

The image of tagging-in-general is similar to that of bail in that it too now connotes "leniency", "risk" and "endangerment" rather than the "additional degree of control" that its champions have promoted it as possessing. Its association with offending

during the period of the order, coupled with the idea that merely placing people on curfew for part of the day to stop them offending seems counter intuitive to many people, has largely discredited it in the eyes of the press. Positive stories about the successful completion of tagging orders never appear in the press, as indeed, they do not appear for community penalties generally. Tagging, by dint of its ease of visualisation, has to a degree become emblematic of community supervision more generally - and criticism of tagging easily becomes implied criticism of community supervision per se. Crime victims can be found who are unhappy that “their” offender was tagged. Two broadsheet editorials have implicitly questioned tagging’s viability - and by implication the continuing need for it.

The following sections summarise - in a highly condensed form - the 5 occasions (the latter occasion having 3 phases) when EM bail became newsworthy during and - for the sake of rounding off one story - after the research period. The press coverage of the EM bail pilots was part of a continuously unfolding narrative about bail and tagging as issues in their own right: the EM bail stories were instances within this narrative.

THE LEAK OF THE SENTENCING COMMISSION REPORT: “USE OF BAIL AND REMAND”

The Sentencing Commission was established in November 2003 and was asked shortly afterwards by the Executive to review the use of bail and custodial remand as a matter of urgency, as part of a strategy to increase public confidence in the criminal justice system following a controversy surrounding the sentencing of James Taylor, for raping a baby girl while on bail. The general thrust of the Sentencing Commission’s proposals, and some specifics, were leaked to *The Herald* several days before the anticipated release of their report. The front page headline “Murder and Rape Suspects to Go Free in Tagging Plan” set the tone for what followed:

“Scores of people accused of crime, including murder and rape, will be tagged and released into the community every year under a radical shake up of the bail system being recommended by an official panel”. (*The Herald*, 28th March 2005)

The alarmist tone of this scene-setting opening is further reinforced by a reference shortly afterwards that “the Commission, made up of judges, prosecutors and justice experts, *has rejected calls to end the presumption that the accused should be given bail*, even if the charge is murder or rape” (emphasis added). This serves to convey the idea that, although they had a choice, the Commission chose not to toughen up - but, by implication, to do something ostensibly lenient, the headline having already established that tagging is a form of “going free”. Tagging is the first new “alternative to custodial remand” measure mentioned in the article, closely followed by bail supervision. The credibility of these measures is then impugned (allusively) by the claim that “annually almost a third of criminals offend while on bail”. The Scottish Executive is described as saying that there is “no definitive figure” on this type of offending, but some (not too up-to-date) statistics from Strathclyde lend credence to the claim: “there were 1,586 crimes committed by bailed suspects in

2002, up from 1,158 the year before". More tellingly, specific *cases* where bail has been abused are referred to.

The effect of both the general information and the specific story is to cast aspersions - to put it no more strongly - on the credibility of EM bail and the wisdom of the Executive/Sentencing Commission's initiative. No attempt is made to cast tagging in positive light - using either statistics or stories - but 2 facts are offered by way of explanation of what the Executive/Sentencing Commission was proposing. Firstly, it is acknowledged that since 1999 Scotland has been bound to comply with the requirement of Article 5 of the European Commission on Human Rights that "all crimes and offences [are] bailable". In the past serious crimes like murder were not bailable. Secondly, it is acknowledged that "the remand population has ...increased by about 40 per cent in the past 2 years and almost half of prison admissions are of people awaiting trial". An impression is given that the "presumption of bail" - on which there are few constraints - offers only slender protection of the public. This theme is constantly affirmed by the Conservative Party's justice spokespersons, and appears consistently in all press coverage of tagging:

"The protection of the public demands that potentially dangerous criminals should not be at liberty, even if tagged, if they pose a risk. Sadly, this Labour/Lib Dem Executive seems more interested in emptying Scotland's jails than in protecting the public. It must reject these proposals. If a murder or rape suspect is thought to need tagging, then they should not be released on bail. Far too many suspects are let loose in Scotland to commit further horrific crimes.

...It is bad enough that virtually every prisoner in Scotland is given a 'get out of jail free' card that cuts their sentence by a third or more, but to allow alleged killers and rapists bail only compounds the danger to the public." (quoted in *The Herald*, 29th March 2005)

There was near unanimity among the other newspapers that picked up the story on the 29th March. *The Press and Journal* news headline "Killers could be tagged and released onto streets", and editorial headline - "It's hard to see sense in tagging suggestion" were uncharacteristically combative for that paper. The idea that tagging was in effect freedom and that bail tagging was illogical and counterintuitive was at the heart of *The Daily Mail's* coverage. Under a headline which read "Move to tag and free murder suspects, and a handcuff logo containing the words "Soft Touch Scotland" it stated "an expert group has now suggested tagging as an alternative to custody - despite the fact a third of all bailed suspects commit further crimes while awaiting trial". The gist of the coverage in *The Daily Express* and *The Courier* - headlined respectively "Tagging scheme to let suspected killers walk free" and "Tagging extension puts public at risk - Tories" was much the same.

The nearest approximation to positive coverage came from *The Scotsman* and *The Daily Record*. Despite its headline - "Alleged Killers Held on Remand May be Tagged and Freed"), *The Scotsman* (29th March 2005) offered a balanced and

substantial account, which, unlike so many of its rivals, at least acknowledged that “The Commission is ... understood to be calling for *tighter guidelines for granting bail*” (my emphasis). *The Daily Record* coverage, headlined “Fury at Murder Suspect Tag Plan”, acknowledged that, at least in the Executive’s view, “the move would tighten existing law, which at present does not allow anyone released on bail to be tagged” and anticipated that few serious offenders would actually be granted bail. Its editorial was superficially supportive of the EM bail initiative but set impossibly high standards for it - indeed, for any community-based intervention with offenders - with its headline alone: “Tagging Must Work First Time”. The logic of this argument is simply that one failure would count for more than a dozen successes. Insofar as it would be impossible to guarantee that tagging would never fail, *The Daily Record* was simply setting up the EM bail pilots as a target for inevitable future criticism.

The Release of the Report

The Sentencing Commission’s report appeared on 5th April 2005. The Executive issued 2 news releases to accompany it. The first drew attention to 6 of the reports 40 recommendations, including the recommendation for “enhanced supervision” and also called for “more investment in innovative alternatives to remanding offenders to prison”. In the second news release, containing a small colour picture of a tag on an ankle, the Justice minister emphasised that the Executive’s criminal justice reforms “are moving us towards the sharper, smarter system the Commission envisages” and denied that they were about reducing prison use:

“The provisions which relate to murder and rape cases are not, as some seek to portray, an attempt to ‘empty our jails’ but to tighten up the supervision of those already granted bail. Extra conditions where the court has already decided in such cases on bail rather than custody. A tightening of the existing position - not a relaxation of it” (Scottish Executive, 5th April 2005b)

The press coverage of the Sentencing Commission’s Report was subtly different from that which surrounded the leaked material the week before. There was much less high profile attention to the fact that murderers and rapists were going to be released on bail, although this was usually alluded to in the body of most news reports. *The Daily Mail* (6th April 2005) did make it the basis of its headline – “Safety Fears over Plan to Bail More Violent Criminals”. It was again accompanied by the Soft Touch Scotland logo, and a poignant 150-word case study, complete with photograph, of 21 year-old “promising student” Allen Lennox who “fell victim to Scotland’s soft justice system after being stabbed to death by a drug addict who had been freed on bail”. The female addict was on bail for blinding a teenage asylum seeker in a “random street attack”. Towards the end of the piece Allen’s “grieving mother” is quoted as saying “I feel sick to know this could have been avoided if Amy Stewart had been kept in custody.”

Neither *The Herald* nor *The Scotsman* made tagging central to their coverage, and while both noted the supportive views of the Scottish Human Rights Centre both remained sceptical about the general thrust of the Commission’s proposals *The Herald* reiterated the Conservative’s view that “protecting the public, not clearing the prisons,

should be paramount” (although it should be noted that *The Herald* sometimes does take a positive stance towards alternatives to custody - perhaps it depends on the particular editorial writer). *The Scotsman* (6th April 2005) rounded off its article with a “reoffending while on bail story” - the murder of a 91 year old Ayrshire woman, Margaret Irvine by a man who “embarked on a crime spree while at liberty”. *The Courier* (6th April 2005) did not headline tagging as such but its page 3 news item paid disproportionate attention to it (given the range of the Commission’s proposals) - referring specifically to the establishment of the pilot schemes, and its short punchy editorial, headed “bail tags”, was explicitly sceptical “the suspicion remains, however, that the real priority is getting remand numbers down”.

THE EARLY STAGES OF THE PILOTS

In early May 2005, *The Sunday Herald* (8th May 2005) picked up that there had been difficulties getting the EM bail pilots started, and attributed this to wider failings in the criminal justice system more generally, particularly underfunding, for which the Executive should be blamed. Under the alarmist headline “justice system faces ‘meltdown’ with criminal tag scheme in chaos” and the slightly more sober subheading “public safety at risk as offenders are arrested within hours of release”, *The Sunday Herald* itemised 3 difficulties with the pilots - lack of cooperation by Glasgow social workers (who had to write assessment reports); sheriffs who were unable to use EM bail because facilities were not available; and police concerns that one of the first defendants placed on the scheme was arrested within 4 hours of the order being made. Various political and professional commentators were quoted in respect of the difficulties, the Conservative justice spokesperson concluding that:

“The strong suspicion is that the Executive simply has not thought this through. It should come clean and put the whole thing on ice or else demonstrate that the proposals are not putting public safety at risk”.

Without asking the journalist concerned it is difficult to know the source of this story. It is not the sort of story a journalist would discover by chance; at this stage of the pilots, only the police were likely to have had information about the first EM bailed defendant. *The Evening Times* (9th May 2005) reiterated (without expanding upon) the *Sunday Herald* article the following day, heading it “Electronic tagging scheme in ‘chaos’”. Beyond that, the story was not widely covered, and never returned to in quite this form, even though influential police organizations continued to have reservations about the appropriateness of some bail decisions, with ACPOS (2006: 1) noting that “in recent times the attitude of some accused persons towards bail has not always been fitting”.

THE FIRST 77 EM BAIL ORDERS

The next moment of press coverage arose, perhaps ironically, as a result of this research. I interviewed a journalist on *The Scotsman* about the coverage of tagging in general in his newspaper. He was wholly unaware of the existence of the EM bail pilots, (although they had been running for almost a year at that point), and learned of

them from me in the course of the interview. He subsequently researched them and wrote a critical article whose headline “Tag rules let more murder suspects be freed on bail” used the same framing device that *The Herald* had done when it first leaked the recommendation of the Sentencing Commission report - namely the implied wrongfulness of releasing murder suspects on bail, either because it endangered society, or because it was wrong in principle. The article began:

“Suspected murderers and drug dealers are among scores of people granted bail under a controversial pilot scheme aimed at testing the use of electronic tagging.”

“*The Scotsman* has learned that amid a high-profile crackdown by the Scottish Executive on so called bail bandits, 77 suspects originally refused bail because they were deemed a danger to the public or at a high risk of evading justice have been released into the community with a tagging order while they await trial.”

“The catalogue of charges they face include murder, attempted murder, attempted rape and serious drug offences, as well as lesser alleged crimes such as breach and road traffic offences”.
(*The Scotsman*, 16th March 2006)

The article identified the locations of the pilot schemes, described their aim as being “to reduce the rising number of remand prisoners, and give courts a wider range of options”, and indicated that 29 bail suspects were currently tagged. It even conceded that EM might “significantly restrict the liberty” of people charged with the most serious offences. But its overall tone - from its alarmist headline, through its reference to the Rory Blackall case and its use of a quote criticising EM from Professor David Smith, who had researched the original EM-pilots in 1998-2000, conveyed a clear sense of scepticism about the pilots. The article ended with a quotation from the Executive, which drew attention to the fact that the pilots were being evaluated and that public safety considerations were among the issues being looked at.

Under the headline “Fury over tagging plan for high-risk suspects” *The Daily Mail* (17th March 2006) picked up this story the following day, repeating many of the same points as *The Scotsman*, although the inflections were sometimes different. It was the fact that tagging was being used on suspects who had already been remanded in custody that concerned them, although no reference was made to the fact that this was the mechanism by which netwidening was to be avoided. The pilots were referred to as “a scheme by the Scottish Executive to extend the use of tagging”, as if this were an end in itself. The “fury” referred to in *The Mail’s* headline was of its own making, insofar as it used comments from the Conservative justice spokesman, to claim that the discovery of the “plan” to allow “such potentially dangerous suspects to remain at large has sparked anger and calls for a rethink”:

“It is totally inappropriate for these dangerous people to be out on bail. It is clearly not in the public interest and it could have disastrous consequences. I wanted this pilot restricted to low-

level offenders if it was to go ahead at all, but it is now time the Executive ditched this ludicrous measure. It means that dangerous people who should quite clearly be behind bars are being allowed out with only the flimsy protection of an electronic tag. Ministers were warned well in advance of the dangers of this scheme and now that it has been up and running for almost a year it is time they drastically reconsidered it.” (quoted in the *Daily Mail*, 17th March 2006)

THE “HOLIDAY ABROAD” STORY

In Kilmarnock, in February 2006, 4 young men were given EM bail after being charged with the murder of a 51 year-old grandfather who was assaulted as he walked home from a pub in the town centre. The young men’s bail conditions included a ban on entering the town. It was clear from our routine interview with the Victim Information Officer that the victim’s family were unhappy with the decision to bail and tag the suspects. In April 2006, the solicitor for one of the accused, a 16 year old, applied to have the tagging restrictions removed to allow him to go on a pre-booked family holiday, abroad, in August. Permission was granted at a bail review hearing on 5th May. The victim’s family were not present at this review but at some point heard a rumour that the bail restriction’s had been lifted. Dismayed by this, they phoned *The Daily Record* to ask if this could be confirmed. *The Record* checked with the Crown Office and Procurator Fiscal Service who confirmed it by email (telephone interview with *The Daily Record* October 2006). The view was taken at *The Record* that this story was “a big talker” in which there would be considerable interest and on June 1st 2006 it carried a front page “exclusive” (continued prominently on page 3), accompanied by large pictures of the late victim and of his son.

MURDER SUSPECT FLIES OFF ON HOL: fury as he’s banned from Kilmarnock but can jet to Bulgaria.

A tagged murder suspect is to jet off on a foreign holiday. The teenager, who is accused of killing granddad Bryan Drummond and banned from going into Kilmarnock, has a courts blessing to enjoy a fortnights holiday in a sunshine resort...

...the Crown made no objection to a relaxation in one accused’s bail conditions - which can ban him from Kilmarnock town and keep him in his home 7pm to 7am - to allow him to soak up the sun on the Black Sea.

The revelation about his Bulgaria holiday sparked a furious response yesterday from Bryan’s family and cross party politician’s.

Bryan’s son, Eric, 28, said:

“It’s an absolute outrage. We were already reeling from the fact that they were out on bail, and then we hear this. How can

the justice system release a person accused of murder then let him swan off on holiday? It's unreal. We can't lead normal lives. We are not even starting to get over what's happened to my dad. The justice system has gone crazy. How can they let him go to Bulgaria? My wife is expecting a baby in 6 weeks and it's something my dad was really looking forward to." (*The Daily Record*, 1st June 2006 emphasis in original)

The victim's son apparently took up the matter with his local MSP, who was reported as being "absolutely astounded that anyone who is on bail for such a crime has been allowed to have his tag removed just to go to Bulgaria" and believed that the case showed "how out of touch the judiciary are with the community". The SNP justice spokesperson conceded that it "appears bizarre" that the accused was allowed to go on holiday. The Conservative Party justice spokeswoman linked the incident to her party's more general concern about the use of tagging:

"Clearly questions have to be asked about this and you can only feel for the victim's family who must be watching this scenario with absolute horror, wondering whose side the criminal justice system is on. We've already had huge reservations about tagging but this surpasses anything we thought could possibly be achieved under tagging (idem)".

Although the *Record* story was an "exclusive" - other newspapers picked it up on the same day, but gave it less prominence, on inside pages only. Under the headline "Holiday for tagged teen" the *Daily Express* focussed on the sense of outrage expressed by the Drummond family. The *Evening Times* coverage of the story focussed on tagging rather than bail - its headline, and much of the article itself was about the apparent "leniency" associated with tagging: "Fury at holiday for murder accused: court eases tagging order to let boy join his family in Bulgaria". *The Herald* - under the headline "Murder accused allowed to go on holiday to Bulgaria" - quoted not only from the victim's son and the Conservative Party justice spokeswoman, but also, unlike any of the other papers, from the Crown Office and Procurator Fiscal Service, who indicated that they were unhappy with the local decision not to oppose the request for the easing of bail conditions, and that they may order an internal enquiry. The second day's worth of coverage - very extensive - in the *Daily Record*, *The Herald*, *The Scotsman*, *The Press and Journal*, *The Evening Times*, *The Daily Telegraph*, *The Times*, *The Daily Express*, *The Sun* and *The Daily Mail* reported that the First Minister was questioned on the case in Parliament and announced that the area Procurator Fiscal for Ayrshire had been asked by the Lord Advocate to report on it, and that the Crown Office and Procurator Fiscal Service was already considering whether new guidance on bail should be issued to Procurators fiscal (Scottish Parliament Official Report, 1st June 2006: col 26301). Several newspapers unearthed new "facts" about or related to the story. Most said of the 16 year old at the centre of the case that he could not be named for legal reasons, but the *Daily Mail* named him, identified the town he came from, described his family as "unrepentant" about the holiday they had booked, and quoted his grandfather as saying that the boy was "innocent until proven guilty". *The Herald* concluded its article with an attribution (not a direct quote) to the Conservative justice spokeswoman, namely that "the

piloting of tagging instead of custody at courts such as Kilmarnock was wrong”. Coverage in the local *Kilmarnock Standard* was minimal - the story was not seen as particularly special. No mention was made of it on the 2nd June (the day after most of the national papers covered it). It was covered a week later, prominently on page 3 (not the front page, which led with another youth crime story), under the headline “Court Okays Killing Suspects Holiday” (*Kilmarnock Standard* 9th June 2006). The article was unsigned and was largely derivative of national newspaper coverage, complete with pictures of Mr Drummond and his son, and a concerned quote from the Justice Minister. It usefully explained at the end what the EM bail pilots were and somewhat cryptically said “It is understood in this case that the prosecution opposed both standard bail and bail with electronic monitoring”, although whether this was intended to refer to the original bail application, or to the bail review hearing, is unclear (and if the latter, it is inaccurate). Despite the headline above the article, there was a sense that the *Kilmarnock Standard* was not wishing to over-dramatise the incident, and even a sense that the paper felt somewhat protective towards the court, shielding it from undue criticism. The story did not appear to rouse the outrage of Kilmarnock’s citizens - the 5 reader’s letters in the following issue (16th June 2006) did not touch upon it, covering instead improvements to the local railway, animal testing and expressions of gratitude to 2 charities and a local radio station. It was for a national rather than a local audience that the case seemed outrageous and galvanised demands for action.

Although applications to vary bail requirements are routine, an application based on a defendant’s desire to go on a family holiday, and where the charge is murder, is rare. In view of this, the decisions taken by the Procurator Fiscal and the Sheriff do seem surprising, intrinsically so, not merely in terms of tabloid standards of newsworthiness. This is all the more true when it is considered that the Procurator Fiscal’s Office was aware (through the VIAO) of how aggrieved the murder victim’s family had been by the original EM bail decision. Hostile press comment could have been anticipated. At the very least, it would seem that a decision to permit the defendant to go on holiday required careful presentation to the media, to minimise any prospect of misunderstanding. The end result of the “unmediated” decision-making was press coverage which cast EM bail in a very negative light, gave opponents of Executive crime policies further opportunity for criticism and reinforced the prevailing tabloid press view a) that bail was routinely granted in inappropriate cases; b) that tagging both expressed and permitted leniency towards offenders in a way that custody did not; c) that crime victims were prone to being treated disrespectfully by “the system” and d) that sheriffs were out of touch with the public. It is difficult in respect of this particular issue to claim that the media coverage was unduly sensational or disproportionate to the incident - senior Executive officials readily accepted that an enquiry into the decision was needed, and implicitly vindicated the revelations in *The Record*.

The Revision of Bail Guidelines for Murder Suspects

The Lord Advocate issued new guidance on bail for murder suspects on 28th July. The aim of the guidance was to ensure prosecutors adopted “an appropriate and consistent position in relation to bail in murder cases and to maintain that position in

the public interest throughout the life of the case”. The gist of the guidance was that henceforth the Crown would always oppose bail for murder suspects, and, if it was granted, appeal against it. In the 4 pilot sites, tagging would not be opposed per se, but if it was granted against the Crown’s wishes, it too would be appealed against. In addition:

“The guidance also sets out the information which is required to properly inform decisions about the Crown’s attitude to bail. The information will include the police assessment of the risks posed by the accused and his associates and the potential impact on the community if he were to be liberated.” (Lord Advocate’s Department, press release, 28th July 2006)

The press release did not attribute the revisions to the “Holiday in Bulgaria” case, but all the newspapers who reported on it did so, reiterating the basic facts of the matter. *The Herald’s* (29th July 2006, page 9) was the longest and most detailed coverage. Its headline “Crackdown on bail for murder cases - move follows row over suspect’s holiday” was consistent with the stance it had taken on bail for murder suspects since its first coverage of the proposed pilots. *The Scotsman’s* coverage (page 8) – “Bail guidelines reviewed after tagging lifted” - was much shorter in comparison, but relayed both SNP and Conservative spokesperson’s views of the development. The Conservative viewpoint formed the basis of *The Daily Mail* (page 2) headline - “Anger over ‘worthless’ bail rules” in which Bill Aitken, the Conservative chief whip, was quoted as saying that the new Scottish bail rules were worthless because they still failed to challenge the Human Rights Act, which had made murder bailable in the first place. *The Mail*, incidentally, continued to name the 16 year old suspect. *The Daily Express* (page 34) - “Case sparks new bail rule” took the same approach, quoting Aitken saying, “Until 2000 those accused of murder were not granted bail, but Labour and the Lib Dems changed this in their rush to incorporate the Convention on Human Rights”. The shortest news item (6 sentences, 3 on the guidance, 3 on the case from which it derived) was in the newspaper which originally broke the “holiday in Bulgaria” story, *The Daily Record*, (page 2) which might reasonably have been expected to be a little more self-congratulatory than even its headline suggested: “Murder rap bail ban bid”. *The Evening Times* (page 12) simply summarised the press release, and like *The Record* did not quote from any political spokespersons.

Under the headline “Bail Suspect Takes Trip” the *Evening Times* (4th August, p6) did however run a short sidebar piece about the “teenage murder suspect... enjoying a sunshine holiday [and] knocking back champagne in Bulgaria”. *The Record* didn’t cover it at that point - perhaps because so many pages of that day’s edition were taken up with Tommy Sheridan’s victory in a libel action against the *News of the World*. *The Record* did however send photographers to Bulgaria and had pictures which it planned to use once the case was heard (telephone interview with *The Daily Record*, October 2006). The *Sun* and *The Daily Mail* did publish pictures of the boy sunbathing. Upon his return from holiday, the bail and tagging restrictions were reinstated.

Plea and Sentence

The case came to the High Court at Glasgow on October 18th (after the formal period of research into EM bail had ended). All 4 young men pleaded guilty to culpable homicide rather than murder, and sentencing was put back for a month while reports were prepared. Two of the 4 did not apply for their bail to be renewed and were remanded in custody. The other 2, including the one who had gone to Bulgaria, continued to be remanded on bail. Unsurprisingly, given the earlier interest, there was widespread press coverage, and for the first time all 4 were named. The continuance of bail was the newspaper's main theme, articulated as adding insult to injury to the relatives of the murder victim. *The Daily Record's* full page coverage (October 19th p13) was headed "My dad's killer was let out for a holiday... now he's free again: victim's family hit out as tag row thug is bailed". The similar full page treatment in *The Sun* (October 19th, p13) was headed "Bail hol thug admits guilt... but is freed: **what does this teenage killer have to do to be locked up?**" While it might have been inferred from all the press accounts that the "bail hol thug" was marginally less culpable than at least 2 of the other 3 for the assault on Mr Drummond, he was the one of the 4 on whom the reports concentrated, because of the notoriety he had acquired earlier. Large photographs of his face (and smaller ones of him relaxing on a lounge in Bulgaria) were used in both *The Record* and *The Sun*. Perhaps surprisingly, the same photograph, large and in colour, formed half of *The Herald's* (October 19th p5) half page coverage; its headline "Family anger as killer allowed to go on holiday is bailed again" expressed the same sentiments as the tabloids. Rather than interpreting this as an instance of a liberal newspaper "going tabloid" it may be better to see it as an expression of just how widespread the hostility to the original decision to relax bail and tagging actually was. *The Herald* quoted both SNP and Conservative spokespeople to the effect that the case had brought, and continued to bring, the bail system into disrepute, although rather disingenuously, no mention was made in the paper that the Lord Advocate had already issued revised bail guidelines. *The Record*, whose original report on the "Holiday in Bulgaria" story had triggered the enquiry that produced the guidelines, did refer to them, but a quote from Mr Drummond's son - in respect of bail being continued even *after* guilt had been established - was used to imply that the judiciary had *still* not learned from previous errors of judgement:

"They said first time (*sic*) he was allowed on holiday because he was innocent till proven guilty. Now he's admitted killing my dad and they still let him out. There are people in jail for not paying fines but he is back on the street. No wonder people have no faith in the justice system." (quoted in *The Daily Record* October 19th 2007)

The 4 young men were held equally responsible for Bryan Drummond's death and each sentenced to 9 years custody at Edinburgh High Court on November 15th. Press coverage nonetheless focussed almost entirely on the 16-year old whom the court had allowed to go on holiday, most of the tabloids again used photographs of him in Bulgaria. Only *The Daily Record* ran the sentence as a front page story. Half page articles in *The Daily Mail* and *The Sun* (16th November 2006) - respective headlines: "Prison at last for killer given bail to go on holiday" and "Bail Hols Killer Locked Up" ran on pages 33 and 35. *The Daily Express* ran half a page on page 4, while *The*

Daily Mirror reduced it to a sidebar on page 11. *The Herald* and *The Press and Journal* ran short articles on pages 9 and 15 respectively, both mentioning “holiday” in the headline. All the articles identified the granting of bail to a murder accused, rather than the fact of tagging, as the main issue in the case. Picking up on comments from the sentencer (issued by the High Court), some newspapers, particularly *The Scotsman*, on page 19, criticised the Crown’s reduction of the charge from murder to culpable homicide, although in the light of the eventual sentences handed down, the victim’s family - heavily quoted throughout - seemed not to object to this.

CONCLUSIONS

Press coverage of Scotland’s EM bail pilots has veered between sceptical and negative, erring mostly towards the latter. Nothing strikingly positive has been said or implied. In themselves, they have not had a particularly high profile, rather they have been covered as illustrative of a larger, ongoing narrative about bail and tagging. Press coverage framed the advent of the pilots in March 2005 as a misguided and ill-thought out strategy on the part of the Executive, and created particular anxieties about their use with rapists and murderers, which, as indicated below, was disproportionate given the range of offender-types who applied for and were granted EM bail. Coverage has not been *rational* because the idea that EM bail constitutes a *toughening up* of bail - made patently clear by both the Executive and the Sentencing Commission - has never been presented cogently or systematically in the press; if anything EM bail has been made to seem irrational precisely because it allows offenders who were deemed dangerous enough to be refused ordinary bail to keep their (undeserved) freedom. Coverage has not been *rounded* in the sense that stories about the successful operation of bail (least of all human interest stories) have been noticeably absent: the main “human interest” stories have invariably been tragedies, detailing the death of someone at the hands of a bailed defendant. *Responsibility* has been interpreted by the press as warning people that with this particular policy the Executive is needlessly endangering people, not as promoting rational debate about penal matters in a balanced way, although latterly, *The Herald*, in several editorials, has been taking seriously the need to manage prison numbers.

The main characteristics of the *formats* used in the press coverage of bail and tagging over the research period have been as follows:

1. An almost exclusive emphasis on the *failure* of bail and tagging. Success stories hardly ever appear in the press - there is no context of routine and mundane achievement against which isolated and atypical stories of failure can be set.
2. The majority of the coverage has taken the form of *news items*, together with a few editorials. No analytical pieces on tagging, by regular or guest columnists, appeared in the papers examined during the research period.

The main *themes* in the press coverage have been:

1. Bail and tagging - separately and in combination - are forms of leniency, risk and endangerment.

- a) Attempts to reduce the use of prison are basically wrong.
 - b) The judiciary are mostly out of touch with public concern and sentiment about crime.
 - c) Tagging is not a credible form of control or punishment- tagging is not seen in any meaningful way to strengthen bail, to make it more onerous than ordinary bail.
 - d) Tagging is becoming emblematic of community supervision more generally.
2. The Conservative Party is deeply opposed to tagging - good at getting press coverage, and with a knack for expressing its criticism with panache.
 3. There is no essential difference in the themes across tabloids and broadsheets - the latter express similar sentiments to the former, but (usually) in more refined and sophisticated ways.
 4. Even where press stories on tagging are balanced - containing even-handed arguments about its use and potential - they are invariably “framed” and “stacked” negatively, first by the headline then by the order in which points are made in the article.
 - a) The case for tagging is never made by the authorities with the panache that its critics muster to oppose it.
 5. The voice of angry crime victims are often enlisted to criticise both bail and tagging - and this is a uniquely and emotionally powerful way of discrediting them.

The skewed, unrounded nature of the press coverage of the EM bail pilots is arguably most apparent in respect of murder cases. Of the 261 cases in which the research has details of the presenting offences in applications for EM bail - and there are 45 cases where we do not have such information - 10 involved murder (of which 5 were granted); 10 involved attempted murder (of which 3 were granted); one involved rape (and was not granted); one involved attempted rape (granted) and one involved causing death by dangerous driving (not granted). Put another way, 5 defendants facing murder charges who had been refused ordinary bail were also refused EM bail; while 7 defendants on attempted murder charges refused ordinary bail were further refused EM bail. 7 of the murder charges came from Kilmarnock Court (plus 2 from Glasgow Sheriff Court and one from the High Court at Glasgow) and included the 4 young men charged with the murder of Bryan Drummond. Despite the prominence given to this case when one of the 4 was permitted to take a 2-week holiday abroad, it can readily be seen that in the 16 month period of the research EM bail enabled only 8 defendants charged with murder (5) and attempted murder (3) to be released “on conditions” into the community rather than be remanded in custody. In both types of case, either equivalent or greater numbers (5 and 7 respectively) were refused EM bail. This is not to dispute that EM bail was used more generally for presenting offences involving violence (granted in 41 cases and refused in 76 cases), or to deny that murder and attempted murder may have figured in the 45 cases on which we have insufficient data, but it still puts the press preoccupation with murder cases - the

creation of an expectation that murderers would be bailed in significantly greater numbers than hitherto because of the addition of an EM-condition - in perspective.

REFLECTIONS AND RECOMMENDATIONS

The negative press coverage of EM in Scotland serves to weaken the credibility and legitimacy of an initiative in Scottish criminal justice policy for which an obvious and reasonable case can be made. This is heightened by the absence, anywhere in the public domain, of accessible and intelligible positive images which might contextualise, counter or balance the negative ones. The Executive, reasonably enough, has seen the addition of an EM-condition to bail as a partial solution to acknowledged problems with ordinary bail, but the press, precisely because it has a pre-existing sceptical-to-negative attitude towards tagging, has simply not portrayed it in these terms. There are no simple or rapid solutions to this, and certainly no straightforwardly technical ones, but unless tagging can be given a better image (or the negative images neutralised) it will not readily be seen as a way of strengthening or augmenting any other measure with which it is associated, whether bail, probation or parole. That is not to say that nothing can be done. The following reflections and recommendations - by no means comprehensive - draw on academic research on the media coverage of community penalties, on the processes by which public opinion can be influenced, on the insights of the Rethinking Crime and Punishment initiative and on the work of the campaigning group Smart Justice. Direct referencing is kept to a minimum, for ease of reading.

The Social Context of the Scottish Press

There are a number of reasons why the cumulative press coverage of a specific topic like tagging or an issue like reducing the use of imprisonment cannot be fully understood apart from a grasp of broader press practices, and the specific political, media and commercial context in which newspapers operate. Scottish newspapers are in an evolving, not-yet-settled relationship with the still relatively new Parliament and its Executive. Overall newspaper sales are in decline, and circulation wars are intense, both among indigenous papers and between indigenous papers and Scottish editions of England-based newspapers. Established competition with television and radio has been intensified by the advent of 24 hour “rolling” news services, and augmented by web-based information sources, which is in turn forcing “the press” itself to disseminate news in multi-media formats, perhaps targeted on niche audiences at particular times of day.

Aspects of this context affect current press practice in a number of ways. Where the relationship between government and press is (for whatever reason) generally antagonistic, stories about specific initiatives - tagging for example - may become proxies for larger targets, indirect ways of questioning the competence and integrity of the authority responsible for them. Conversely the very reasonableness of criminal justice policies may mean that in order to make them newsworthy, such imperfections as they inevitably possess may have to be amplified, and criticised more stridently than they might otherwise warrant. Newspapers are adept at manufacturing “furious”

arguments by juxtaposing quotes from selected spokespeople, limiting each to soundbites which are often little more than party political points, rather than constructive contributions to rational, rounded debate about penal practice. (The same spokespeople may nonetheless contribute quite eloquently elsewhere, in feature articles rather than news items, or in fora outside the media altogether). Lastly, what may on the surface appear to be the independently formed and held views of newspaper editorial teams may in fact reflect the views of authoritative (or, at least, perceived-to-be-authoritative) respondents within the criminal justice system with whom certain journalists are regularly in contact. The police, for example, have a sophisticated public relations machine compared to other criminal justice agencies, and, given their on-the-record frustrations with the bail system are not likely to find fault with the way in which Scottish newspapers have consistently portrayed its failings.

Taking all these contextual factors into account, there is no likelihood of halting the negative press coverage of tagging, unless and until it comes to be regarded as either boring (un-newsworthy) in itself, or unless something else displaces it as a handy emblem of absurdity and failure in community supervision. It is in the very nature of newspapers to render (selected) issues of the day controversial, and for several years - after an initial honeymoon period when it was first introduced in Scotland - tagging has been one of those issues. Cynics and realists alike will point out that almost any dramatic crime and punishment story helps to sell newspapers, that (some of) the public are only being given what they want. In addition, in a competitive marketplace newspapers can legitimately claim that if they did not dramatise stories (or at least headlines) people's attention would not be caught and they would be less well informed as a result. Furthermore, no one can seriously dispute that some of what newspapers expose and dramatise *is* in the public interest, however uncomfortable it is for the government or judiciary, and that in granting the press the freedom to do that all of the newspapers some of the time and some of the newspapers all of the time will cumulatively report on issues in a way that is ultimately not conducive to balanced, rational public debate. The criticism remains, however, that insufficient good news stories about community supervision - as opposed to an abundance of routine good news stories about the police catching criminals, or good news stories about courts sentencing someone to prison - are too few and far between to provide a context against which the typicality of bad news stories can be judged. Only by constantly generating counter stories - of routine success in community supervision - in the hope that they too will filter into public consciousness, might one create a climate in which the perennial tilt towards negative stories will be consistently recognised for what it is, and allowance made for it when forming judgements. Before considering how good news might be generated and disseminated, however, something must be said about tagging and public opinion.

Tagging and Public Opinion

It was made clear at the beginning of this appendix that the state of public opinion about tagging cannot simply be read off the press coverage, or indeed *any* media coverage. Public opinion (itself a problematic concept) on criminal justice matters is a complex, nuanced affair. Research conducted for the Justice 1 Committee

concluded that despite claims being made of increased punitiveness among the public there was, in Scotland as in many other jurisdictions, “significant support for community-based sanctions” (Hutton 2004:250). This support was apparent however only when respondents in a civic participation exercise (a deliberative poll) were given background information - mitigating circumstances - on individual offenders whose cases they discussed as part of a sentencing exercise. When this information was made available - as opposed to cases where it was not - there was “a significant movement towards more rehabilitative sentences and away from the more punitive sanctions (prison, *electronic monitoring*, fines)” (idem, emphasis added). No indication is given of what practical image respondents had of EM or of what their sources of information were, but if indeed the majority of Scottish citizens believe EM to be an unduly punitive measure, and something to be “moved away from” for that very reason, one can only infer that they are profoundly unaffected by the portrayal of it in the press, which discourages support for tagging *for precisely the opposite reason, namely that it is not punitive enough*.

It has been claimed elsewhere (Maruna and King 2004) that public education approaches to improving opinion on community penalties generally have only small scale and short-lived effects - no-one knows how long the effects of a particular time-limited educational input may last. It might be argued in policy terms, however, that even small-scale gains are worth working for, and that the possibly short-lived nature of interventions might be offset - to put it not stronger - if a constantly updated public education source was continuously available. In respect of tagging itself there is limited, mostly American, evidence that educative/deliberative techniques can indeed elicit positive and supportive responses from respondents - electronically monitored home detention comes to be seen as having a legitimate place in the spectrum of sanctions in some cases - but no evidence that it is perceived as a more superior approach to community supervision than anything else.

Creating Good News about Community Supervision (including Tagging)

Although specific things must be said and done to promote a more positive image of tagging in particular - showing that it routinely works, that it has mundane successes - this should mostly be undertaken in the broader context of promoting the principle of community supervision and the practical successes of all community penalties. Compared to good news about police and court practice (swift arrests and stiff sentences), which regularly appears in the media, and certainly in the press, there is a marked absence of good news about community supervision (which is hampered, in part, by a requirement laid on the supervising authorities to maintain client confidentiality). Although the phrase “honesty in sentencing” is not usually used in this context, getting good news about community supervision into the public domain could be regarded as an exercise in overdue truth-telling, bringing to light something too long suppressed. It is a good in itself. In addition, it has an instrumental justification: a strategy for managing prison numbers cannot be carried by tagging, or indeed any one form of community supervision, alone. Public support for a prison reduction strategy depends in part on knowing (just enough) about and having confidence in alternatives to custody. Insufficient practical attention has been given by policymakers as to how this might be brought about. The publication of official

data, and estimations of effectiveness based on arcane statistical and economic formulae, intelligible only to experts, is necessary and valuable, but not enough to win legitimacy.

It is not readily in the gift of the Executive itself to improve the image of community supervision, beyond doing what it already does. The Justice Department's Communication's Team is on top of its game in every sense. Any special pleading by the Executive for their own policy initiatives, however well grounded and honest, would be dismissed by many - if not all - in the media, as spin. In any case - other stakeholders in the different forms of community supervision - the statutory and voluntary (and in tagging's case, private) agencies which deliver them should also be reflected in any positive image of them. It would, however, be useful for the Executive (and the other stakeholder's) to at least be able to point towards the availability of a reputable and independent good news source *elsewhere*, and to convey a sense that, by dint of the evidence at this site, it has every reason to be confident with the broad thrust and general outcomes of its policies. The issue remains of how the various media would use Executive references to good news, but right now it is the absence of an identifiable source of good news that is the most pressing problem.

The ideal source of good news would be an independent website which explained the processes and outcomes of different forms of community supervision in an intellectually respectable but publicly accessible way. Information would need to be available both in the form of statistical evaluations and human interest stories: a premium would be placed on clarity of data and argument. Evidence would be fair and rigorous but not formally academic or unduly theoretical: it should be made audio-visually interesting in every possible way, so as to become indispensable to any journalist (or member of the public) seeking information on community supervision. Criminological, political *and* public relations and marketing expertise should be drawn on in its construction. Tagging should appear "in context" on this website as just one among several components of community supervision, and its strengths and limitations openly acknowledged. However, precisely because tagging has been singled out by the press as a rather problematic way of dealing with offenders, special care should be taken to show that there are many instances of offenders routinely complying with it, and benefiting from the opportunity it affords to break criminal contacts and habits. A penal reform body may well be the best placed organisation to construct, brand and operate such a website, but it would need to be properly resourced.

Nonetheless, caveats remain. Even if a good news source of the kind described here existed, there is of course no possibility, in a democratic society, in a multimedia age, of sustaining a permanently positive view of tagging across a broad swathe of citizens. There are genuine pros and cons to be aired about the ways we deal with offenders, and no sanction is viewed positively all the time; indeed prison itself is often criticised for being either too lenient or too harsh. The utility of punitive and rehabilitative measures will always be contested from one standpoint or another. It ought, however, to be possible - and it is certainly desirable - to convey a view that community supervision in general (and tagging in particular) is a sensible measure in many instances, which works for some if not for all. This would be better than

permitting - in the absence of *any* good news source about tagging - a sense that it *never* works, and that it is in principle ridiculous. When press coverage of tagging reaches a level of negativity that no minister would want to speak publicly in support of it, for fear of attracting opprobrium or ridicule, then remedial action is surely necessary. Such a situation means, firstly that the media have (however temporarily) set the agenda, and secondly, that public debate cannot proceed as openly as it might otherwise do. Allowing negative images to go uncontested undermines the legitimacy of criminal justice policies and judicial practice and it may set in motion a downward spiral, in which erstwhile supporters of tagging, sensing the ebb of political endorsement, fall away.

Electronic Monitoring, Popular Culture and Public Opinion

Public opinion on something like EM may be based on fleeting impressions rather than substantial knowledge - many people will be too busy, or insufficiently interested, or both, to pursue knowledge in depth - but, that being the case, one wants positive rather than negative fleeting impressions. Such fleeting impressions might well derive from popular culture rather than news media, entertainment magazines no less than serious newspapers. Real and imaginary forms of EM already have a presence in crime fiction and science fiction - literature, comics, film and TV - and there is quite rightly no way of imposing official control on the information therein or the impressions formed as a result. In England, 2 long-running TV soaps, reaching audiences of over ten million, have both featured tagging stories. Both, as it happened, cast tagging in a reasonably positive light, but, while opportunities should be taken to insert positive impressions of tagging (or indeed any form of community supervision) into popular culture formats, the real lesson here is the ease with which absolutely uncontrollable sources of widely-seen entertainment could easily create and sustain false impressions. This points even more emphatically to the need for an independent information site about good news in community supervision.

A more focussed and controlled way in which popular culture might be utilised to promote tagging would be via occasional celebrity endorsement. This may seem at first sight like “dumbing down”, and be dismissed accordingly. However, in the past decade it has not been unknown for alternatives to custody projects, and crime prevention and victim support initiatives to use this approach, and well-known politicians who, for example, use wit and panache to demolish the credibility of penal reforms are, in a sense, already using their own personal reputation or brand to tilt public perception and argument in a certain way. The truth is that modern celebrities - footballers, musicians, newsreaders and actors - will attract attention and interest among audiences who pay little or no attention to the more formal reportage of journalists or the considered reflections of penal reformers. Celebrities bestow qualities associated with themselves - intelligence, glamour, “cool”, common sense and integrity - onto the product or approach in question. There is obviously an issue about choosing the right kind of celebrity - the wrong choice may further dent the reputation of the product, and again, in order to be authentic and credible, celebrity endorsement should depend on the availability elsewhere of solid evidence that tagging works and is worth supporting. The aim of celebrity endorsement would simply be to convey an impression of tagging as a smart, sensible, common sense

component of a strategy designed to keep appropriately selected offenders out of custody, to make community supervision more onerous, to keep families together who might otherwise be separated, and to facilitate reintegration within the community.

Serco, the Business Community and Public Opinion

The fact that EM is delivered via the private sector - and in Scotland by an organisation which prides itself on contributing to technological innovation - could be capitalised on. Serco Monitoring Services could promote itself as a successful enterprise within Scotland's high-profile "Silicon Glen" industries, and in its business community more generally. In addition media coverage should be sought in the science and technology sections of newspapers and broadcasting - as indeed it was in the early days of its introduction. Its novelty has now worn off, but innovation is ubiquitous in this field, and new ways of attracting the attention of science and technology media could surely be found. Tagging needs to appear periodically in the media alongside such developments as (for example) nanotechnology, ipods and mobile phones as a "smart" and socially useful technology, albeit not as something "complete in itself" as a mechanism for regulating or changing offender behaviour. People who read, hear and inform themselves about EM in their capacity as business people or technophiles are still likely to talk informally - spread word - about it in a range of intersecting social networks.

Electronic Monitoring and Victim Support/Advocacy Organisations

Some support for EM needs to be cultivated among victim organisations, showing clearly how EM can be used to augment, if not guarantee, their protection from particular types of offender. Victim advocate and support organisations must ultimately be left free to form and promote their own view of EM but they too need to be sufficiently well informed about its ordinary routine successes and to be at least capable of contextualising claims made in the media by angry victims that because they feel let down when *their* offender is tagged that the whole practice of tagging is therefore flawed. Emotive claims by angry, grieving victims, or by their representatives, that they have been unfairly or insensitively dealt with by courts can be potent ways of denting the credibility and legitimacy of any form of community supervision. The voices of crime victims, angry or otherwise, are legitimate and desirable contributions to mature debate about crime and punishment in any country, but it is not sensible to allow their likely amplification by the media to distort the broader realities of otherwise defensible policies and practices. Other voices - respectful of their grief and anger, but more moderate and less emotive - must be heard alongside them.

Prosecutors, Sheriffs and the Press

While judicial decision-making must be independent of all media pressure, decisions need to be intelligible and defensible to a range of parties. The fact that the press had from the outset - the publication of the Sentencing Commission's report - played up

anxieties that EM bail would be used routinely with “murders and rapists” should arguably have made court personnel especially reflective in their dealings with the very small number of applications from murder-charge defendants for EM bail was imposed - and also in their dealings with relatives of murder victims. The decision to suspend bail and tagging to enable a defendant to go on a 2 week family holiday signalled clearly that these measures afforded legal possibilities to defendants that a remand in custody would clearly not have done; no-one could apply from custody to go on holiday without attracting derision and ridicule. Within a 24 hour period, a court’s decision to suspend bail and tagging to allow a defendant to go on holiday had put senior politicians on the defensive, and an enquiry - in itself a concession that something needed to be done - had been announced. The press coverage was triggered by an angry victim and in the final analysis angry victims cannot be stopped from going to the press. It is unclear whether the victims were equally upset that bail and tagging had been suspended for the defendant who had been to visit his ailing grandma in England. Certainly the press made nothing of this compared to what they made of the suspension in respect of a foreign holiday, suggesting that they accepted some kind of “moral” distinction about the defensibility of the 2 decisions, rendering the “bad” one newsworthy and the other not.

The report of the enquiry into the Kilmarnock decision is not in the public domain, and this research did not explore the incident itself with any of the key players, other than to confirm some basic facts. But let us assume for the sake of argument that the Procurator Fiscal *did* have sound reasons for not opposing the request for a temporary suspension. Firstly, he had more detailed knowledge than anyone else of the defendant’s actual involvement in the crime. Secondly, the defendant was technically innocent till proven guilty. Thirdly, the Procurator Fiscal could have reasoned a) if the defendant was in Bulgaria he could not by definition do any of the things that his bail and tagging conditions prohibited him from doing in Kilmarnock and b) that if the suspension was denied, and the defendant barred from travelling abroad, he would - if his family went without him - be left at home unsupervised, perhaps a potentially worse option in public safety terms. This reasoning is, admittedly, entirely hypothetical. The point however is that the reasons are intelligible and (to a degree) defensible and had they or something like them been put in the public domain they may have made the Procurator Fiscal and the Sheriff look somewhat less defenceless than the press, in actuality, made them appear. In addition - bearing in mind the Executive’s (2005 para 19) desire that “bail decisions must be fair to the accused, but also fair for victims” - if reasons of this kind had been given to the relatives of the victim (by the Victim Information and Advice Officer) they *may* have felt less let down, and been less likely to take their concerns to the press.

A practical model for making judicial decision-making more publicly intelligible already exists in the Scottish High Court. Its appointment of a Public Information Officer, who helps draft public statements about particular judicial decisions, has been welcomed by newspaper editors, including the editor of *The Daily Record*, as a basis for more accurate and informed reporting. While the scale of sentencing in the lower courts precludes press statements even in the case of all serious crime, there is something to be learned from the High Court experience as to what might need to be said, in court or subsequently, to make a particular and perhaps awkward, decision

intelligible. The failure to give good reasons when good reasons can be given simply makes it easy for the press to find fault with judicial decisions.

SUMMARY

The press coverage of Scotland's EM bail pilots veered in the 16 month research period between sceptical and negative, erring mostly towards the latter. There were only 5 incidents in which the pilots became news. Nothing strikingly positive was ever said or implied. There are subtle (and useful) differences between tabloids and broadsheets, but the thrust of the argument in each is much the same. Much of the early news focussed upon the anticipated impact of EM bail in murder cases - and latterly, on an actual murder case - although murder represented only a small proportion of the cases in which EM bail was granted.

In themselves, the pilots did not have a particularly high press profile, rather they were covered as illustrative of a larger, ongoing - and very critical - narrative about bail and tagging. The credibility of EM as a condition of bail will only be taken seriously as an enhancement of bail if the image of tagging more generally is improved. The image of bail itself is a problem - by dwelling on cases of serious offending that have occurred on bail, the press use it to connote leniency and incompetence on the part of legislators and courts.

The negative press coverage of EM in Scotland serves to weaken the credibility and legitimacy of an initiative in Scottish criminal justice policy for which an obvious and reasonable case might otherwise be made. This is heightened by the absence, anywhere in the public domain, of accessible and intelligible positive images which might contextualise, counter or balance the negative ones. The creation of a good news website about community supervision generally, in which tagging is set in context, lies at the core of a number of steps that could usefully be attempted to redress this. The availability of a good news website will not guarantee that the press reporting of atypical cases - the acknowledged failures of community supervision - becomes more balanced. Nonetheless, in an increasingly multi-media, web-oriented age (in which *newspapers* are gradually becoming less important) it will constitute a new sort of reference point, and ensure that better, more rounded, information *is at least available* as a resource for public and media discussion.

**ANNEX 2 CONSENT FORM AND INFORMATION SHEET
FOR BAILEES**

Consent Form for People on Electronically Monitored Bail

**Research: Evaluation of the Use of Electronic Monitoring as a
Condition of Bail**

I have read and understood the information sheet included with this consent form.

I am willing for the research team to have access to any records about me that are stored by the Electronic Monitoring Company, the Police, the Courts and the Social Work Department.

I am willing to be interviewed by the researcher. I understand that I don't have to answer any questions I am not happy about.

I do not wish to take part in this study.

[Please tick which boxes apply]

Your name (print): _____

Your signature: _____

Your address: _____

Your mainline phone number: _____

Your mobile phone number: _____

Please remember to fill in all the details above before returning this form to us in the pre-paid envelope provided.

If you do not return this form to us we will assume that you are happy to be included in the research.

Information Sheet for Respondents

Study: Evaluation of the Use of Electronic Monitoring as a Condition of Bail

The research:

Since April 2005 the Courts in some areas of Scotland have had the option of granting Bail with a condition of Electronic Monitoring in certain circumstances. The University of Stirling on behalf of the Scottish Executive is interested in how this is working in practice, how many people are being Electronically Monitored at the moment and what people's views and experiences are about this new condition of Bail. You will have received this letter because you have been given Bail with a condition of Electronic Monitoring.

What we would like you to do:

If you are happy for us to access your records either through the Electronic Monitoring Company or through the courts and social work department then you don't have to do anything. We will contact you directly at the address on your file.

However, you can also help us by completing the attached consent form and returning it to us in the envelope provided. Even if you do not wish to take part in the study, please remember to sign your name and include your contact details on the attached form and return it to us in the pre-paid envelope. If you do not return this form to us we will assume that you are happy to participate in the research.

What happens to this information:

If you give us permission to look at your records or to take part in the interviews, don't worry, anything you tell us or anything that is in your records will remain confidential. Next year, once we have spoken to many other people about the research, we will produce a report of what we have found for the Scottish Executive. Information we get from all the interviews will be included in this report but you will not be identified in it and your name will never be used.

Who we are:

The researchers are from The Social Work Research Centre, University of Stirling, Stirling, FK9 4LA.

If you have any other questions about the study and about your part in it, please contact Monica Barry, Margaret Malloch or Kristina Moodie on 01786 467724.

Please now complete the Consent Form on the other page and return it to us in the pre-paid envelope provided. You don't need to use a stamp.

ANNEX 3

INTERVIEW SCHEDULE GUIDELINES

Name..... Post..... Date.....

The Social Work Research Centre of the University of Stirling has been commissioned by the Scottish Executive to undertake an evaluation of the use of electronic monitoring as a condition of bail in 4 pilot courts. The aims of the research are to ascertain the extent to which EM bail will reduce the prison population and will be cost-effective in comparison to other forms of bail. We are interviewing various stakeholders over the next few months and all information received during these interviews will remain confidential. We would like to tape record our conversation, if you are agreeable, but any quotes used in the report will be anonymised. The interview will take approximately 30 minutes and the topics covered include issues relating to the setting up and running of the pilots, legislation relating to EM bail and breach procedures.

1. Can you tell me how long you have been in post and what your role is?
2. To what extent and how are you involved in the piloting of EM bail?
3. What do you consider to be the aims and objectives of the pilots? How appropriate do you think these are?
4. Can you tell me about the processes you go through when an application for EM bail is made? How does this compare with standard bail applications?
5. How satisfied are you with the procedures and timescales for requesting suitability reports, and with the quality of those reports?
6. How satisfied are you with the timescales for EM bail more generally, in terms of applications, appeals, sentencing and disposal?
7. What are your overall impressions of compliance with the conditions of EM bail? How does this compare with compliance of standard bail?
8. How is breach of EM bail dealt with? How does this compare with breach of standard bail?
9. What is the likely impact of EM bail on sentencing and length of sentence?
10. How confident are you with EM bail in relation to: increasing public safety; reducing offending; reducing intimidation of witnesses; and ensuring due legal process? How does this compare with standard bail?
11. In your view, what are the advantages or disadvantages of EM bail compared with standard bail or remand in custody?

12. Have there been any difficulties for you in relation to EM bail, for example, workload or operational matters?
13. Can you comment on the relatively low numbers of EM bail orders granted to date?
14. Could you comment on the extent and quality of inter-agency cooperation with respect to EM bail in this area?
15. Have you had specific training in relation to EM bail? How useful was that training and what further training needs might you have?
16. Are there any particular factors in the catchment area of this court that help or hinder the process of EM bail?
17. How easy has it been to apply/administer this new measure?
18. Do you think EM bail is a successful and strict alternative to custody?
19. Do you think the scheme overall has been a success?
20. Would you like to see any changes or improvements made to the operation of EM bail in the future?
21. Do you think any changes need to be made to the legislation relating to EM bail?
22. Are the guidelines in the procedure manual adequate for the purposes of EM bail?
23. In your view, are there any legal/ethical issues relating to EM bail?
24. Are you aware of any media coverage of the pilots in this area?
25. Do you think EM bail should be rolled out nationally in the future and if so, what are the implications?
26. Is there anything else that we haven't touched on that might be relevant?
27. Other issues:

ANNEX 4

LOG LINEAR ANALYSES

Chapter 3, Table 3.4

For this section of analysis, it was decided to use a hierarchical log-linear approach because this method is suitable for multiple categorical variables. Loglinear Analysis is a multivariate extension of Chi Square used to detect the varying associations and interactions between the variables and provide a systematic approach to the analysis of complex multidimensional tables. The log linear analyses used in this study were hierarchical and carried out using SPSS13.0 and the associations and interactions are discussed thereafter. A log linear analysis was applied to the frequency data using granted or refused EM bail (2), age group (4), number of presenting offences (4), previous offending history (4), in which court the application was made (3) and the type of court where the application was made (2). This relationship is illustrated in Table 3.4 below.

Tests that K-way effects are zero

K	DF	L.R. Chisq	Prob.
1	13	113.017	.0000
2	68	159.919	.0000
3	182	252.203	.0004
4	261	165.816	1.0000
5	189	4.437	1.0000
6	54	.420	1.0000

Tests of PARTIAL associations

Effect Name	DF	Partial Chisq.	Prob.
Granted EM bail by number of presenting offences by age group	9	22.320	0.0079

Table 3.4 Number of presenting offences by age

Granted EM Bail						Refused EM bail					
Age groups	No of presenting offences					Age groups	No of presenting offences				
	One	Two	Three	Four+	Total		One	Two	Three	Four+	Total
Under 21 yrs	16 41%	13 33%	8 21%	2 5%	39 100%	Under 20 yrs	16 31%	13 25%	11 21%	12 23%	52 100%
21-30 yrs	7 35%	7 35%	1 5%	5 25%	20 100%	21-30 yrs	18 29%	14 23%	10 16%	20 32%	62 100%
31-40 yrs	3 17%	6 33%	1 6%	8 44%	18 100%	31-40 yrs	15 43%	9 26%	6 17%	5 14%	35 100%
41+ yrs	5 45%	3 27%	1 9%	2 18%	11 100%	41+ yrs	5 42%	3 25%	2 17%	2 17%	12 100%
Total	31	29	11	17	88	TOTAL	54	39	29	39	161

Chapter 3, Table 3.8

A log linear analysis was applied to the frequency data using granted EM bail, refused EM bail after reports or refused EM bail outright (3), age group (4), number of presenting offences (4), previous offending history (4), in which court the application was made (3) and type of court (2). Table 3.8 shows this relationship.

Tests that K-way effects are zero

K	DF	L.R. Chisq	Prob.
1	14	117.234	.0000
2	80	200.908	.0000
3	238	319.225	.0003
4	387	195.470	1.0000
5	324	4.704	1.0000
6	108	.204	1.0000

Tests of PARTIAL associations

Effect Name	DF	Partial Chisq.	Prob.
EM bail granted, refused after reports and refused outright	4	23.806	0.0001

Table 3.8 Applications refused outright versus suitability reports requested

	Application refused outright	EM bail refused after reports	EM bail granted	Total
Glasgow	18 (17%)	39 (37%)	48 (46%)	105
Kilmarnock	8 (9%)	50 (54%)	35 (38%)	93
Stirling	49 (45%)	26 (24%)	33 (31%)	108
Total	75 (25%)	115 (38%)	116 (38%)	306

Chapter 5, Table 5.5

A log linear analysis was applied to the frequency data in the comparison sample using categories of age group (4), no of presenting offences (4), previous offending history (4) and outcome of first hearing. This log linear analysis found an interaction between number of previous offences and the outcome of the first hearing where the sheriff decided if the accused should be remanded, bailed or ordained.

Tests that K-way effects are zero:

K	DF	L.R. Chisq	Prob.
1	11	148.987	.0000
2	45	133.124	.0000
3	81	77.485	.5901
4	54	16.761	1.0000

Tests of PARTIAL associations:

Effect Name	DF	Partial Chisq	Prob.
No of previous offences by outcome of first hearing	6	16.573	0.0110

Table 5.5 Comparison courts: Number of previous offences by outcome of first hearing

Number of previous offences	Outcome of first hearing			Total
	Remanded	Bailed	Ordained	
None	2 (11%)	13 (72%)	3 (17%)	18
1 - 5	10 (13%)	47 (59%)	23 (29%)	80
6 - 10	12 (31%)	18 (46%)	9 (23%)	39
10+	21 (42%)	19 (38%)	10 (20%)	50
Total	45 (24%)	97 (52%)	45 (24%)	187

5.43 Table 5.5 shows that in the comparison sample those accused who have an offending history of 6+ previous offences are more likely to be remanded in custody (73%) pending trial than those who present with 1-5 previous offences (13%) or no previous offences (11%). This difference is statistically significant ($X^2 = 18.879$, $p < 0.01$).

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