

Release under investigation

October 2019

The Law Society of England and Wales is the independent professional body that works globally to support and represent 180,000 solicitors, promoting the highest professional standards and the rule of law.

Summary

- The use of release under investigation (RUI) has increased dramatically since changes were placed on the use of bail in 2017.
- The release under investigation procedure has no time limit and no conditions are placed on release.
- There is evidence that there are people being released under investigation who are potentially a risk to victims of crime and the public in general, rather than being put on bail as would be more appropriate.
- For those accused of crimes and released under investigation, they are essentially 'left in limbo' for long periods of time – sometimes for over a year – with no updates or indication from the police if or when the case will progress. This can cause much anxiety and distress for those involved – including victims.
- We recommend the Government introduces time limits for RUI, that the police reports data on RUI usage centrally, and that the police ensure decisions on RUI/bail are proportionate and informed by the potential risk to the public.

1. What is release under investigation?

Following changes to police bail proceedings, since 1 April 2017 large numbers of people suspected of committing a crime are now being 'released under investigation'. This allows the police to release a suspect under investigation while they gather more evidence, as opposed to releasing a suspect on bail.

Being released under investigation is different from being released on bail. Following changes introduced under the Policing and Crime Act 2017, when someone is put on police bail this is only for an initial period of 28 days. This can then be extended up to a period of 3 months on the authority of a police officer at Superintendent level or above. In exceptional circumstances this can be extended yet further by a Magistrates' Court.

If a person is released on bail, they might be made subject to certain conditions such as:

- Living at a particular address
- Not contacting certain people
- Giving their passport to the police so they cannot leave the UK
- Reporting to a police station at agreed times, for example once a week

Release under investigation (RUI) is different because:

- The person is released with no time limit – it can be for a matter of weeks or could be for years
- The person is not given an indication of how long they will be released under investigation for and are told they will be notified “at some point” of the outcome of the investigation
- The person is not subject to any conditions

Under RUI, if someone is charged and is required to go to court to answer the allegation, they will receive a “postal requisition” letter through the post. If they move home following their initial arrest, go on holiday or forget to check their mail, they may not receive their postal requisition. This will usually lead to the court issuing a warrant for their arrest.

2. How widely is it used?

The use of RUI has massively expanded since the changes to bail introduced in the Policing and Crime Act 2017.

Due to the time limit introduced for bail, many police forces now use RUI to provide more time to complete their investigations. As a result of decreasing police resources, it has become increasingly difficult to complete many investigations within a 28-day period.

Data collated by the legal firm Hickman and Rose shows that since the introduction of RUI and time limited bail, in a large number of areas the number of suspects on bail has dropped dramatically, with a far larger number released under investigation.

For example:

- In Nottinghamshire the number released on bail between 2016 and 2017 was 7392. But in 2017-2018 this fell to 562, and the number released under investigation was 4728.
- In Thames Valley the number released on bail between 2016 and 2017 was 13,768. But in 2017-2018 this fell to 379, and the number released under investigation was 11053.
- In Cheshire the number released on bail between 2016 and 2017 was 4742. But in 2017-2018 this fell to 526, and the number released under investigation was 4640.
- In London the number released on bail between 2016 and 2017 was 67,838. But in 2017-2018 this fell to 9881, and the number released under investigation was 46,674.

This data also shows that people are being released under investigation for long periods. For example:

Average length of under investigation status 2017 – 2018	
Nottinghamshire	114 days
Leicestershire	120 days
Norfolk	135 days
Cambridgeshire	155 days
Surrey	228 days

However, only some police authorities have provided data on RUI numbers, and even less have provided average length of RUI data. We are concerned that many local forces are not collecting or monitoring this data, meaning that there may be thousands of potential criminals on the streets released under investigation which we don't even know about.

3. What's the problem?

Risk to the public and victims of crime

RUI is essentially being used by many police forces as an alternative to bail. This means that there are tens of thousands of individuals being investigated for a crime but under no conditions and with no time limits. This impacts on victims, who may be targeted again by the same perpetrator, as well as on the public in general.

For some crimes, it may be appropriate to place the accused under RUI, and the police are supposed to ensure decisions around bail and conditions are necessary and proportionate. However, the Law Society has uncovered examples where the police are not putting people on bail in cases where the defendant could be a risk to the public.

For example:

- A solicitor had a client who was released under investigation for two separate knife crime murders. This individual has also been released under investigation for two separate knife robbery offences. During the time he has been subject to RUI he was also charged with a separate S18 GBH knife crime and has undergone a Crown Court trial.
- A solicitor in a region outside London had a client who was arrested for rape and bailed, accused of a further sexual offence against the same complainant, then placed under RUI under the original rape accusation due to bail not being extended.
- An individual in the West Midlands was arrested for murder, placed on bail, but after the bail was expired was placed under RUI.

The prevalence of examples such as these suggests that the police are not assessing the appropriateness of the use of RUI or bail for each case, and are instead making decisions based on

the amount of time they think will be needed to build evidence for a case. It is worrying that individuals accused of a series of crimes are being released under investigation, with no conditions or oversight. This means that defendants can contact their alleged victims or potential partners in crime without restriction, can leave the country, or commit further crimes.

People left in limbo

For individuals suspected of a crime, it can feel as if their case has been effectively left in limbo. They are often unaware of what is happening with their case, unaware of whether they remain a suspect or unaware of whether the police are even actively investigating their case.

The accused never know when the letter will arrive charging them or not – and for those who have moved since their original arrest, their letter may go to their wrong address, sometimes resulting in them not being aware of their court date and being tried in their absence.

The uncertainty inevitably creates a situation where those released under investigation are placed under enormous stress which can impact on their personal and family lives and their employment. For example:

- In 2013 a man then in his 70s was interviewed for a second time on allegations of sexual abuse when he was a care worker in children's home – the first interview took place in 1990 and the police stated that the files from the earlier interview had been lost. He was then re-interviewed in 2015/2016 and eventually released under investigation. The man received no updates on the case despite five answered letters from his solicitor to the CPS. The man, now aged 82, was finally told at the start of June 2019 that he will not be prosecuted. The length of process placed extreme strain on him and his wife, who is seriously ill (South West)

A lengthy RUI process can also result in people assuming the court date will never come, and continue their lives only to find it abruptly changed:

- A young woman was arrested for cannabis possession in a prison visiting area and was later found to have 10 tablets of MDMA at her home address. As this was a simple case with the evidence quickly available, it could have been resolved quickly in court. However, the individual was released under investigation and the case did not come to court until 22 months later. In this time the individual had assumed the case would go nowhere and had started a family. By the point of the trial, the judge felt that, given the circumstances, there was little he could do other than impose a Community Order.

RUI can also have an extremely detrimental impact on victims and witnesses because they are similarly left in an open-ended situation without resolution for potentially years. For example:

- An individual was interviewed and bailed in 2015 when aged 16 after being accused of rape. The complainant was a 14 year old girl. When the individual was due to answer bail, this was changed to release under investigation. The case didn't reach court until October 2018, meaning the complainant had to go through the trauma of giving evidence 4 years after the alleged offence. From the accused's perspective, the delay meant that he had reached 18 and had to be dealt with in court as an adult rather than a youth. (South West of England)

In addition, a [survey](#) of 109 lawyers conducted by the London Criminal Courts Solicitors' Association (LCCSA) on release under investigation found:

- 98% of solicitors said delays in an investigation have impacted on their client's mental health
- 99% of solicitors said delays in an investigation have impacted on their client's family life
- 100% of solicitors surveyed said delays in an investigation impacted on their client's employment status

The current system is unfair to the accused. We understand the need for there to be a more flexible alternative to bail for both the police and suspects, but if this is to work fairly and effectively, people need to be dealt with promptly and efficiently.

A further blow to the struggling criminal law market

Those released under investigation require ongoing legal advice and support. The criminal legal aid fee schemes never anticipated solicitors having to provide advice for those released under investigation in these circumstances. Payments for police station advice are paid as fixed fees for providing advice at the police station itself. They were not intended to cover work chasing officers for updates and trying to remain in contact with those who have been released under investigation, all of which can be very time consuming. This makes the work of criminal defence practitioners even more uneconomic than it already is, and acts as a further disincentive for firms to provide legal aided services.

This is in the context of an extremely difficult legal aid market and a looming crisis in the numbers of criminal duty solicitors. Criminal defence solicitors have received no fee increase since 1998, and have also suffered a number of cuts to the fees they receive, the last being an 8.75% cut in 2014. As a result of this adverse environment, businesses are becoming unviable and many lawyers no longer see a future doing this work, and so it is almost impossible to attract new members to this area of law, and also to retain existing practitioners.

The average age of criminal duty solicitor is 47 (and is much higher in many areas). In as little as five years, there could be areas of the country with no duty solicitors at all.

4. What should be done to change it?

The Law Society has a number of recommendations to address the situation which are set out below. However, we do not recommend returning the pre-2017 bail regime, which left many people on tight restrictions for an overly long period, many of whom were later acquitted. Instead, we believe there needs to be tighter timeframes on RUI (but not as tight as bail) and a commitment from the police to ensure RUI is only used when appropriate, i.e. when the accused is of low risk to the public and at a low risk of fleeing the country.

Our recommendations are as follows:

- 1) **Ensure release under investigation is used appropriately:** The police need to ensure decisions around whether to place someone under bail or RUI are necessary and proportionate – as they are required to do under the PACE Codes of Practice. This means that those who are of a potential risk to the complainant or to the public in general should not be placed under RUI.
- 2) **Time limits on release under investigation:** Strict time limits must be introduced to RUI, with senior approval required to extend those time limits, mirroring the bail requirements. However, we acknowledge that the police, like the defence and prosecution, are under resource pressure, so we understand the need for a mechanism which is less restrictive than bail in terms of time limits and extension approvals. We would therefore suggest an approximate first period of around 56 days authorised by a sergeant, with approval needed from a Chief Inspector or Superintendent for an extension to 6 months. For an extension of up to 12 months, approval from a magistrate would be needed.
- 3) **Better ways to update the accused:** A single “postal requisition” letter to the accused’s address original is not acceptable, especially given the long times people are released under investigation and the likelihood of people moving in this time. Police forces should use additional methods to contact the accused, such as email and/or a text message in case the individual has moved or is away from home.
- 4) **Better data collection:** There should be a central register of the numbers of people released under investigation, broken down by police authority area, by the crime the individual has been accused of, and the date of when the individual is placed under RUI. This will help the Government monitor numbers and determine whether it is being used appropriately.
- 5) **Fairer remuneration for defence solicitors:** The Law Society has long been calling for an increase in legal aid rates paid to criminal defence practitioners. The increased volume of work caused by the increasingly widespread use of RUI is yet another reason to increase the rates paid in order to fairly remunerate the profession.