The Scottish Government

Summary Justice Reform: Undertakings Evaluation

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SUMMARY JUSTICE REFORM: UNDERTAKINGS EVALUATION

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The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

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EXECUTIVE SUMMARY

Introduction

In December 2009, the Scottish Government commissioned an independent evaluation of reforms to undertakings, the findings of which are presented here.

The research is part of a wider package of work to evaluate summary justice reform (SJR) in Scotland, and sits alongside five other evaluations of individual areas of reform, namely direct measures; criminal legal assistance and disclosure; fines enforcement; and lay justice. An evaluation of the impact of the whole package of reforms on the experiences and perceptions of victims and witnesses, and the perceptions of the general public was also commissioned.

The reforms to undertakings were evaluated in tandem with a number of changes to bail which, although were part of the same Act, and occurred at roughly the same time (i.e. December 2007), were not directly part of SJR. The evaluation of the reforms to bail are the subject of a separate report with this report focusing solely on the reforms to undertakings.

The main aim of the research was to evaluate how far the reforms to undertakings had met both the overarching aims and objectives of SJR, as well as a number of specific policy objectives.

Reforms to undertakings

Undertakings are issued by the police, and involve the liberation of an accused on an undertaking to appear in court on a specified date, normally within 28 days of their release. A hard copy undertaking form is issued to the accused and is signed by them, which states the place, date and time that the accused must appear for their first calling in court. Such undertakings are sometimes referred to colloquially as 'police bail'.

The main difference between an undertaking and a citation to appear at court is that when an accused is liberated on an undertaking, the accused is advised of the date on which s/he requires to attend at court before leaving police custody. While a complaint[1] is still produced, there is no requirement for it to be served on the accused until the first court appearance, and the case can be booked into the court programme sooner than would be the case if a citation were used. More importantly, this process ensures that the first calling of an undertaking has the key elements in allowing cases to be resolved which are usually lacking in cited cases when they call for the first time, namely the presence of the accused and his/her lawyer already instructed and sighted on the evidence. This was a key feature of the McInnes recommendations, along with the earlier first calling of the case, in favour of shifting the balance from cited cases to undertakings.

[1] The 'complaint' is a paper document that includes the charge(s) libelled, the disclosable summary of evidence from the police report and information on the accused's previous convictions.

Undertakings in themselves are not new under the reforms, and have been in use in Scotland for a number of years. Before the reforms, however, their use varied greatly between different police forces, there were limited eligibility criteria for their use and there were tighter restrictions on who could issue an undertaking, i.e. only the arresting officer.

Changes to undertakings were introduced as part of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and were implemented from December 2007. The main changes to the use of undertakings include:

- widening of eligibility to issue undertakings. Any Constable may do so post-reform, and not necessarily the arresting officer. In contrast to pre-reform, undertakings can also be made without authority from an officer in charge;
- persons arrested on a warrant can also now be released on an undertaking, instead of the pre-reform necessity for remand; and
- the police may impose new conditions when issuing an undertaking, similar to those included in bail orders.

The first of these changes meant that undertakings could be used more often and the latter meant that undertakings placed greater restrictions on accused released this way. Consequently, it was anticipated that the reforms would result in more reported cases being dealt with by way of undertaking, and that greater control of accused might be achieved. The reforms set out an ambition to increase the use of undertakings as a means of improving the speed and efficiency of the summary justice system and to assist in making sure that cases came to court more quickly, compared to citations.

Methodology

A mixed methods approach was used that combined analysis of secondary data with collection of primary qualitative data from interviews. A limited cost-benefit exercise was also attempted to assess whether the benefits, i.e. savings generated by the reforms to undertakings, were sufficient to outweigh the corresponding burdens arising from the reforms. This encountered several challenges, not least being a lack of available data to inform its execution and, therefore, a full economic analysis was not possible. Instead, the evaluation considers the likely impact of the reforms on the workloads of the main criminal justice agencies involved in the administration of undertakings, as well as the impacts on failure to appear and churn, which may all have associated costs to the system.

The research findings presented here are based on data generated from four case study areas. This means that no national conclusions are presented and, instead, the findings from the case study areas are only used to posit possible impacts of the reforms elsewhere.

Main Findings

The numeric and interview data show mixed messages about whether there has been an increase in the number of accused who appear at court on undertakings. The KPI data suggests no real increase in use post-reform, although gaps in the

data mean that it is not possible to say what happened in the period immediately following their introduction.

Increased use of undertakings instead of citations might have been expected to have brought about increased numbers overall over time. The flat line observed for undertakings, and the seasonal peaks and troughs in use of citations, suggests that undertakings are not used more post-reform in place of citations. The data does, however, show that undertakings are being used for a wider range of offences, including more complex cases such as simple assault, shoplifting and drugs offences, since the reforms.

Qualitative data suggests that the police are making concerted efforts to increase their use of undertakings. That said, police interview data show some police reluctance to use undertakings for fear of being challenged by supervising officers regarding their decisions. This may be contributing to lower numbers of undertakings being used in some areas. It does not seem from the evaluation that awareness of undertakings practices or reforms is a barrier to their use.

Views from police, Fiscals and Defence Agents suggest that officers are making use of national guidance as well as using discretion and adopting local protocols that best meet the local circumstances.

The KPI data supports the notion that a large number of cases are coming to court within the 28 day target, although some areas have a greater success rate than others in meeting this goal. Overall, the objective of getting cases to court quickly does, however, seem to be met.

While data is positive in regards to the 28 day target being met, the negative consequences are that interviewees felt that they were not able to prepare quickly enough and this was negatively impacting on getting cases *through* court. Indeed, in interviews it was suggested that there may have been some unintended churn as a result of cases coming to court quickly, with police, Defence Agents and Fiscal interviewees reporting difficulties in preparing quickly enough for pleading diets in the time given. KPI data also show a lower proportion of undertakings cases concluded at first calling in court in the period since the reforms, compared to an increase in the percentage of cited and custodial cases concluding at this stage over time. This may indicate a reduction in the effectiveness of court hearings for undertakings cases at this stage in the summary justice journey.

KPI data also show that, pre-reform, undertakings cases usually proceeded through court with fewer diets per case on average than cited and custody cases, however, post-reform, there has been a notable increase in the average number of appearances for undertakings cases. This is all the more notable since there has been a corresponding drop in the average number of diets for the other two case types, suggesting that the rise is isolated to undertakings cases and may be a direct consequence of reforms in this particular area.

The speed of getting accused to court on undertakings may be leaving less opportunity for agents to advise their clients to plead guilty (where appropriate). As a result, and given concurrent reforms to legal aid, greater use may be being made of continued pleading diets to allow later guilty pleas to be tendered. This may be

exacerbated by the shift in use of undertakings towards different types of cases, including more complex cases, post-reform. More complex cases may require more diets than the cases where undertakings were traditionally used (for example, drink/drug driving offences), due to challenges in gathering evidence, or citing civilian witnesses to court who may be less reliable than their professional or expert witness counterparts (and with whom evidence can arguably more easily be agreed). The lack of time for clients and agents to consult, and to prepare for such cases, as well as these wider evidence gathering and witness citation issues may therefore explain some of this increase in the average number of appearances required.

Although end-to-end targets are currently being met, the evaluation has shown that the percentage of undertakings cases being dealt with within 26 weeks has progressively declined over time since the start of 2009 with a corresponding upward trend in average time taken from caution and charge to verdict, both of which are unique to undertakings cases.

Thus, in sum, while undertakings do seem to be getting people to court quickly, with some areas showing good compliance with the 28 day target, case marking among fiscals is taking slightly longer over time, and there appear to be more diets and overall lengthier times required to conclude cases once they are at court. The end-to-end time for undertakings is, however, still faster than for cited cases, but the difference in time for the two has reduced in recent years. Some of this may be accounted for by the shift in use of undertakings towards more complex cases, although interviewees stressed that the main issue was short timescales impacting on ability to prepare adequately in time. Thus getting people *to* court may be occurring at the expense of the other intended outcomes of SJR – in particular the early, effective preparation of cases and more effective court hearings, as well as cases being dealt with at the earliest stage of proceedings and achieving faster case conclusions overall.

Among all interviewee groups, there was consensus that most people do appear at court on first calling if released on an undertaking. Interviewees perceived that there were few breaches of conditions, including special conditions where applied, based on there being few arrests for this crime. Data on failure to appear rates for *citation* cases at first calling in court had not been specified as one of the many monitoring indicators agreed at the start of the SJR evaluation programme, so it was not possible to compare failure to appear rates for undertakings with failure to appear on citation. Where breach of undertakings does occur, there is evidence to suggest that Sheriffs and Justices of the Peace are making use of their increased sentencing powers under the reforms.

Undertakings were seen by interviewees to be largely fair to victims, witnesses and accused. In particular, one of the main benefits of undertakings was seen to be the certainty (for the accused) of knowing where and when to attend court. Findings from the victim, witnesses and public perceptions evaluation, published separately as part of the SJR evaluation series, also show that members of the public support the rationale and principles for undertakings, as do victims and witnesses. This, however, does not hold for cases involving repeat offenders and those with a history of breach of bail or undertakings for whom custody seems to be what the public would prefer.

Responses from the accused interview group seem to show reasonably good levels of awareness of the reasons for undertakings and the conditions of their use. There seemed to be support for their use for lesser offences and accused agreed with the principles that, for some more serious offences, their use was not appropriate. Those accused who took part also showed support for the serious treatment of breach of undertakings and conditions, especially given that the standard conditions were not difficult to comply with and allowed the privilege of liberation. Most of those who took part welcomed their freedom and also seemed to welcome a quick turnaround in getting *to* court.

Although not a specific focus of the evaluation, qualitative interview data show that there may be some issues around communication between both Fiscals and the accused, and between Defence Agents and their clients, which are linked to undertakings use. The first problem reported by interviewees was that Fiscals were marking some undertakings cases as Fiscal direct measures or no proceedings, but were failing to alert accused of this decision. This can mean wasted time for some accused attending court only to be notified that the case has been dropped or is being dealt with by a non-court disposal.

Secondly, interviewees reported that some accused were failing to liaise with their Defence Agents ahead of appearing in court on an undertaking which exacerbated the lack of time to prepare (as mentioned above). The absence of a written complaint before the court appearance was often coupled with failure by the accused to provide sufficient details to Defence Agents of the nature of the charge. Whilst this may not be unique to undertakings, the short time between arrest and pleading diet may be compounding the problem in undertakings cases, and this may be impacting on other aspects of SJR. Overall, it seems that more effective communication between Fiscals, Defence Agents and accused may be needed.

Gaps in the Data

Gaps in the recorded data on the use of undertakings and conditions has meant that it has not been possible to produce an accurate national picture of these measures. Specifically, police data is not available for all forces that cover all LCJB areas for the period before the reforms were introduced and, even post-reform, staggered start dates in the collection of this data mean that it is not possible to say what happened at the national level immediately after the reforms were introduced. Crown Office data on the number of standard prosecution reports submitted to COPFS is not available before April 2009, and so again cannot be used as a measure of changes in the total numbers of undertakings pre and post-reform. There is also no data on the numbers of warrants granted for people who fail to appear at court at pleading diets broken down for undertakings and cited cases and so it is not possible to say whether use of undertakings is any more effective than citation at ensuring that accused appear at court when required.

From the data available, it has also not been possible to say what the true costs and benefits of the reforms to undertakings have been, and this is something that would be desirable in the future.

Finally, the evaluation has revealed that there is considerable local variation in the extent to which reforms to undertakings are being adopted and the extent to which use of undertakings has changed over time. More detailed analysis at police force level for the whole of Scotland may be useful in revealing what needs to be done to maximise the potential benefits of undertakings as a means of getting people to court.

Messages for Policy

Some of the main messages from the evaluation appear to be that:

- Greater flexibility in the terms of the Lord Advocate's guidelines is perceived as being necessary by all key stakeholder groups (police, Defence Agents and Fiscals) in order to ensure the optimum use and effectiveness of undertakings. In particular, greater flexibility in the time taken from release to appearance in court may mean that problems with gathering evidence and preparing quality reports may be overcome. This may also help to alleviate some of the communication problems that are occurring between Fiscals and the accused, as well as between accused and their Defence Agents allowing both more time to initiate communications, where appropriate.
- There may be a need to review the communication strategy between Fiscals, Defence Agents and the accused. This is especially true in cases where alternative, non-court disposals are decided by Fiscals after undertakings have been issued, and in cases where no proceedings are marked. Ensuring that all relevant parties are aware of these decisions as soon as possible may reduce inconvenience to Defence Agents and accused, in particular.
- A focus on getting people to court needs to be carefully balanced with getting cases through court since it seems that, in some cases, a lack of communication and preparation is leading to ineffective first court hearings and continued churn, meaning that undertakings cases are not being dealt with at the earliest possible stage in some instances.

Conclusions

The evaluation has shown that there is generally good support for undertakings among criminal justice professionals and accused alike. The benefits to victims of bringing cases to court more quickly via undertakings is also recognised.

Despite some regional variation, police targets for getting undertakings cases to court, as well as Fiscal marking targets are being met, as are the end-to-end targets for undertakings cases progressing through court. The speed of undertakings cases through court is also still faster than cited cases. Disappointingly, gaps in the data mean that it is not possible to say conclusively if undertakings are being used more post-reform, as was expected, or how compliance with undertakings compares to cited cases.

Despite some positive findings, there is also clear evidence of churn still occurring at the front end of the court journey for undertakings cases, though this may be in part due to a change in the types of cases for which undertakings are being used. The evaluation perhaps, therefore, suggests a need to revisit some of the core principles of undertakings, and to consider further if speed at the early stages of the justice process has the desired impact on end-to-end summary justice performance overall. A key to the future success of undertakings, which will minimise negative impacts at later stages in the system, seems to be a more flexible timescale for the scheduling of undertakings cases in court and better communication between all parties concerned.

1 INTRODUCTION

1.1 In December 2009, the Scottish Government commissioned an independent evaluation of reforms to undertakings, the findings of which are presented here.

1.2 The research is part of a wider package of work to evaluate summary justice reforms (SJR) in Scotland, and sits alongside four other evaluations of individual areas of reform, namely direct measures; criminal legal assistance and disclosure; fines enforcement; and lay justice. An evaluation of the impact of the whole package of reforms on the experiences and perceptions of victims and witnesses, and the perceptions of the general public was also commissioned.

1.3 The reforms to undertakings were evaluated in tandem with a number of changes to bail which, although were part of the same Act, and occurred at roughly the same time (i.e. December 2007), were not directly part of Summary Justice Reform[2]. The two reforms were evaluated together because they were thought to have potential to impact upon the same stages of the summary justice process (i.e. pre-court up to first hearings) and, in the main, affect the same principal stakeholders. This report focuses solely on the reforms to undertakings. The evaluation of the reforms to bail are the subject of a separate report.

Summary Justice Reform

1.4 In 2001, the Scottish Ministers established the (independent) McInnes Committee, to review the operation of the summary criminal justice system in Scotland and explore ways that it could be improved. It concluded that the system was in need of a comprehensive overhaul due to:

- problems with the overall speed in dealing with cases;
- wasted court attendances for victims and witnesses;
- little difference in the way that minor and more serious cases were being dealt with by the system;
- no incentives to encourage Defence Agents to deal with cases quickly;
- inconsistencies in the way that the police, courts and Procurator Fiscal dealt with cases; and
- waste of public funds.

1.5 The McInnes Committee report[3], which represented a wide range of interests and experience in summary justice, was published in March 2004. In March 2005, following consideration of the Committee's report and an extensive public consultation, Scottish Ministers published Smarter Justice, Safer

[2] Reforms to Bail have their origins in the 2005 Bail and remand Action Plan available at: http://www.scotland.gov.uk/Publications/2005/09/26103133/31348

[3] The Summary Justice Review Committee: Report to Ministers (2004) Scottish Executive, Edinburgh available at: http://scotland.gov.uk/Publications/2004/03/19042/34176

Communities: Summary Justice Reform Next Steps[4] and subsequently a Summary Justice System Model Paper[5], in September 2007, detailing the reforms. Those that required legislation formed the basis of the Criminal Proceedings etc (Reform) (Scotland) Act 2007. The whole package of changes or 'reforms' was commenced from December 2007 and is referred to colloquially as 'Summary Justice Reform' or 'SJR'.

Aims and Objectives of SJR

1.6 The overarching objectives of SJR were to achieve a summary justice system that is:

- fair to the accused, victims and witnesses;
- effective in deterring, punishing and helping to rehabilitate offenders;
- efficient in the use of time and resources; and
- quick and simple in delivery.

1.7 The following intended outcomes of SJR were also identified in the Summary Justice System Model Paper (2007):

- the removal of a significant number of appropriate cases from the court through a greater use of non court options or alternatives to prosecution including adult warnings, fixed penalty notices and Fiscal direct measures;
- for cases that do come to court, those cases will come to court more quickly;
- improved case handling, namely:
    - early, effective preparation of cases;
    - more effective court hearings;
    - cases will be dealt with at the earliest possible stage in proceedings;
- appropriate allocation of case to forum, including sufficient use of better-trained lay Justices;
- to make a contribution to reducing re-offending by dealing with cases at the earliest possible stage in proceedings; and
- to reduce inconvenience for victims and witnesses.

Reforms to undertakings

1.8 Undertakings are issued by the police, and involve the liberation of an accused on an undertaking to appear in court on a specified date, normally within 28 days of their release. The undertaking form that is issued to the accused and is signed by them, states the place, date and time that the accused must appear for their first calling in court. Such undertakings are sometimes referred to colloquially as 'police bail'.

[4] Smarter Justice, Safer Communities: Summary Justice Reform Next Steps (2005) Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Resource/Doc/37428/0009568.pdf

[5] Summary Justice Reform System Model (2007) Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Publications/2007/09/06092618/6

1.9 The main difference between an undertaking and a citation to appear at court is that when an accused is liberated on an undertaking, the accused is advised of the date on which s/he requires to attend at court before leaving police custody. While a complaint[6] is still produced, there is no requirement for it to be served on the accused until the first court appearance, and the case can be booked into the court programme sooner than would be the case if a citation were used. More importantly, this process ensures that the first calling of an undertaking has the key elements in allowing cases to be resolved which are usually lacking in cited cases when they call for the first time, namely the presence of the accused and his/her lawyer already instructed and sighted on the evidence. This was a key feature of the McInnes recommendations, along with the earlier first calling of the case, in favour of shifting the balance from cited cases to undertakings.

1.10 Undertakings are only competent for offences which may be tried summarily. They cannot be used for cases which must proceed by petition (i.e. solemn procedure).

1.11 Undertakings in themselves are not new under the reforms, and have been in use in Scotland for a number of years. Before the reforms, however, their use varied greatly between different police forces, there were limited eligibility criteria for their use and tighter restrictions on who could issue an undertaking, i.e. only the arresting officer.

1.12 Changes to undertakings were introduced as part of the Act and were implemented from December 2007. The main changes to the use of undertakings include:

- widening of eligibility to issue undertakings. Any Constable may do so post-reform, and not necessarily the arresting officer. In contrast to pre-reform undertakings can also be made without authority from an officer in charge[7];
- persons arrested on a warrant can also now be released on an undertaking, instead of the pre-reform necessity for remand; and
- the police may impose new conditions when issuing an undertaking, similar to those issued with Bail Orders.

1.13 The first of these changes meant that undertakings could be used more often and the latter meant that undertakings placed greater restrictions on accused released this way. Consequently, it was anticipated that the reforms would result in more reported cases being dealt with by way of undertaking, and that greater control of accused might be achieved. The reforms also set out an ambition to increase the use of undertakings as a means of improving the speed and efficiency of the summary justice system and to assist in making sure that cases came to court more quickly, compared to citations.

[6] The 'complaint' is a paper document that includes the charge(s) libelled, the disclosable summary of evidence from the police report and information on the accused's previous convictions.
[7] Although special conditions attached to an undertaking have to be made by an authorising officer of the rank of at least Inspector.

Aims of the Research

1.14 The main aim of the research was to evaluate how far the reforms to undertakings had met both the overarching aims and objectives of SJR, as well as a number of specific policy objectives for the reforms to undertakings which were to:

- increase the number of accused who appear at court on undertakings;
- bring undertaking cases to court within 28 days of caution and charge, resulting in cases progressed in this way coming to court much more quickly than cited cases and reducing delay in the summary criminal justice system; and
- enable the police to impose conditions when releasing accused on an undertaking.

Methodology

1.15 A detailed methodology is attached as Appendix A. A mixed methods approach was used that combined analysis of secondary data, collection of primary qualitative data from interviews and questionnaires from accused as well as a parallel cost-benefit analysis exercise. A staged approach was taken so that findings from early stages could inform the design and content of the later stages.

1.16 Secondary data analysis focussed mainly on Key Performance Indicator (KPI) data from the Scottish Government's Criminal Justice Board Management Information System (CJBMIS). This includes data from all partner agencies involved in the administration of undertakings including the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Court Service (SCS) and the Crown Office and Procurator Fiscal Service (COPFS).

1.17 Following initial analysis of the KPI data and discussions with key stakeholders, four case study areas were selected in which to concentrate the qualitative research. These were based upon Local Criminal Justice Board (LCJB) areas, and were Ayrshire, Central, Lothian and Borders, and Glasgow and Strathkelvin.

1.18 In-depth interviews were conducted with a range of key stakeholders, including Sheriffs, Justices of the Peace, Procurators Fiscal, police operational supervisors (Inspectors and Sergeants), Defence Agents and accused whose cases had concluded. Group interviews were also conducted with police Constables with operational experience of undertakings.

1.19 A limited cost-benefit exercise was also attempted to assess whether the benefits, i.e. savings generated by the reforms to undertakings, were sufficient to outweigh the corresponding burdens arising from the reforms. This encountered several challenges, not least being a lack of available data to inform its execution, rendering a full economic analysis not possible. Instead, the evaluation considers the likely impact of the reforms on the workloads of the main criminal justice agencies involved in the administration of undertakings, as well as the impacts on failure to appear and repeat rescheduling of cases which may all have associated costs to the system.

Research Caveats

1.20 The research findings presented here are based on extracts from the national KPI data for the four case study areas, as well a nationally, where appropriate. This means that, in some cases, no national conclusions are presented and, instead, the findings from the case study areas are used to posit possible impacts of the reforms elsewhere. The areas were chosen principally on the basis of geography (to achieve a good spread), patterns identified in KPI data (to capture typical and atypical areas) and workload in the courts (capturing Sheriffdoms that have a mix of different court types and different volumes of work). While the research successfully managed to achieve this spread, the data generated in each area varied considerably. This is highlighted throughout the report and is noted as a caveat insofar as the findings cannot be widely generalised.

1.21 For context, it is worth noting that, in West Lothian and parts of Edinburgh, (both of which are within Lothian and Borders police force area), there were pre-SJR system improvement projects that operated by allowing a form of undertaking to be used for a wider range of summary non-custody offences than set out in the Lord Advocate's guidelines. These were allowed to continue post-SJR and, accordingly, the findings around impact of the SJR reforms in this area will be influenced by these projects. This is not a constraint, since it is useful in showing how differing local practices can impact on the perceived success of undertakings, and in this way its use as a case study area has been particularly useful to the evaluation.

1.22 Also, in Falkirk, and then Central Scotland Police as a whole, officers were permitted to implement a similar approach from the start of 2008. As with Lothian and Borders, a broad range of offences are/were dealt with by undertaking in Central Scotland which are not allowed elsewhere under the Lord Advocates guidelines. In addition, they operate under more flexible timescales, usually circa 40 days, rather than the 28 day cycle used elsewhere. Central Scotland Police also operate a 'no liberation to cite' policy, wherein accused coming into police custody are either kept in custody or liberated on an undertaking, the majority being with no conditions (mandatory) attached. Citation is no longer used at all and this is unique to this Force area. Consequently, any findings from data in Central must be carefully considered in this context, as they are not directly comparable with other force areas where different practices are in place. Again, however, this area is a useful case study for showing how variations to national guidelines can impact on both the actual and perceived success of the undertakings reforms.

1.23 Recognising differences between areas, the quantitative data analysis presented here is provided at the national and case study level wherever possible. This was again difficult in some cases since the geographical boundaries used by various partners for data recording purposes were not always the same. For example, data provided by the SCS is provided at Sheriffdom level, whereas data from police forces is disaggregated to police force level. Appendix B shows the overlaps in Sheriffdoms, LCJB areas, COPFS regions and police forces.

1.24 From the outset, it is also important to note that there were a number of gaps in the data that were available for analysis as part of the evaluation. Specifically, data on the number of undertakings issued pre reform was not available for all geographic areas. Police data regarding the use of standard and special conditions for undertakings also varied greatly between areas and is not systematically recorded by all Forces. Although data were extracted for this evaluation, it is not routinely held as part of the CJBMIS data capture. Crown Office data on the number of standard prosecution reports submitted to COPFS is not available before April 2009, and so again cannot be used as a measure of changes in the total numbers of undertakings pre and post-reform. There is no data on the numbers of warrants granted for people who fail to appear at court at pleading diets broken down for undertakings and cited cases and so it is not possible to say whether use of undertakings is any more effective than citation at ensuring that accused appear at court when required. The collection of this data would allow monitoring of the reforms to undertakings to be considered over time, along with associated impacts.

1.25 Representatives from various stakeholder groups were interviewed although it was not possible to recruit equal numbers of participants from each agency in each of the four selected areas. This means that, for some groups (particularly Procurators Fiscal), there is no geographical spread of views and, as a result, the findings cannot be generalised.

1.26 As with all qualitative research the key aim was to generate understanding of the issues. To this end we report the range of perceptions we found from interviewees and do not aim to represent these views as representative of all participants in the justice system.

1.27 Finally, it is important to emphasise that the interpretation and reflections on the research findings set out in this report are those of the researchers, and not of the Scottish Government. Further, the views put forward by the various respondents which are presented in this report are those of the individuals who took part, and should not be taken as being representative of the organisations for whom they worked. With these caveats in mind, the remainder of this report sets out the findings of the evaluation.

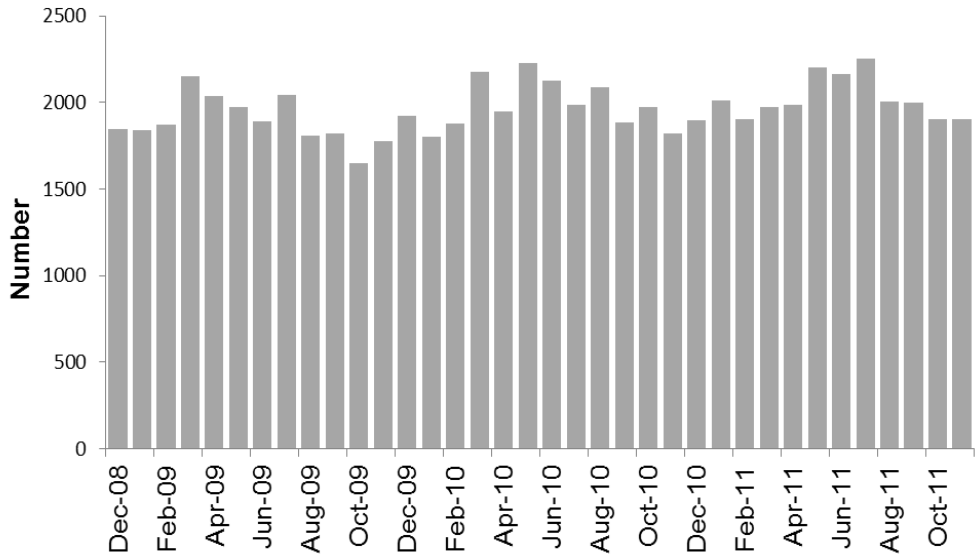
2 USE OF UNDERTAKINGS

Number of Undertakings Issued

2.1 As undertakings were available as a means of bringing accused to court before the summary justice reforms, it was hoped that the evaluation would be able to consider changes to both the nature and frequency of their use pre- and post-reform. Unfortunately, this was not possible due to gaps in the data and the evaluation has, therefore, only been able to explore changes since the reforms, rather than before and after their introduction.

2.2 Data on the frequency of use of undertakings has been recorded by ACPOS since April 2007 at the LCJB area level, although the commencement of data recording varies greatly between areas[8]. Figure 2.1 shows the total number of undertakings issued at the national level for the period from December 2008 to November 2011 (the latest available data at the time of writing), taken from the CJBMIS. The data show that, in the period where a full data set was available at the national level, there was little fluctuation in the number of undertakings issued, with no obvious upward or downward trends.

Figure 2.1 Number of undertakings issued



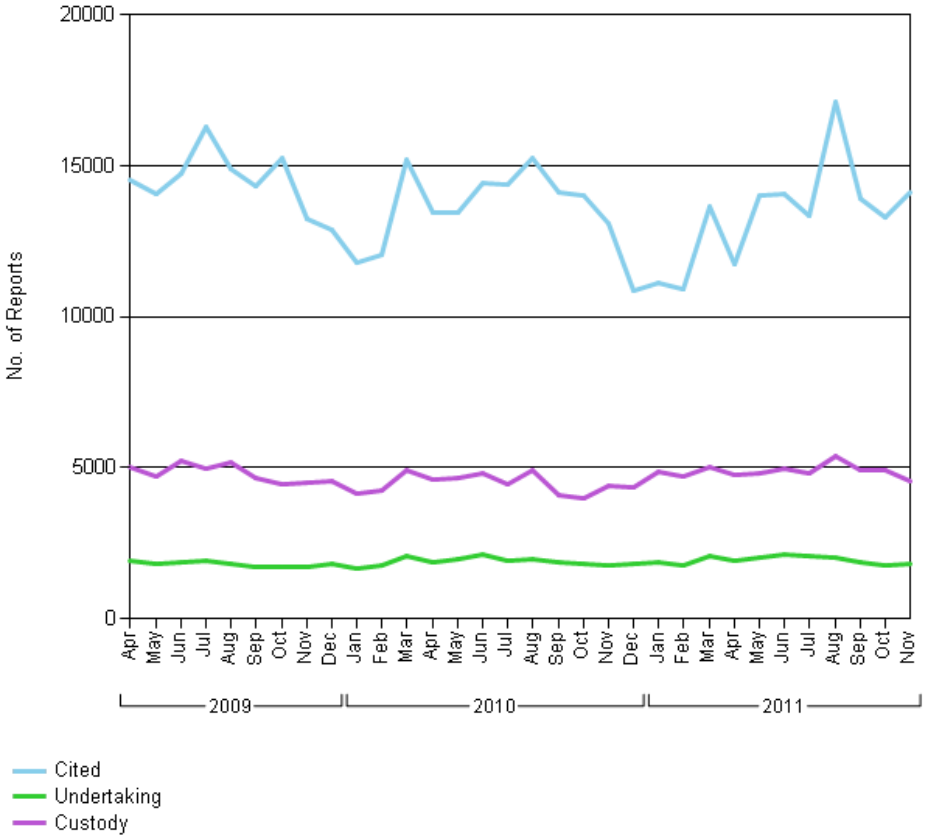
2.3 Figure 2.2 shows the number of standard prosecution reports submitted to COPFS for cases that appeared at court on undertaking, as well as by citation or from custody. This provides an alternative measure to the ACPOS data held on the CJBMIS. It also shows that, in the period from April 2009 to November 2011[9], there was no noticeable change in the numbers of undertakings reports submitted by the police. This data is perhaps a more

[8] Data is only available for all LCJB areas (except Highlands and Islands) between December 2008 and November 2011

[9] Data are not available before this date and so the period from April 2007 to March 2009 cannot be compared with the data in Figure 2.1

reliable indicator than the number of undertakings issued alone, since it represents a national sum that is not impacted on by differences in the dates at which police started to record undertakings data. It shows that around 10% of all reports to COPFS had an undertaking attached.

Figure 2.2 Number of Standard Prosecution Reports Submitted to COPFS



2.4 Increased use of undertakings instead of citations might have been expected to have brought about increased numbers overall over time. The flat line observed for undertakings, and the seasonal peaks and troughs in use of citations, suggests that undertakings are not used more post-reform in place of citations.

2.5 Locally, there were also no notable trends in the data for numbers of undertakings issued, and peaks and troughs in the data appeared to vary by area.

2.6 Stark differences in local practice and perceived 'norms' were also found in the qualitative interview data from the police:

"When I bring someone in, an undertaking doesn't come into my head at all. I think is this a custody or a report. Undertakings aren't even considered. It wouldn't cross my mind. It's not the norm." [Police Officer]

"Everybody is released on an undertaking unless they are a custody…it was hardly heard of before [pre-reform], it wasn't used much, just drink drivers really. It was uncommon then, now it's the norm." [Police Officer]

2.7 Although guidelines to Chief Constables were issued by the Lord Advocate in March 2008, and have a statutory authority by virtue of Section 12 of the 1995 Act, there is no national protocol. This means that local discretion can be used, with departure from the guidance, but only with the agreement of the Lord Advocate. The absence of a standardised approach to undertakings in Scotland, and each force having its own policy and procedures for undertakings administration, may go some way to explain the regional variations noted.

2.8 Procurator Fiscal views were also mixed depending on the area they represented as to whether they felt the use of undertakings had increased. Many considered that undertakings were not being utilised as much as was desired. This was a sentiment expressed both by Procurators Fiscal and the police, who commented that they were often asked by Fiscals to increase the use of undertakings, where appropriate:

"I think they could be utilised a bit more. When they came in, I remember being told there would be an increase in undertakings, and maybe there was, but it's not been to a huge extent." [Procurator Fiscal]

"From what it was before, there has been an increase. We were requested to achieve twenty undertakings on a weekly basis and we are currently averaging about twelve to fourteen and we regularly get contacted by the Procurator's Fiscal office to try and increase that." [Police Operational Supervisor]

2.9 Some Sheriffs perceived that there had been an initial increase in the number of accused appearing on undertakings in court just after the reforms were introduced, however this cannot be objectively evidenced or refuted due to lack of pre-reform data in most areas[10]. Sheriffs did comment, however, that the early increase had petered out over time:

"To be honest, I am not sure how good we are at using them here. We have an Undertakings court on a Thursday at 11 o'clock. It's mainly for drink drivers and some domestic cases. If I remember rightly there was a surge of use when the reforms came in, but I think it has died away again." [Sheriff]

"There was more at the beginning, but I have a sense that there is not as many now. I have a feeling that it can vary; some weeks there are about twenty and other weeks it is fewer." [Sheriff]

[10] Again, data is not available prior to April 2009 regarding the number of Standard Prosecution reports submitted to COPFS and the ACPOS data prior to the reforms has several gaps since data is not recorded for all LCJB areas.

2.10 Even though these sentiments cannot be supported by numerical data, they do provide a reflection of perceived changes brought about by the reforms over time.

Offences for which undertakings are used

2.11 Table 2.1 shows the types of offences proceeded with by use of undertakings (nationally) for a four year period from 2007/08 to mid-2010/11, based on data from the CJBMIS. The data show that, over time, the offence types most likely to be associated with undertakings are motor vehicle offences, breach of the peace and simple assault.

2.12 Over time, the proportionate use of undertakings for motor vehicle offences has decreased and there has been a corresponding increase in their proportionate use for more complex cases, including simple assault, drugs offences and shoplifting. In recent years, the number of motor vehicle offences going through the courts has decreased (specifically drink/drug driving cases), suggesting that if undertakings had remained largely limited to these case types, the overall numbers of undertakings may have been expected to go down. The greater use of undertakings for a wider spread of offences under SJR perhaps, therefore, explains the data trends in the total number of undertakings issued, i.e. no change since the reforms as shown in Figures 2.1 and 2.2 above.

Table 2.1 Alleged offences processed by use of undertakings (percentages within year)[11]

	2007/08	2008/09	2009/10	2010/11
Theft by shoplifting	4%	4%	6%	7%
Other theft (including Housebreaking etc)	7%	8%	8%	8%
Vandalism	3%	3%	4%	3%
Crimes against public justice	5%	6%	7%	7%
Drugs offences	4%	5%	6%	8%
Handling an offensive weapon	2%	2%	2%	2%
Simple assault	10%	12%	15%	16%
Breach of the peace	10%	12%	13%	12%
Motor vehicle offences (including drink/ drug driving)	48%	40%	33%	28%
Other	5%	6%	7%	9%

2.13 Interviews indicated that, traditionally, police and others viewed that undertakings were reserved for particular crimes, primarily drink driving

[11] Totals do not add to 100% due to rounding

offences, and this is supported by the data. Interviewees suggested that, on the whole, most other offences were dealt with by citation or custody.

2.14 There was a view from those who were interviewed that, post-reform, the types of offences undertakings have been used for had widened in most of the case study areas and the alleged offences for which they are now most commonly used include: shoplifting, assaults, minor disorder, road traffic offences, anti-social behaviour, and acquisitive crime. The numerical data above suggest that use of undertakings for a wider range of offences is indeed occurring post-reform.

2.15 Some police officers felt that it was hard to pinpoint specific crime types where undertakings were typically used and instead indicated that they could generally be used for any crime type; *"it just very much depends on the features and individual circumstances of the crime*." This was most commonly stated by interviewees in Lothian and Borders and Central[12], and to a slightly lesser extent in Ayrshire:

"In the past undertakings were just used for specific offences but now anything that's summary is deemed to be appropriate for an undertaking. That's to be the default position; we've to do an undertaking unless there are reasons to specify otherwise." [Police Operational Supervisor]

2.16 In contrast, in Glasgow undertakings were considered only to be used for a small number of crime types, most commonly drink driving and prostitution, and officers perceived that there was no noticeable change since the reforms were introduced:

"I've been here years, and I can tell you that's the only two crimes [drink driving, prostitution] I've had undertakings for…there's been no change since 2007 of introducing other crimes into undertakings." [Police Officer]

Decision making and discretion

2.17 Some police force areas appeared to have more two-way decision making with regard to whether they should release someone on an undertaking than others. Officers in Lothian and Borders more often stated that they would have a discussion with their Custody Sergeant when deciding to release an accused on an undertaking, and although the final decision was up to the Sergeant, they felt involved in the process, which some considered to aid their personal development and experience:

"They are only guidelines I suppose, we would also justify everything to our Sergeant, and we would talk it over with them and come to a decision." [Police Officer]

[12] This is in the context that Central Scotland Police operate a 'no liberation to cite' policy, wherein accused coming into police custody are either kept in custody or liberated on an undertaking, the majority being with no conditions (mandatory) attached. Citation is no longer used at all.

2.18 In other areas, however, this was not considered the case, and officers explained that they would put the case to the Custody Sergeant who would then make a decision on an undertaking, summons, or custody[13]. Most of these officers felt they would like to be more involved in the decision making process, as often they knew information about the offender which could impact on the decision. A few of these officers, however, stated that they were happy for the decision to be in a Custody Sergeant's hands, as they did not feel confident enough to make the decision themselves, and did not want the onus to be on them should the accused offend whilst on an undertaking:

"Technically, it's usually up to the Sergeant and for you to encroach on that, you're stepping on their feet…and you don't know the protocol so it would be difficult for you to comment." [Police Officer]

"The decision is not ours, it's the Duty Officers' decision. So it really depends on them. One could say one thing and another could say something else. They've got the guideline, we don't. So that's who we really take direction from, the Duty Officer." [Police Officer]

2.19 Most police officers agreed that the decision to release an accused on an undertaking usually depended on the Sergeant who was on duty. Some Sergeants were more prone to releasing accused on an undertaking, while others would use custody or citation in most instances. Junior police officers suggested that, in these cases, Sergeants perhaps did not feel it was their place to release an accused on 'bail', as this was the job of the court. There was also a perception that some Sergeants were concerned that if the accused committed an offence while on an undertaking the blame would be placed on them:

"If it's in the guidelines that it might meet a custody, then it's a custody...the Sergeant will err on the safe side so there's no repercussions if it's a grey area…if they make them a custody, nothing's going to come back on them." [Police Officer]

2.20 This cautiousness on behalf of officers may suggest that undertakings are perhaps not being used to their fullest in some areas.

2.21 Most officers felt that having the Sergeant make the final decision meant that there was efficiency in scheduling court dates and in dealing with issues that arise. Therefore, almost all officers considered that this was the correct level for decision making to occur.

2.22 Finally there was some concern that police actions may be under greater scrutiny following the reforms. One officer commented that they interpreted the reforms to mean that their *"thought processes and reasons for releasing someone on an undertaking would be accountable".* While another officer felt that there would be no direct impact for them personally, they recognised that

[13] The exception being Central Scotland Police where there is no option for summons, in line with their 'no liberation to cite' policy.

"frontline officers would take the brunt of the change". Essentially, they suggested that the reforms were about ensuring greater transparency for undertakings cases and so this additional scrutiny was seen as inevitable.

Use of Lord Advocate's Guidelines

2.23 Frontline, operational police officers were generally aware of the Lord Advocate's guidelines on undertakings; however, they felt that, as the final decision did not rest with them, there was no need to become fully versed in the guidelines.

2.24 There was some confusion regarding how strictly the Lord Advocate's guidelines were to be followed. In some police force areas, officers explained that they could not be used for certain offence types such as sectarian, domestic and racial crimes and were not to be used if the accused was on bail when they were arrested. In other areas, however, interviewees were less clear. This is perhaps a reflection of the local policy and agreed variations that were operating across the different areas which will have meant that the guidelines were being applied more straightforwardly in some areas than others.

2.25 Most Sergeants and Inspectors stated that, when the changes to undertakings were first introduced, they referred to the guidelines each time they issued an undertaking. More recently, however, undertakings had become common practice with officers only needing to refer to the guidelines in an unusual case, or when imposing particular special conditions that they had not imposed before:

"The guidelines are being utilised but this was more so in the beginning. It's second nature now, so to actually physically refer to the guidelines doesn't happen very often." [Police Operational Supervisor]

2.26 It was considered by some police officers that there was not a significant amount of time put into a decision on whether to release an accused on an undertaking. If the accused met the criteria, they would naturally be released on an undertaking:

"Certain things have to be a custody, I don't really know if there is much decision making involved. It's set down in the guidelines. It's pretty black and white." [Police Officer]

2.27 In other instances, however, police officers explained that the use of undertakings depended on a number of factors. These included type of offence and the previous bail record of the accused, pattern of offending, perceived likelihood of re-offending, whether the accused was known for failure to appear, whether further enquiry needed to be completed, or whether other suspects needed to be traced.

2.28 Other external factors were also cited as a reason to release someone on an undertaking[14] such as cell capacity or whether the accused had a medical condition:

"It's running through your head all the time, which way are we going to go here [undertaking, summons or custody]. But then sometimes it goes down to whether they [the accused] are renowned for not turning up to court. If you look at their past history, and say there's a previous seven warrants out for their arrest, no fixed abode, and whatever, you've got to go down the custody route. It's decision made for you at that time." [Police Officer]

2.29 Most officers were content with the guidelines in terms of not being able to use undertakings where the accused had already been released on bail, and saw no reason for this to change:

"If you start saying he's got one bail for an assault, and one bail for something else, then when do you stop? It's clear the way it is, if you've got one bail, that's it, you're a custody." [Police Officer]

2.30 These feelings about declining to use undertakings for people who have previously shown themselves to breach conditions also mirror findings from the victims, witnesses and public perceptions evaluation. All those consulted as part of that evaluation expressed resistance to the use of bail and bail conditions, as well as to undertakings and undertakings conditions to those with previous breach histories. For such offenders, the public expressed a view that custody was more appropriate.

Perceived Inefficiencies in the Use of Undertakings

2.31 Although officers supported not using undertakings for persons currently on bail, there were other areas of the guidelines that were questioned by some stakeholders.

2.32 Some interviewees perceived that some accused who are released on an undertaking do not reach court as their case is subsequently disposed of by the Procurator Fiscal by other means, such as a direct measure, prior to the pleading diet. Although there were no numerical data available to measure the extent to which this happens, some officers stressed that clearer communication in cases where this type of case marking may occur may prevent some waste of court time that results from accused arriving at court to be told that the case is now being dealt with by way of direct measure or no proceedings. The issue does not appear to be that accused or their Defence Agents disagree with the alternative/non-court disposals being used, but rather that they are not always made aware of these decisions until they appear at court. It is recognised that the Procurator Fiscal's decision is taken at a later date and may be informed by additional information not available to

[14] Including the policy of 'no liberation to cite' in Central Scotland Police which dictates use of undertakings or custody only.

the police at the time. The findings do however suggest that improved communication between the police, Fiscals and the accused may aid the overall process.

2.33 Additionally, in many instances, Defence Agents mentioned anecdotally that they would attend court to find their client's case was being diverted to the JP court instead, and they were issued with a new date. This meant that they would have to attend court on another day:

"It's not uncommon for them to turn up at court to simply be told 'you can go away/we're not going to prosecute you/we're giving you a Fiscal fine/we're sending you to a JP court and here's the JP court complaint." [Defence Agent]

2.34 As a result, a number of Defence Agents considered that there were too many people being given undertakings for trivial cases and that it would be better to report these cases to the Fiscal and for the accused to be cited to court only if necessary:

"I had five undertakings the other day and four of them were sent away no proceedings, that's just one day, but still." [Defence Agent]

2.35 Again, the extent to which this occurs cannot be measured from existing numerical data, but it suggests that improved communication of Fiscal marking to Defence Agents and accused may facilitate greater efficiency in the system to some degree.

2.36 The changes to undertakings did not impact on the type of case dealt with in custody. Several Defence Agents, however, felt that the police should have more discretion because the guidelines are too stringent with regards to the type of offences where accused can be released on an undertaking:

"Undertakings are fine in general, but on the odd occasion you would have a quite serious case…but the client has no previous convictions but is still kept in the police station overnight…now you'd be saying to the Sheriff 'This is completely out of character, and this case could really have been an undertaking…is there really any danger in letting him to go out and answer at a later date?'" [Defence Agent]

2.37 Procurators Fiscal considered that while the guidelines may be appropriate they are open to interpretation and discretion by the police. Some Fiscals felt that not all cases were being appropriately dealt with by an undertaking and should have been cited to appear in court at a later date or should have been custodial:

"Sometimes you get an undertaking and you think 'This should quite clearly be a custody case'." [Procurator Fiscal]

2.38 On the other hand, some Procurators Fiscal also considered that there was scope to increase the types of offences that could be dealt with by undertakings, in order to align it better to the types of cases that would

eventually come to court as opposed to being dealt with by alternative measures such as a Fiscal fine. Indeed, this was also welcomed by the police and, overall, it seems that greater flexibility in the terms of the Lord Advocate's guidelines was perceived as necessary by all parties (police, Defence Agents and Fiscals) in order to ensure the most appropriate use of undertakings.

Summary

2.39 In summary, the numeric and interview data appear to be showing mixed messages about whether there has been an increase in the number of accused who appear at court on undertakings. The KPI data suggests no real increase in use post-reform, although gaps in the data mean that it is not possible to say what happened in the period immediately following their introduction. The use of undertakings for a wider range of offences, and a move away from their traditional use primarily for motor vehicle offences (of which there are now fewer cases in the courts), perhaps accounts for some of this lack of change in overall volume of undertakings.

2.40 In contrast, qualitative data suggests that the police are making concerted efforts to increase their use of undertakings. That said, there is also evidence of some police reluctance to use undertakings for fear of their decision being challenged if the accused offends while on an undertaking. This may be contributing to lower numbers of undertakings being used in some areas. It does not seem from the evaluation that any lack of awareness of undertakings practices or reforms is a barrier to their use.

2.41 Views from police, Fiscals and Defence Agents suggest that officers are making use of national guidance as well as using discretion and adopting local protocols that best meet the local circumstances. Overall, while justice professionals interviewed seem content that undertakings are used appropriately in most cases, it seems that there may scope for some cases to be otherwise handled to improve efficiencies in the system.

3 USE OF UNDERTAKINGS WITH CONDITIONS AND COMPLIANCE

3.1 Changes to the use of undertakings, as enacted by the 2007 Act, included giving the police a new power to impose conditions on an undertaking similar to standard bail conditions. These exist alongside the basic mandatory condition of attending court on the specified date at the specified time.

3.2 Standard conditions for undertakings are that the accused does not commit an offence while released on an undertaking, does not interfere with witnesses or otherwise obstruct the course of justice and does not cause alarm or distress to witnesses. These standard conditions are set and are not separable.

3.3 Special or 'further' conditions which may now be used include attending a designated police office at a specified time and date; or not contacting or approaching named persons or entering a designated place or building. These additional conditions can be added by police as appropriate to the case.

Use of special conditions

3.4 Data on the use of undertakings conditions is not routinely recorded by all Forces or within the CJBMIS. As part of the evaluation, a request was made to ACPOS for information on the use of undertakings with mandatory conditions (no conditions other than to attend court on the specified date/time), with standard conditions and special (or further) conditions, in each of the case study areas. This required the manual extraction of data in some areas which was a time consuming activity and thus, only limited data could be extracted.

3.5 Table 3.1 shows the number of undertakings with various conditions issued in the period April to December 2010 for Central and Lothian and Borders and between April 2010 and March 2011 for the two case study areas that fell within the Strathclyde Police force area (i.e. Ayrshire and Glasgow).

Table 3.1 Use of undertakings conditions by case study area

	Mandatory	**Standard**	**Special**
Ayrshire	73 (5%)	1130 (82%)	174 (13%)
Central	1456 (80%)	318 (18%)	33 (2%)
Glasgow & Strathkelvin	190 (7%)	2286 (85%)	206 (8%)
Lothian and Borders	144 (2%)	4488 (75%)	1371 (23%)

3.6 The data show considerable variation in practice between the Central and Strathclyde forces with most undertakings in Strathclyde being classified as having standard conditions attached, and most in Central being classified as

mandatory[15]. Across the board, less than 15% of undertakings are issued with special conditions – for the period under investigation, the figure was as low as 2% for Central.

3.7 Table 3.2 below shows use of undertakings conditions for a three year period in the two case study areas in Strathclyde police force area. It shows that, proportionally, in both areas, most undertakings are issued with standard conditions and this has remained unchanged in recent years. The main change has been a reduction in undertakings with mandatory conditions in Ayrshire and a move towards more special conditions. In Glasgow, there has been a reduction in the proportion of undertakings with no conditions, with an increase in standard conditions, while the use of special conditions has remained relatively stable.

Table 3.2 Number and proportion of undertakings conditions used in case study areas over time

		2008/09	2009/10	2010/11
Ayrshire	Mandatory	164 (14%)	77 (5%)	73 (5%)
	Standard	919 (81%)	1268 (83%)	1130 (82%)
	Special	58 (5%)	185 (12%)	174 (13%)
Glasgow & Strathkelvin	Mandatory	515 (19%)	358 (11%)	190 (7%)
	Standard	2035 (75%)	2497 (80%)	2286 (85%)
	Special	175 (6%)	289 (9%)	206 (8%)

3.8 The data indicate that the new special conditions are being used in the areas studied, but it is not possible to say anything conclusive about their use at the national level given that this data comes from only two LCJB areas.

3.9 Despite a lack of numerical evidence, interviews suggest that the use of undertakings with special conditions has been widely employed in Lothian and Borders in recent years. This was especially true for those police staff based in the city centre who explained that they frequently put exclusion zone restrictions as a condition of undertakings.

3.10 Interviews confirmed that, in Ayrshire and Central, the use of undertakings with special conditions was not widely used. Most police officers interviewed had either not released any accused on an undertaking with a special condition, or had released only one or two accused in this way.

3.11 In Glasgow and Strathkelvin, the use of undertakings with special conditions was reported to be used mostly in relation to prostitution:

"Releasing girls who work in the red light district is good because you can put in a condition not to return to the red light district." [Police Officer]

[15] This is likely to be as a result of different forces interpreting the Lord Advocate's guidelines on use of conditions differently.

3.12 Some officers suggested that the use of special conditions was perhaps not widespread because, where people were considered to be potentially 'dangerous', police were more likely to use custody than an undertaking with special conditions:

"I believe there is a fine line between how many conditions can be imposed before it would be more beneficial keeping someone in custody rather than release them on an undertaking." [Police Operational Supervisor]

"If they [Sergeants] are thinking of putting conditions on, rather than doing that, they'll just keep them in custody." [Police Officer]

3.13 None of the Sheriffs who were interviewed felt they could comment reliably on the use of special conditions attached to undertakings because it was information that they would not generally be made aware of before an accused stood before them.

3.14 Defence Agents also explained that they often do not see the undertaking forms issued to their clients and so are often unaware of any special conditions which are attached. They explained that clients often just advise their agents that they are appearing in court on a specified day without mentioning special conditions. This does not, however, seem to be causing any difficulties with the progress of the case through court:

"The clients wouldn't necessarily turn up and say I've had special conditions not to do this or that…They would just turn up, hand you the pink slip and you would go to court to ask for bail. So you don't really care what's happened before, all that you're concerned about is what happens when they leave court." [Defence Agent]

3.15 Additionally some Defence Agents felt that by the time the client approached them to request that they represent them in court, the undertaking was almost at its end, and so there was little or no merit in exploring the conditions attached.

3.16 Although not widely used, most police officers interviewed welcomed the opportunity to impose conditions if appropriate, and felt that this gave them greater flexibility and independence in the initial administration of cases:

"We have this wonderful opportunity now to put on specific conditions of bail." [Police Operational Supervisor]

3.17 Conditions were considered by the police to be particularly helpful for certain types of crimes including the use of exclusion zones to prevent shoplifters entering designated areas:

"There's an element of control. You can restrict their movements to a certain extent, so restrict them from coming into the city centre. From a controlling point of view, it has a great benefit." [Police Officer]

"If it's a shoplifting, a repeat offender, maybe at the weekend, then it's useful to put conditions for them not to be in the town centre, especially with CCTV, because as soon as they stop somebody, they're caught before the shoplifting even happens. So that's where it's useful." [Police Officer]

3.18 Consensus among police officers was that while special conditions were not used in some areas very often, it was good that they were available if the police felt they were needed.

3.19 Where used, police staff hoped the conditions they attached to an undertaking would be continued if the Sheriff released the accused on bail. Some Fiscals, particularly in Lothian and Borders, noted that the use of conditions by police officers provided a starting point for recommending conditions for the accused when their case reached court, and so they too welcomed this continuity:

"When the case does call in court it makes the whole bail position clearer and more coherent because of course if they've been on appropriate special conditions of bail since they've been released on their undertaking, then it can sensibly be argued that those conditions on bail should be formalised and continued." [Procurator Fiscal]

"It makes it easier for us to argue for the imposition of conditions because it would be a continuation." [Procurator Fiscal]

3.20 Perhaps the only resistance to special conditions came from Defence Agents. Some questioned if it was necessary for police to have powers to impose conditions when releasing an accused on an undertaking because they generally only last for 28 days. Additionally, some Defence Agents perceived that the police were not well placed to impose conditions, having not taken the full situation into account as a Sheriff or Justice may be able to do in court. Fiscals can, of course, review any conditions attached by the police and have the power to revoke the special conditions imposed if they are perceived to be unduly restrictive.

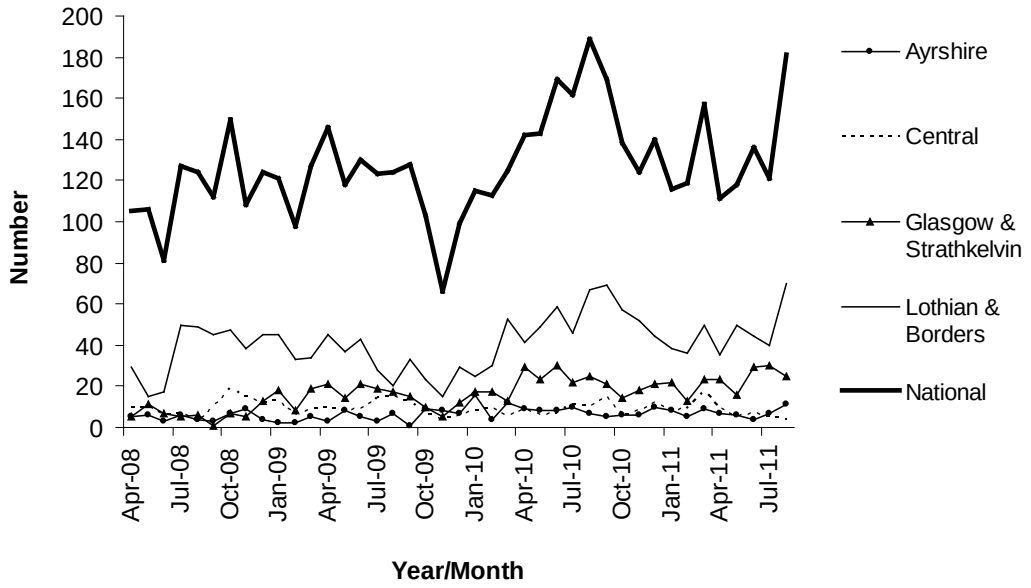
3.21 In summary, interviews with the police suggest that they welcome the opportunity to impose special conditions, although their use remains infrequent. Fiscals welcome the consistency that they allow for in directing bail conditions, but Defence Agents questioned their appropriateness.

Warrants for failure to appear

3.22 Figure 3.3 shows the number of warrants granted for failure to appear at pleading diet or continued pleading diet while on an undertaking, nationally and for each of the case study areas over time[16].

[16] Note: comparable data for those released for citation is not available.

Figure 3.3 Number of warrants granted for failure to appear at pleading diet or continued pleading diet while on an undertaking



3.23 Despite some erratic patterns in the data over time, there does not appear to be any noticeable increase since April 2008 in the number of warrants issued in either Ayrshire or Central. In the two larger LCJBs, however, 2011 data indicated a small increase in warrants suggesting that initial low rates of failure to appear post-reform have not been sustained over time.

3.24 Table 3.4 shows the average proportion of warrants granted from the total number of undertakings issued in each case study area, and nationally for the three financial years from April 2008 to March 2011. What is clear from all areas is that there has been no noticeable change in the proportion of warrants granted as the reforms have bedded in. The absence of pre-reform data means that it is not possible to comment on whether the levels that have been witnessed since April 2008 are any different from preceding years. It is also important to note that the percentages here related to relatively small numbers in most cases.

Table 3.4 Average Proportion of warrants granted for failure to appear at pleading diet or continued pleading diet while on an undertaking by LCJB area[17]

	2008/09	2009/10	2010/11
Ayrshire	1%	6%	6%
Central	4%	5%	5%
Glasgow and Strathkelvin	2%	6%	8%
Lothian and Borders	8%	6%	9%
National	8%	6%	7%

3.25 When looking at the data in detail by month, Central is the only area that has a consistently smaller proportion of warrants granted compared to the national average, and this may be because there is a greater flexibility in that area for the scheduling of first appearance at court dates (and so stipulated dates/time can be better negotiated with accused).

Perceptions of failure to appear

3.26 No numerical data were available to allow a comparison to be made of failure to appear on an undertaking compared to failure to appear for citation cases. Qualitatively, however, most of those interviewed thought that those released on an undertaking may be more likely to attend court than, for example, those released on bail. It was felt that one of the main reasons for this was that accused leave the police station with a piece of paper that details the time and date they have to attend court. The accused is also required to sign a copy of the undertaking, which is retained by the police. In this way, the accused person knows up front where and when they have to be in court. This was considered especially important because of perceived problems with the citation system, such as accused not being at the address given, the citation being lost in the post, not being opened by the recipient, the accused moving house before receiving the citation, or simply being ignored:

"To have the bit of paper in front of you [the accused] 'You have to attend court on this date'…it's got to have some sort of impact." [Police Operational Supervisor]

3.27 Overall, for the police, it was perceived that court attendance rates on undertakings were higher than attendance rates for those released for citation. It was posited from the interviews that this might possibly be because many of those released on an undertaking are first time offenders and they may, therefore, be more likely to abide by the law in the hope of avoiding a further criminal record, and this view was supported by Defence Agents. Alternatively, it may be because there is no legal obligation to attend personally in court in answer to a citation, whereas there is for an undertaking.

[17] Although the data includes continued pleading diets, the undertaking expires at the point the case calls in court and so technically the next FTA would be one of breaching bail or FTA having been ordained to appear.

3.28 On the whole, Fiscals also felt that most people who are liberated on an undertaking would appear at court:

"I think that most people liberated on an undertaking do actually appear which is quite encouraging actually." [Procurator Fiscal]

3.29 That said, some also expressed the view that there would inevitably still be some people who would fail to appear.

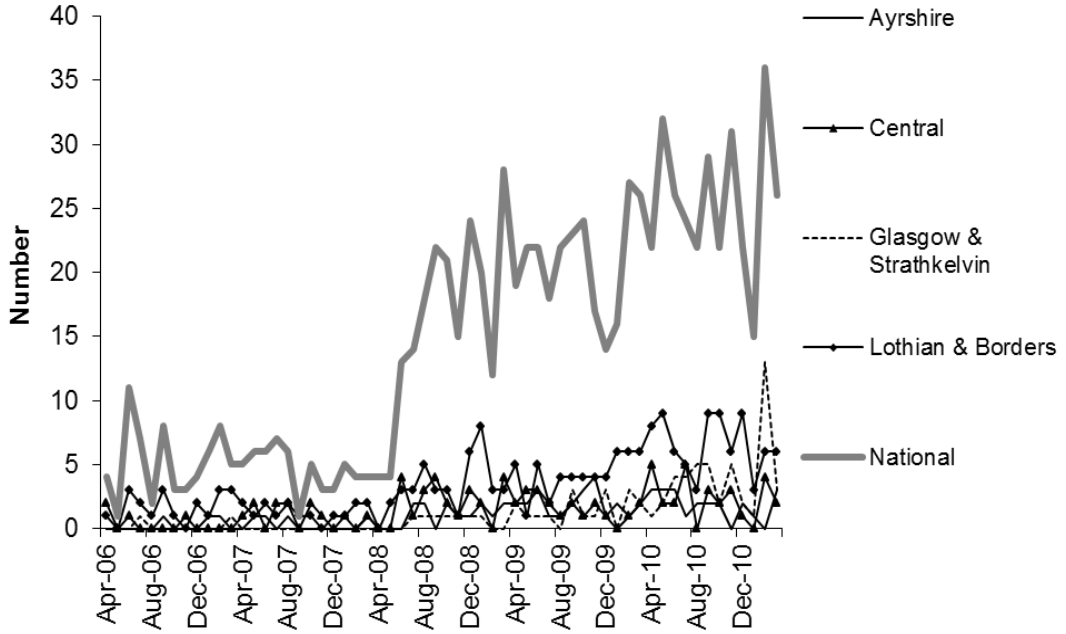
Convictions for breach of undertaking conditions

3.30 Figure 3.4 shows the number of convictions for breach of undertaking conditions (including failure to appear) in each of the four case study areas, and nationally. The data show a notable increase in the number of convictions for breach of undertakings in the period since April 2006 both nationally and in each of the case study areas[18]. One possible explanation for this may be the increased use of undertakings for more complex offences. Such offences may be committed by offenders living more chaotic lifestyles and who, as a result, may be less inclined to attend court.

3.31 It is important to stress here that the number of convictions for breaches in each area is very small. This means that, although the increase in the number of convictions for breach may appear *prima facie* to be dramatic, it relates to changes in only single digits in most areas.

[18] Data is taken from the Criminal Proceedings in Scotland Statistical Bulletin see http://www.scotland.gov.uk/Publications/2011/12/12131605/0

Figure 3.4 Number of convictions for breach of undertaking conditions[19]



Perceptions of breach of undertakings conditions

3.32 Interviewees' perceptions of breach of undertakings were mixed and not necessarily reflective of the numerical data. Police operational supervisors indicated that they were unsure if people were complying with the conditions imposed when released on an undertaking. In addition to this, some officers felt that conditions were not being used enough to be able to comment on whether they were being complied with.

3.33 Generally, police officers interviewed in Lothian and Borders thought that accused were not breaching their undertakings conditions. Police interviewees thought that this may be because of the strict penalties that someone would incur if they breached their conditions.

3.34 Again, it was also thought by police interviewees that those on undertaking conditions are generally less likely to be recidivist offenders, and, therefore, are more likely to take their undertaking and their conditions seriously. It was felt that some of those who are repeat offenders have a "don't care" attitude in comparison, and will breach their conditions regardless of the consequences.

3.35 Among agents, it was felt, by and large, conditions are probably being complied with because they are *"sharply focussed"* [Defence Agent] and apply only for a short period of time.

"I've had a couple of breaches but for the most part I think they are complied with." [Defence Agent]

[19] The large jump in the numbers of convictions from April 2008 onwards may be due to changes in the way that such charges were coded following legislation in the 2007 Act.

3.36 Again, the experience of Procurators Fiscal as to whether conditions are being complied with was dependent on the area in which the respondent was based. In Lothian and Borders, which has the highest number of undertakings with conditions, Procurators Fiscal stated that they had seen several breaches of undertakings conditions and commented that this was quite time consuming for them to deal with.

3.37 The main reason an undertaking is breached was believed to be because the accused committed another offence while being on an undertaking. It was felt by Procurators Fiscal that few accused breached special conditions that had been added to their undertaking.

3.38 As with the police, Procurators Fiscal generally took the view that accused who were likely to breach their undertaking within a few days of being released should be kept in custody:

"The cases where people are quickly breaching their undertakings and conditions is where they should have been reported as a custody…the people that don't turn up to court, you think 'Well, they are the ones that I considered not suitable for an undertaking'." [Procurator Fiscal]

Penalties for breach of undertaking

3.39 Table 3.6 below shows the main penalties that have been used in cases where undertakings have been breached (including both failure to appear and breach of conditions), for the eight year period including the periods directly before and after the reforms were introduced[20].

Table 3.6 Main Penalty Given for Breach of Undertaking

	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11
Custody	6 (14%)	6 (15%)	3 (7%)	11 (18%)	9 (16%)	27 (14%)	45 (18%)	32 (11%)
Community Sentence	9 (21%)	7 (17%)	10 (23%)	12 (19%)	11 (20%)	55 (28%)	64 (25%)	86 (28%)
Monetary	17 (40%)	18 (44%)	14 (33%)	24 (39%)	21 (38%)	67 (34%)	84 (34%)	90 (29%)
Other[21]	11 (25%)	10 (24%)	16 (37%)	15 (24%)	14 (26%)	46 (24%)	57 (23%)	99 (32%)
All	43	41	43	62	55	195	250	307

3.40 The data show that there has been an increase in the total number of penalties imposed for breach of undertakings post-reform (in line with an increase in the number of convictions presented above). While the number of

[20] Data is taken from the Criminal Proceedings in Scotland Statistical Bulletin see http://www.scotland.gov.uk/Publications/2011/12/12131605/0.
[21] A definition of 'other' penalties can also be found at http://www.scotland.gov.uk/Publications/2011/12/12131605/0

community sentences has increased, the number of monetary sentences has decreased. Use of custodial and 'other' penalties seem to fluctuate over time.

3.41 Table 3.7 shows the average penalties used across the same period for each disposal type.

Table 3.7 Average Penalties Used

	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11
Custody (Days)	56	52	305[22]	40	44	65	87	78
Community Sentence (Hours)	93	127	175	90	140	110	114	135
Fine (£)	163	161	205	187	154	177	159	157
Compensation Order (£)	-	-	-	-	-	125	200	100

3.42 Again, the data show no steady patterns post reform except an increase in the average duration of custodial penalties given.

Policing undertakings

3.43 Generally, undertakings were not said to be pro-actively policed in the case study areas. Police officers reported that there were not enough resources to police undertakings conditions as well as bail conditions. Undertakings conditions would only be pro-actively policed if the accused was reported for another offence while on an undertaking.

"Mostly, if it's an undertaking, then there's no specific conditions, so you wouldn't police that. Also there's so many of them [undertakings] that it wouldn't be possible to police them. You wouldn't be able to do anything else." [Police Officer]

3.44 Undertakings are also not pro-actively policed in some areas because the 'lists' of those released on an undertaking with conditions were not readily available to other operational police staff in the same way that those released on bail with conditions would be, making it harder to monitor these individuals.

Summary

3.45 In summary, there seems to be consensus that most people do appear at court if released on an undertaking. Interviewees perceive that there were few breaches of conditions, including special conditions where applied, based on there being few arrests on this basis. Where breach does occur, there is evidence to suggest that Sheriffs and Justices are making use of their increased sentencing powers under the reforms.

[22] Due to an extreme outlier.

4 GETTING TO AND THROUGH COURT

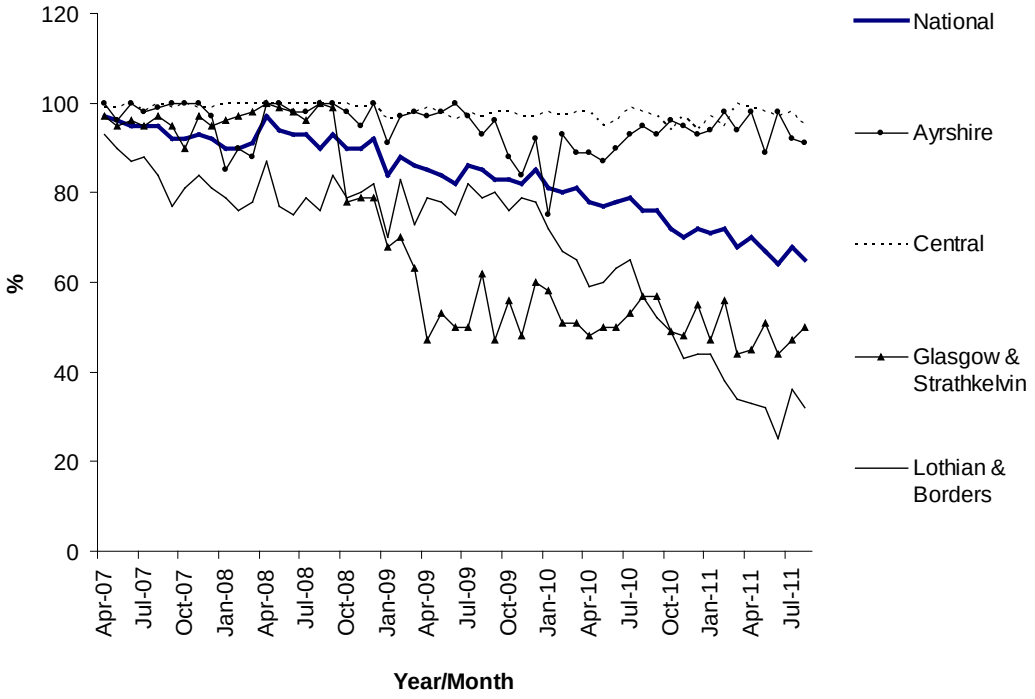
4.1 One of the specific objectives for the reforms to undertakings was to bring undertaking cases to court much more quickly than cited cases – within 28 days of caution and charge – thus reducing overall case time in the summary criminal justice system.

4.2 For this specific objective, the main measure of success is whether the case actually appears at court in that timeframe, irrespective of whether the accused (or other party) fails to appear at first calling. A second measure of success would arguably be appearance rates by the accused, as discussed in the previous chapter, since early scheduling of cases in court may be impacting on their likelihood of meeting this basic condition. This chapter, however, focuses on getting cases *to* and *through* court from a process perspective.

Meeting the 28 day target

4.3 Figure 4.1 shows the percentage of accused appearing by undertaking on first calling in court within 28 days of caution and charge, for the case study areas, and nationally.

Figure 4.1 Percentage of accused appearing by undertaking on first calling in court within 28 days of caution and charge



4.4 The data show that, among the four case study areas, Central has the greatest success rate in meeting the 28 day target.

4.5 In Ayrshire, early success in meeting the 28 day target can be seen from the start of 2007 to mid 2009. Thereafter, there appears to have been a dip in performance, followed by a recent rise again to near 100% compliance with the target.

4.6 Both Glasgow and Strathkelvin and Lothian and Borders do not appear to be meeting the 28 day target post-reform, with both areas showing a tailing off throughout 2009 through to August 2011. Glasgow and Strathkelvin did appear to be meeting the target in the early months following reforms, with only Lothian and Borders showing less than 90% compliance in the first half of 2007. The downward trend in these two largest case study areas is possibly driving the national trend and this again highlights how it is difficult to achieve a national picture on the success of undertakings.

4.7 The national average percentage of accused appearing by undertaking on first calling in court within 28 days of caution and charge between April 2007 and August 2011 was 84%[23]. For comparison purposes, the case study area averages were:

- Ayrshire – 95%
- Central – 98%
- Glasgow and Strathkelvin – 69%
- Lothian and Borders – 68%

4.8 On further exploration of the apparent low compliance rate in Glasgow and Strathkelvin, the evaluation identified limited designated space in scheduled undertakings court sessions, such that there are some cases where 'day 28' does not fall on an undertaking designated court day and so, consequently, they appear on day 29.

4.9 It was explained that ACPOS previously obtained agreement in principle to allow 1-2 days grace. In the Glasgow context, this can mean that cases are reported for court appearances up to 34 days in advance due to the scale of the operation, divisional working/divisionalised undertaking courts and public holiday issues. A similar scenario may also be accounting for the low compliance rates in Lothian and Borders[24].

Support for the 28 day target

4.10 Officers interviewed were generally supportive of the principles of the 28 day target:

> *"Suddenly this person [the accused] is appearing a month down the line, instead of six months, which to me, is progress, if there are spaces for undertakings then why not use them? The less time taken for a case to come to trial the better, whether it is serious or not." [Police Officer]*

[23] Average duration data was not available and comparable percentage data was also not available for cited cases.
[24] Numerical data was not readily available to allow this theory to be tested.

4.11 Finding space in the court diary within the 28 days was also not considered to be a problem and police officers also perceived that they had been cited to court less frequently post-reform compared to pre-reform. This was a point also raised in the evaluation of direct measures[25] and the victims, witnesses and public perceptions evaluation[26].

4.12 Additionally, many officers suggested that cases coming to court more quickly ensured that officers wrote up cases while they were "fresh in their mind":

"It means it's clearer in your head, because sometimes you have to read your notes, and think 'Why did we do it that way?' and it takes a while for things to come back. More than anything it makes you write the report there and then because it's so much easier to write it immediately after it happened rather than leaving it 3, 4, 5 days…and it's so much harder to recall, 'Who was there? When? Why did that happen?, etc." [Police Officer]

4.13 This is perhaps an unintended improvement in quality that has resulted from the reforms.

4.14 Fiscals also reported that this speedy preparation of reports was a plus and it was also unanimously considered that bringing cases to court within 28 days of caution and charge was a positive change:

"It gives the police a definitive timescale in which to report the case, and then us a definitive timescale on which to mark it." [Procurator Fiscal]

4.15 The time stipulations for case marking for Procurators Fiscal was, therefore, seen as something which may improve system efficiency. The need for Fiscals to mark undertakings cases within set time limits was perceived to reduce the number of undertakings cases that might otherwise sit 'unmarked' for periods of time.

4.16 Numerical data on the percentage of undertakings cases that are marked by COPFS within the 28 day period was not available. Interestingly, however, Figure 4.2 shows the CJBMIS KPI data for the average time taken from reports to the Fiscal to first case marking for cited, undertakings and custody cases. It shows that there has in fact been an increase since the reforms in the time taken for undertakings cases to be marked, in contrast to a reduction in the time taken for marking cited cases. Custody case marking has remained relatively steady.

4.17 Although the average time for all case types was well within the 28 day target, and police and COPFS targets in this regard have been met and maintained in recent years, it may be that undertakings cases are not being marked as speedily as Fiscals who were interviewed perceived, and that the national

[25] Available at http://www.scotland.gov.uk/Resource/Doc/339672/0112278.pdf
[26] Available at http://www.scotland.gov.uk/Resource/0038/00386764.pdf

average time taken is in fact increasing, quite uniquely for undertakings cases.

Figure 4.2 Average time taken from reports to the Fiscal to first case marking

Negative Consequences of the 28 Day Target

4.18 Although most police officers interviewed frequently cited the positives of undertakings speeding up cases going to court, a few negative points were also noted. Under guidelines, officers are given 2 weeks to write up the report and send it to the Fiscal and some officers felt frustrated that they had to provide the report to the Fiscal knowing that it wasn't their "best work" [Police Officer]. While some officers welcomed writing reports whilst incidents were fresh in their minds, others felt that this perhaps came at a cost to the quality of work that could be produced.

4.19 Some police officers said that time was *"squeezed"* with cases coming to court within 28 days of caution and charge. There was concern that if more cases were released on an undertaking, evidence such as CCTV would be difficult to obtain within given time periods and, if evidence could not be obtained in time, cases would have to be continued without plea at the pleading diet and rescheduled:

"The only drawback I can see with bringing cases to court more quickly is when you are trying to gather evidence. It takes days, weeks, months to try and get hold of people. And then it comes to court and it has to be re-scheduled because there is not enough evidence in place to plead. Sometimes 28 days is not enough time to do the enquiry." [Police Officer]

"It is frustrating when you get an email from the Procurators Fiscal office saying 'We need this evidence within the next couple of days'…Well, when do I do this? Also, sometimes the evidence isn't available. It would be too difficult to do everything within this short period of time." [Police Officer]

4.20 Officers stated that this problem could be overcome by not releasing the accused on an undertaking where it was known that there may be complications with the sourcing of evidence. Alternatively, flexibility with the 28 day target for complex cases could mean that undertakings could still be used whilst still allowing time for evidence gathering.

4.21 Police officers in Glasgow were also concerned at the length of time given to write an undertakings report, as this had to be done on the same day. This was the only area where staff stated that this was the case. Respondents said that they would find it much more beneficial if the report had to be completed within 14 days, rather than the same day. This was the main grievance of officers in this area, and the main reason that support for the changes to undertaking was not unanimous:

"I thought the whole point of undertakings was that it's dealt with at the time and then we're back out in the street and doing the writing at an appropriate time, but that doesn't appear to happen." [Police Officer]

"If you had to write the report within 14 days, that would be fine because it would give you time to plan, but recently, you've got to write it as a custody, come off the street. If it's near the end of your shift you're not getting paid for it, you're doing it in a rush." [Police Officer]

"If you could write it up the next day, you'd be of a fresher mind, rather than clock watching. I think if you released the right people on undertakings and then got a bit of time to write it up then it would be efficient, it would be beneficial." [Police Officer]

4.22 Such comments may again provide insight into why some officers are not using undertakings as frequently as they could, i.e. because the report writing under pressure (and possible impact on report quality) is something that they would rather avoid:

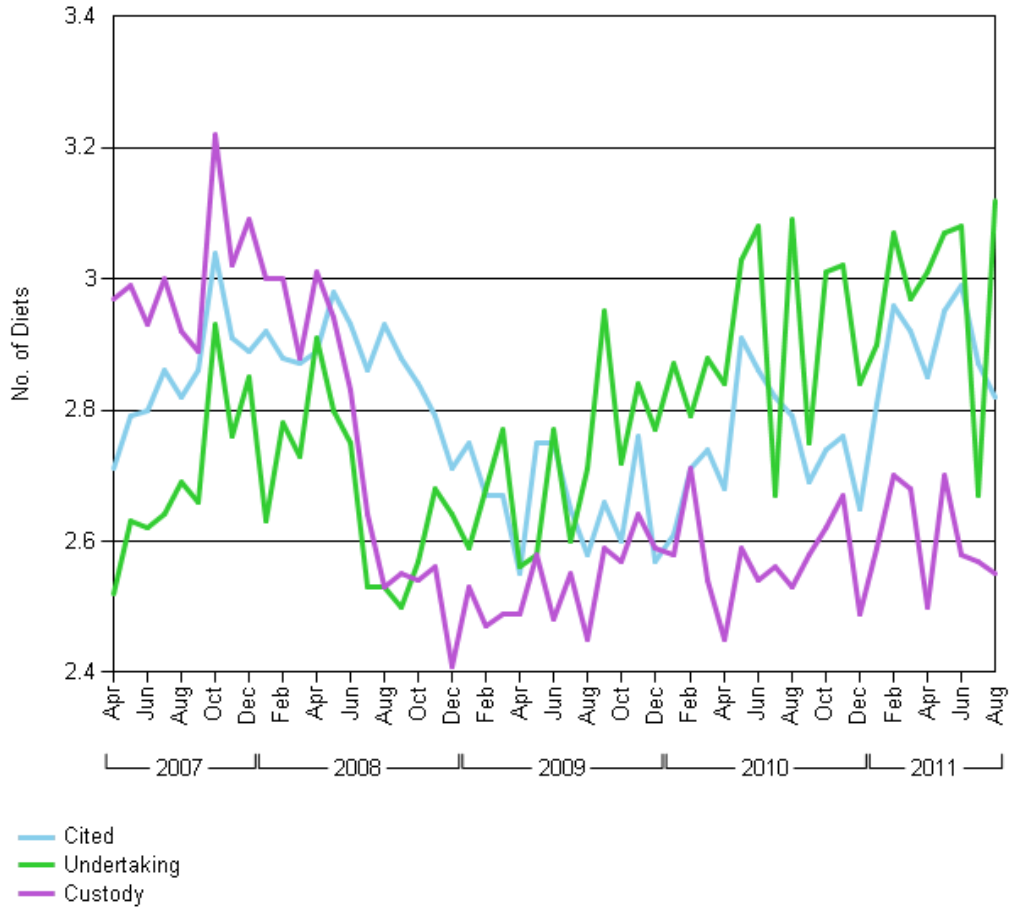
"The timescales for getting the report in can be quite tight, especially if you are dealing with other things, or there is co-accused, it can cause problems." [Police Officer]

4.23 As with the police, Fiscals commented on police not being able to gather sufficient evidence within the 28 day period. It was thought that this was more likely to be the case when there was more than one charge, an insufficiency of evidence, problems with drug cases, etc., or it was a fraud case, for example, when the police also had to involve outside agencies and rely on them to supply information. In many instances it was not possible to obtain this information in time for the pleading diet.

4.24 Again, in such scenarios, it was suggested that cases might require to be adjourned and reconvened meaning that they were stuck in the system. This cycle of adjournment due to lack of preparation is colloquially known as "churn" and was something that emerged across interviews with various stakeholders as being something which may be a negative consequence of the reforms to undertakings, specifically the 28 day target.

4.25 Indeed, data support the notion that churn may be occurring as a result of the tight timescales that undertakings cases operate within. Figure 4.3 below shows the average number of diets per case for undertakings cases, cited cases and those that appear on first calling from custody.

Figure 4.3 Average Number of Diets per Case



4.26 The data show that, pre-reform, undertakings cases usually proceeded through court with fewer diets per case on average than cited and custody

cases, however, post-reform, there has been a notable increase in the average number of appearances for undertakings cases. This is all the more notable since there has been a corresponding drop in the average number of diets for the other two case types, suggesting that the rise is isolated to undertakings cases and may be a direct consequence of reforms in this particular area.

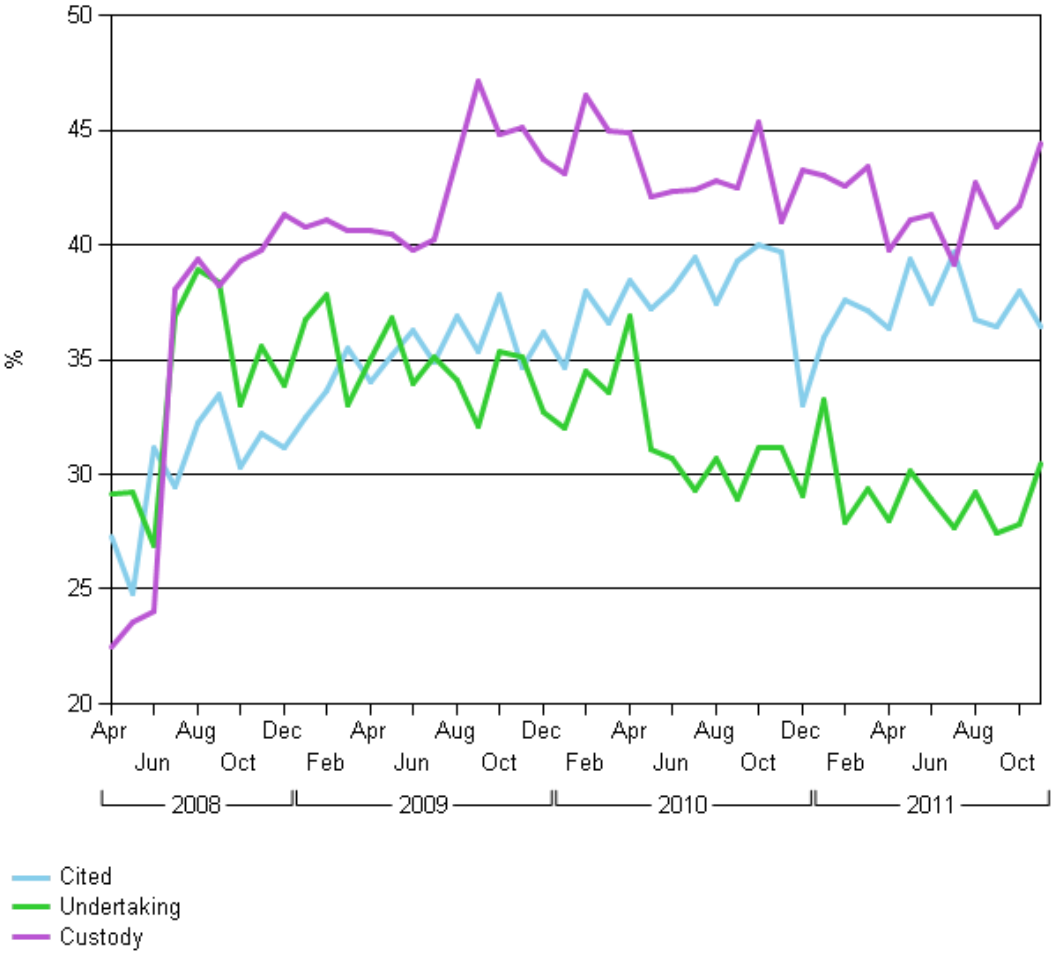
4.27 While tight timescales for police and COPFS reporting and evidence gathering may be one factor explaining this, another explanation may be that the speed of getting accused to court on undertakings leaves less opportunity for agents to advise their clients to plead guilty (where appropriate). As a result, and given concurrent reforms to legal aid, greater use may be being made of continued pleading diets to allow later guilty pleas to be tendered. This may be exacerbated by the shift in use of undertakings towards different types of cases, including more complex cases, post-reform. More complex cases may require more diets than the cases where undertakings were traditionally used (for example, simple motor vehicle offences), again due to challenges in gathering evidence, or citing civilian witnesses to court who may be less reliable than their professional or expert witness counterparts (and with whom evidence can arguably more easily be agreed). The lack of time for clients and agents to consult, and to prepare for such cases, as well as these wider evidence gathering and witness citation issues may therefore explain some of this increase in the average number of appearances required.

4.28 Indeed, the biggest concern raised by both Defence Agents and Sheriffs with regards to bringing cases to court more quickly was the reduction in time to prepare for court:

"Where cases do come to court quickly there are sometimes difficulties in preparation which means they may have to 'go off', thereby defeating the purpose." [Sheriff]

4.29 Figure 4.4 shows the percentage of cases concluded at first calling in court with a breakdown for case type at the national level. It shows that the percentage of undertakings cases concluded at first calling is lower than for cited or custody cases and that while the percentage has increased for these other two case types since April 2008, for undertakings, it has continued to drop over time.

Figure 4.4 Percentage of cases concluded at first calling in court



4.30 The data does also support the picture that undertakings cases are, post reform, taking more diets to conclude (as shown by the average number of diets data above). Although resolution at this stage may occur for a variety of reasons, including not guilty pleas being accepted and cases not being called or deserted, it is likely to be driven largely by the number of guilty pleas tendered at this stage. This would support some of the qualitative suggestions from professional stakeholders that the speed of getting accused to court on undertakings is reducing the likelihood that they will consult with their Defence Agent ahead of the first calling in court, and thus they are less likely to have been advised by their agents to plead guilty. This is again linked to the late receipt of the copy complaint in undertakings cases.

4.31 Some Defence Agents also mentioned that they had appeared in court on their client's undertaking date to find that the case had not yet been marked. This meant that the case was delayed and re-scheduled for another day (i.e. churned). It was described as problematic both for them and for their clients who would perhaps have to take another day off work to attend court and who would have the case "hanging over their head" until a later date:

"It's all very well giving someone an undertaking and asking them to turn up at court in 3 weeks, but when they arrive at court, they should expect to be given their papers." [Defence Agent]

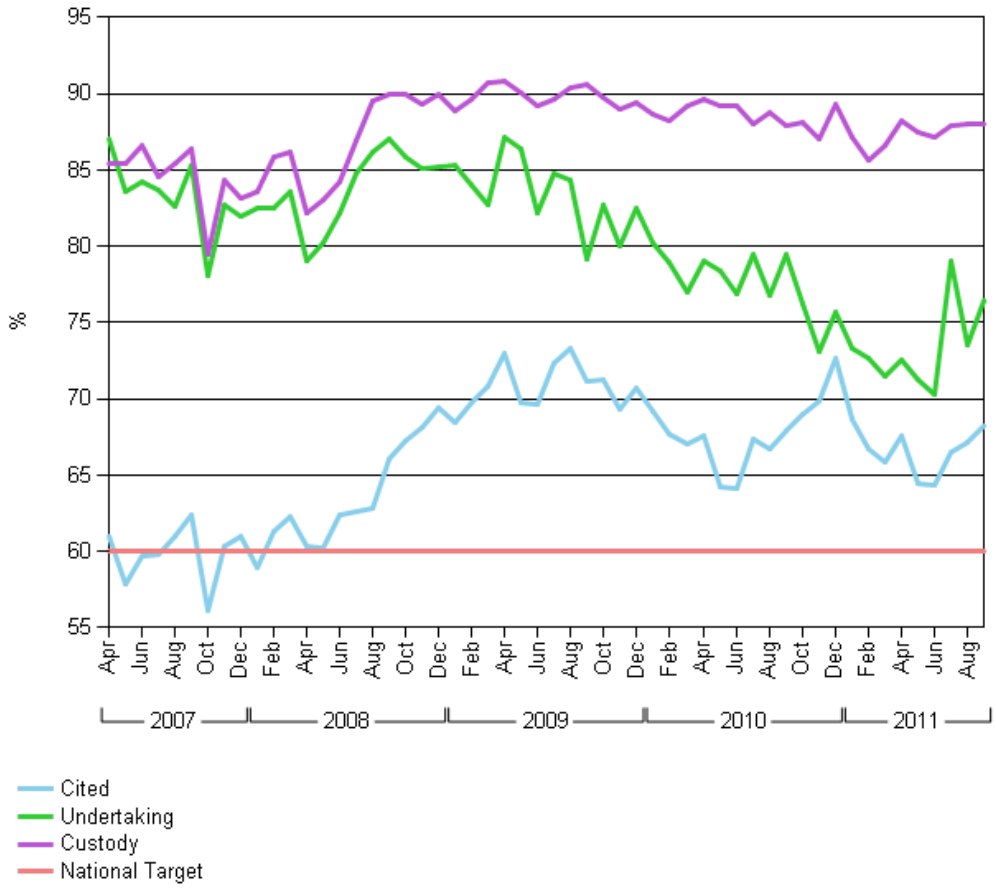
"The decision not to proceed to court is very often made at the last minute when we [the accused and Defence Agent] are already at court so there is no actual court appearance…That in itself is inefficient. If they made the cancellation at an earlier stage then that would be a more efficient way of doing it." [Defence Agent]

4.32 Figure 4.5 shows data from the Scottish Government's Criminal Justice Board Management Information System (CJBMIS) and the Monitoring Workbook in relation to the end-to-end time taken for undertakings cases compared to other types of cases (i.e. custody and cited cases).

4.33 Thus, although Defence Agents considered that cases may be coming to court more quickly, delays were still seen to exist *at* and *after* the pleading diet. This is also evidenced by the KPI data which shows that while undertaking cases are coming to court more quickly than cited cases, these cases seem to be experiencing more churn and less early resolution at first calling. This is possibly due to time pressures on police and COPFS, the timing of the copy complaint and also, perhaps, the changing crime type profile of undertakings cases.

End-to-End Times

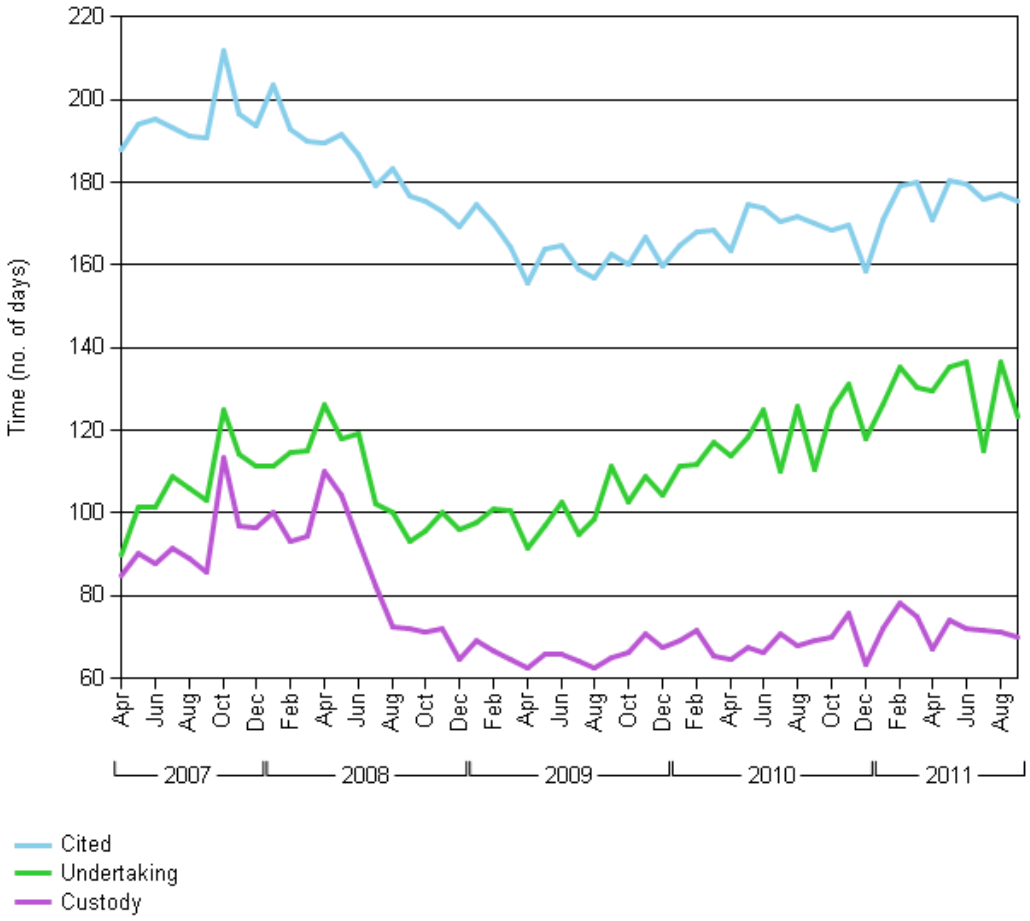
Figure 4.5 Percentage of Summary Criminal Cases dealt with within 26 weeks.



4.34 The data show that the percentage of cases that come to court via undertakings being dealt with within 26 weeks has progressively declined over time since the start of 2009. It has, however, remained higher than for cited cases. This is in contrast to cases that appear in court from custody, which has remained fairly steady and cases that come to court via citation, where there has been an improvement in performance over time.

4.35 Figure 4.6 also shows management data in relation to the average time between caution and charge to verdict for cases that come to court via different routes (i.e. undertaking, citation or custody). The target for this measure is 26 weeks (or 182 days). This data also shows a drop in speed and that the average time for undertakings cases has increased over time.

Figure 4.6 Average Time from Caution and Charge to Verdict



4.36 The downward trend in the percentage of cases concluded within the 26 week target, and the upward trend in average time taken from caution and charge to verdict are unique to undertakings cases. This perhaps suggests that the reforms have impacted on these case types in an isolated way and this may be explained by some of the front-end court delays discussed above, with regard to fewer cases being concluded at first calling in court compared to citation and custody routes. It could be argued, of course, that churn at this stage of the court journey is preferable to churn at trial stage which is more likely to include citation of witnesses to court only for trial to be adjourned to a later date. Continuing first callings and attempting to resolve cases as early as possible in the process was encouraged as part of SJR.

Communication

4.37 Two issues emerged in the evaluation with regards to communication. The first of these related to communication issues between Fiscals and accused, wherein interviewees described occasions where Fiscals decided to mark undertakings cases with an alternative disposal without (in some cases) advising the accused of this decision before the scheduled undertaking court appearance. This was described as “frustrating” among Defence Agents in particular, who felt that they were attending court with their clients to be

advised that the case was no longer proceeding through court. In some cases, communication between Defence Agents and Fiscals may have prevented this wasted time, and in others the Fiscal reports may simply have been prepared too late for copies to be provided to Defence Agents.

4.38 Secondly, a small number of Defence Agents mentioned that, on occasion, they received calls from their clients asking why they were not at court, despite the client not informing their defence agent that they were appearing in court on an undertaking. In these instances it appears that clients wrongly assumed that the police would have notified Defence Agents that their clients were due to appear in court on the specified date. This is despite information in the undertaking advising accused to seek legal advice. These two issues combined suggest that if communication could be improved between Fiscals, Defence Agents and the accused, this may lead to more efficient use of undertakings.

4.39 Where accused did contact agents ahead of their court appearance, most Defence Agents reported that their clients often provided them with only minimal information on their charges since they had not yet been served with the complaint (in the same way as occurs for custodial cases, as mentioned above). They often only possessed the duplicate undertakings slip, which could be blurred or incomprehensible. Defence Agents did not say that they routinely contacted the Fiscals in such instances, and, as a result, Defence Agents sometimes felt unable to do much in the way of preparation:

"On busy court days we are approached by people [accused] simply handing us paperwork which we are expected to try and deal with on top of all the other stuff we are doing…previously most cases that were heard in the Sheriff court were cited so they [the accused] would get their papers, and we would have time to sit down and go over things properly with them before it went to court. If you're simply having to deal with it in a busy court it puts a lot more pressure on you trying to deal with it, read it properly, and just take their instructions…it's just much more difficult." [Defence Agent]

"They don't have any paperwork so you don't know what they are going to go to court to be prosecuted for or, for that matter, whether they are going to be prosecuted." [Defence Agent]

4.40 In a small number of cases, Fiscals also commented that they sometimes received communication from Defence Agents seeking clarification about charges against their clients due to lack of communication between clients and their agents directly.

4.41 Again, although not unique to undertakings, the lack of communication between accused and their agents ahead of court appearances may be impacting on early guilty plea rates, something that the reforms sought to encourage where appropriate to remove unnecessary workloads in the courts. If agents are unaware of their client's case details before the first calling in court, some not guilty pleas may be being tendered which might otherwise be avoided if agents were better informed.

4.42 The missed opportunities for early guilty pleas that might be resulting from the reforms to undertakings could also be counteracting some of the achievement of the reforms to legal aid which specifically sought to encourage early guilty pleas. In this way, the two reform areas may be conflicted instead of being mutually supportive.

Summary

4.43 In summary, all stakeholders seem to perceive that summary justice reforms are impacting on the speed of getting cases *to* court but they also perceive that there may be negative consequences for some cases in terms of subsequent progress *through* court.

4.44 While undertakings do seem to be getting people to court quickly, with some areas showing good compliance with the 28 day target, case marking among fiscals is taking slightly longer over time, and there appear to be more diets and overall lengthier end-to-end times required to conclude cases once they are at court (although this is still well within the target and is better than for cited cases). Some of this may be accounted for by the shift in use of undertakings towards more complex cases.

4.45 It seems that there has been some unintended churn as a result of cases coming to court quickly, with police, Defence Agents and Fiscals all reporting problems with preparing quickly enough for pleading diets in the time given, and this may indicate a reduction in the effectiveness of court hearings at this stage in the summary justice journey, as reflected in the increasing average number of diets per case for undertakings.

4.46 A reduction in the conclusion of cases at first calling in court may be due, in part, to pressures on the police and COPFS to meet reporting deadlines and the absence of copy complaints early on in the undertakings process which is affecting time for and quality of discussions between clients and their Defence Agents. Greater use of continued pleading diets to allow later guilty pleas to be tendered is, however, perhaps potentially preventing churn that might otherwise occur at trial diet. This may be positive for victims and witnesses in that earlier trial diets can be fixed in cases where the accused pleads not guilty.

4.47 Thus, getting people *to* court on undertakings may be occurring at the expense of the other intended outcomes of SJR – in particular the early, effective preparation of cases and more effective court hearings, as well as cases being dealt with at the earliest stage of proceedings and achieving faster case conclusions overall.

5 VIEWS OF THE ACCUSED

5.1 As part of the evaluation, questionnaires were issued to a small number of accused arrested and detained by the police where they were known by police to have previously been released on an undertaking. These participants were asked to comment on previous cases where they had been given an undertaking (not on the current incident for which they had been arrested), and their responses were provided confidentially to the evaluation. Using this approach, a total of 11 responses were achieved and the findings are summarised here. It is important to stress that this small number of respondents will not be representative of the accused population overall, and so these findings should not be generalised too widely[27]. What the data does provide, however, is an insight into the ways in which undertakings and the reforms may be perceived and experienced by this user group.

Understanding undertakings

5.2 Almost all accused said that they had been notified of their release on an undertaking by the Sergeant in charge of the custody suite at the time of their arrest. This occurred mainly at the 'charge bar' or 'charge desk' although one respondent said that an officer had visited them in their cells to explain the procedure to them:

"Someone came to the cell to tell me I would be getting out to appear at a later date for court." [Accused]

5.3 When asked if they understood what being released on an undertaking meant, responses indicated that accused generally understood that it would mean *"going to court at a later date"*. One person commented that it meant *"being released from the cells"* and another said that *"it meant I got my freedom back."* One other respondent commented that, for them, it meant *"I would appear at court without Reliance [security] taking me".* This suggests that the two main principles of undertakings were clearly understood, i.e. that it required people to attend at court in the future but that people were being liberated until that time. Only one person said that they did not know what it meant.

Perceived appropriateness of undertakings

5.4 Although some people felt that they should not have been charged at all, several respondents commented that they felt the use of an undertaking in their case had been appropriate because the offences for which they had been arrested was not a "bad charge". One respondent explained that:

"Yes, it was only a theft, it saved me being kept in." [Accused]

[27] The sample was drawn from one case study area only, namely Central, and so some of the findings may reflect the unique position there.

5.5 This shows that accused had similar views to the officers interviewed as part of the evaluation, in that undertakings were considered as appropriate for lesser offences. Indeed, one respondent explicitly stated that:

"I think it's a good thing, but not for a serious crime." [Accused]

5.6 Another comment provided by one respondent also hints that there may be support among this group for the use of undertakings for those who have proven themselves not to be 'a risk':

"It was right. I hadn't been in trouble for ages." [Accused]

5.7 This mirrors findings from the parallel victim, witnesses and public perceptions evaluation, as well as data collected from professionals for this evaluation, that shows support for undertakings where accused are not considered to be repeat or high risk offenders.

Understanding conditions

5.8 There seemed to be generally good awareness of the basic conditions of undertakings, i.e. to "stay out of trouble" and "to appear at court". As one respondent summarised:

"To appear at court and not do anything else wrong." [Accused]

5.9 One respondent described the basic conditions as being "the same as bail".

5.10 Overall, respondents indicated that they did not perceive the conditions of their undertakings to be difficult to stick to, and one respondent commented that they understood that there may be benefits attached to not breaching their conditions:

"It was not hard to stick to because they work to your benefit." [Accused]

5.11 Such a comment may suggest that accused understand that breach of conditions may result in punitive treatment when appearing at court, although it is not possible to say conclusively that this is what was intended by this statement. Interestingly, the victims, witnesses and general public perceptions evaluation revealed that some professionals and lay members of the public perceive that some offenders know the system so well that they are able to operate within it to their greatest advantage. Again, this statement may be indicative of this kind of system familiarity.

Breach of undertakings and conditions

5.12 Most of those who provided comments in relation to the perceived seriousness of breach of undertakings (and conditions) said that they thought that breach was and should be treated seriously. Indeed, many agreed that it should be treated as a separate offence. Comments included:

"I would have been straight back in so it is serious. I do think it should be an offence or people wouldn't bother going to court." [Accused]

There's rules, so I think it is serious. I think it should be a separate offence as we know the rules." [Accused]

5.13 Comments provided also suggest that the liberation attached to an undertaking was something that should not be taken for granted:

"You get a chance to get out, so it is serious and bit stupid to breach it. Yes, it should be a separate offence." [Accused]

"It should be serious. If you get the chance to get out, you should behave." [Accused]

5.14 Only one respondent said that they felt that breach should not be a separate offence and one other said that leniency was perhaps needed for those who fail to appear the first time:

"I think there should be a second chance to appear, and then after that be charged with it." [Accused]

5.15 In line with such comments, only one respondent said that they had failed to turn up at their court appearance, due to being "mixed up with the dates" and another said that they could not remember if they had attended court.

Time taken to appear at court

5.16 Overall, respondents had mixed views on whether the time periods between release and appearance at court had been appropriate. Some commented that a few weeks had seemed fine, but others said that they had wished it had been sooner. In two cases, the appearance had been just a few days following release and one of these respondents explained that this was "good because it was over and done with."

5.17 One respondent said that they had waited around a month, which they perceived to be "too long" for what they perceived as a minor offence and another said:

"It was too long. It should have been sooner to get it over and done with." [Accused]

5.18 Only one respondent raised concerns that if the appearance date was too far ahead they may be likely to forget about it, and only one suggested that the longer time period may have been personally beneficial:

"It was quite a while, which was fine. It meant that I had to be careful and behave." [Accused]

5.19 Overall, the consensus seemed to be "the quicker the better."

Summary

5.20 Responses from accused seem to show reasonably good levels of awareness of the reasons for undertakings and the conditions of their use. There were hints of support for their use for lesser offences and agreement with the principle that, for some more serious offences, their use was not appropriate.

5.21 Those who took part showed support for the serious treatment of breach of undertakings and conditions, especially given that the standard conditions were not difficult to comply with and allowed the privilege of liberation. Most of those who took part welcomed their freedom and also seemed to welcome a quick turnaround in getting to court.

5.22 Recognising that some people disputed their being arrested at all, and despite only small numbers of responses from accused, the feedback provided in relation to undertakings is positive and supports the views held by professional stakeholders.

6 UNDERTAKINGS AND WIDER SJR OUTCOMES

Awareness of the reforms in practice

6.1 The majority of professional stakeholders interviewed were aware that changes to undertakings were introduced at the start of 2008 and had good general awareness of what the reforms entailed from a process level. There was less understanding of the philosophy underlying the reforms to undertakings, and SJR more generally.

6.2 Overall, of those interviewed, the police had the greatest level of awareness of the undertakings reforms and the associated impact on their own workloads. Generally, police referred to 'undertakings' as 'police bail' and described the purpose of the reforms as being to bring cases to court quicker, reduce wasted court time and increase efficiency, making things fairer, so that people are not held in police custody for excessive lengths of time, and allowing special conditions to be given when someone is released on an undertaking.

6.3 Interviews with Sheriffs revealed much less awareness and knowledge of the specific undertakings reforms compared to other reforms. Sheriffs intimated that this is an area that affects them less and is of greater interest and relevance to the police than themselves. Indeed, how the case comes to court does not impact on the role of the Sheriff who deals with each case on merit and applies the law in determining issues before them.

6.4 Defence Agents generally seemed aware of the reforms to undertakings, only as a consequence of a perceived increase in the use of undertakings by the police, and perceived greater use of conditions on undertakings being imposed by the police.

6.5 Procurators Fiscal generally described the reforms in terms of allowing cases to be fast tracked to court.

Meeting the intended outcomes

6.6 As a package, the summary justice reforms had a number of specific intended outcomes, some of which were more directly relevant to undertakings than others. The outcome that was perhaps most closely associated with reforms to undertakings was that, for those cases that do come to court, they will do so more quickly.

Cases coming to court more quickly

6.7 When questioned about whether or not the reforms to undertakings had contributed to cases coming to court more quickly, most police supervisors felt that there had been a *"definite improvement"* [Police Operational Supervisor] and that undertakings *"had vastly improved the system"* [Police Operational Supervisor]. This was despite some officers saying that bringing cases to court more quickly reduced the amount of time they had to carry out a full

enquiry and that speed had impacted on police workloads (as discussed in the previous chapters).

6.8 Importantly, the extent to which speedier justice was perceived to be being achieved again varied by area, with police officers in Lothian and Borders and Central stating there was a noticeable change with regard to undertakings, but officers in Ayrshire and Glasgow and Strathkelvin stating the change was too slight to comment on:

"Undertakings was seen as a quicker way of getting people through the system…so cases would come to court within 28 days instead of up to 18 months after the event. With undertakings, start to finish it's a lot quicker, that's what I've noticed generally. In that way I'd say it's been a positive, and it continues to be a positive." [Police Officer]

6.9 Almost all Defence Agents interviewed also agreed that the changes to undertakings had contributed to cases coming to court more quickly.

6.10 Numeric data also show that cases are reaching the pleading diet more quickly, with police 28 day targets largely being met and Fiscal case marking also on target.

6.11 Again, the issue does not seem to be one of getting people *to* court, but rather it is about the progress of the case *through* court thereafter. Data relating to the percentage of summary cases dealt with within 26 weeks (shown in Figure 4.5 and discussed above) shows that, while the national target of 60% is being met across all case types, there has been a notable drop in the percentage of undertakings proceeding quickly through court over time, though they are still generally more likely to meet the target than cited cases. Data on the average time taken for all case types to progress through court from caution and charge to verdict (shown in Figure 4.6 and discussed above) also supports this drop in speed and shows that the average time for undertakings cases has increased from a low of 89 days in April 2007 to a high of 142 days in October 2011. The number of undertakings cases concluding at first calling is also dropping, and the average number of diets per case is increasing.

6.12 The KPI data shows, therefore, that although undertakings cases are getting people to court, and are still being concluded faster end-to-end than cited cases, undertakings cases may be requiring more resources (in terms of court time) than cited cases and there may be room for further efficiencies to be achieved.

Wider SJR outcomes

6.13 Each of the individual reform areas had their own specific policy objectives, but from the start, it was asserted that each reform would only be considered a success if they were achieved in a way which was consistent with the overarching objectives of SJR to lead to a system which is:

- fair to the accused, victims and witnesses;
- effective in deterring, punishing and helping to rehabilitate offenders;
- efficient in the use of time and resources; and
- quick and simple in delivery.

Fair to victims, witnesses and the accused

6.14 It was considered by most interviewees that the changes to undertakings have resulted in fairness to the accused as they know when they leave the police station where and when they require to attend at court for their first appearance. Indeed, the mostly frequently cited benefit of undertakings by the police, and a reason for supporting their increased use, was that the accused leaves the police station with a date and time of when to attend court. This ensures the summons does not get lost in the post, that if the accused moves house their summons will not be delivered to the previous address, etc. Police welcomed this increased efficiency (where it was working):

"From a summons perspective, if you're waiting for things to go through and letters to be sent, then people change addresses, letters get lost in the post. At least with undertakings you know that you've given them the court date away with them, they know where they need to be and when." [Police Officer]

6.15 Additionally, bringing cases to court earlier means the accused is 'dealt with' more quickly instead of waiting several months for their case to be heard initially. This is, of course, only true in cases where the case is not held up as a result of lack of preparation time before first appearance. Even where cases are marked as Fiscal direct measures after the initial undertaking, this may still also be faster than if the accused was released pending citation to appear at court before going on to receive a Fiscal direct measure.

6.16 For those accused who were first time offenders, or did not have frequent contact with the criminal justice system, it was thought to be particularly fair:

"If you don't have a lot of involvement with the police, it's your first offence and you made a mistake, then at least it's over with more quickly, rather than it hanging over your head. In that way it's more fair to them." [Police Officer]

6.17 Additionally, it was considered to be fair to victims and witnesses in cases where the undertaking proceeds to trial soon after first calling in court. In particular, a quicker time from incident to trial has the advantage of enabling victims and witnesses to recall events while they were fresher in their minds, with less time to worry about their court appearance:

"It puts less stress on victims, firstly to be able to remember what happened, but also not having to wait for the looming court case." [Police Officer]

"It speeds up cases coming to trial a lot quicker so it's fresher in your mind and the mind of witnesses. People get closure a bit quicker too." [Police Officer]

"I think in truth, the quicker any trial comes to fruition the better instead of it languishing for 4 to 6 months…that allows more time for witnesses to be intimidated. Any improvement with the trial speed is worthwhile." [Police Officer]

6.18 Overall, the consensus seemed to be that anything which brings the court case to an end quickly was welcomed and this was more likely for undertakings cases where the average end-to-end time was faster than for cited cases.

Effective in deterring, punishing, and helping to rehabilitate offenders

6.19 There were few observations with regards to this outcome, except from the police. Some felt that, for some offenders where drug or alcohol misuse was a factor in their offending behaviour, cases coming to court more quickly would help speed up their sentencing and any associated access to drug or alcohol rehabilitation or support.

6.20 For the police, the fact that breach of an undertaking or undertaking conditions was another arrestable offence was also seen as something that may act as a deterrent from committing another crime whilst on an undertaking. Defence Agents and Fiscals seemed sceptical of this prospect.

Efficient in the use of time and resources

6.21 At the initiation stages, police officers considered that the changes to undertakings had been largely efficient in the use of time and resources because everything in the process was done quicker:

"It's certainly more efficient for us. I'm the type of person who likes working to a deadline so it's better for me." [Police Officer]

6.22 The ability to 'book' time slots in the undertaking court for the first appearance was also welcomed:

"I quite like it the way it is, you go in, you pick your date as and when you've got them in the cells, you're doing the whole process there and then. You've got your undertaking date sorted so you know when it's going to happen." [Police Officer]

6.23 Most Defence Agents also considered undertakings to be efficient in terms of getting the accused to court more quickly, however, they felt the changes fell down in respect of 'wasting the time' of Defence Agents and their clients. Again, they felt this happened when the Fiscal had not yet marked the case for the pleading diet, or when it was decided that the case should be dealt

with by alternative measures, but the defence agent or their client had not been informed of this before the day:

"The use of undertakings is efficient in terms of it saving police stations being full with people who could easily be let loose in the world again. But the efficiency is clouded somewhat when three weeks later the Procurator Fiscal is having a look at the papers to actually mark it, and that's not terribly efficient and can lead to an awful lot of people waiting about for lengthy times." [Defence Agent]

6.24 Procurators Fiscal also supported the principle of the use of undertakings in increasing their own personal efficiency, but whether this efficiency is being achieved remains to be seen:

"If the police are using undertakings more often to either prevent a lot of cases coming into the custody court or to prevent a lot of cases sitting in in-trays for a long time, I can see that's very much a better position to be in…that's not based on hard evidence, just my thoughts." [Procurator Fiscal]

Quick and simple in delivery

6.25 Most respondents felt that the process of undertakings was clear and simple to understand for all, including the accused:

"It's clearer for everybody from start to finish, everybody knows the process, what's expected of them, even the accused knows exactly what's happening rather than waiting for things to appear." [Police Officer]

6.26 There was little offered by those interviewed in terms of ways in which the process could be simplified further, except to ensure that loopholes be closed to avoid case marking changes not being communicated to all those concerned.

Summary

6.27 In summary, there is generally good understanding of undertakings and the reforms, as well as general support for the principles of speeding up the justice process by increasing their use.

6.28 Although undertakings cases are coming to court quickly and are still meeting overall end-to-end targets (i.e. achieving speed), there is evidence that greater efficiency could be achieved if the number of diets could be further reduced and more cases concluded at first calling in court. Improved communications between Fiscals, Defence Agents and accused, and more flexibility in preparation time for complex cases may improve effectiveness of undertakings if it allows either for better preparation ahead of court appearances or for earlier pleas.

6.29 There is nothing in the data to suggest that further improvements are required to make undertakings any simpler except, perhaps, for improved communications again between Fiscals, Defence Agents and accused with regard to the nature of complaints and case marking decisions.

7 COST EXERCISE

Introduction

7.1 The main aim of the economic analysis was to assess whether the benefits, i.e. savings from the reforms to undertakings, are sufficient to outweigh the corresponding burdens arising from the reforms.

7.2 At the outset a cost-benefit type approach was preferred where the benefits could be quantified and monetised and then compared against the monetised increased costs associated with the reforms. As the research progressed, however, it became clear that there was a lack of reliable and available data to allow monetised values to be assigned to the benefits identified or, indeed, to produce an estimate of the costs associated with the reforms. This meant that a full economic analysis was not possible.

7.3 As a result, the cost exercise instead had to focus on identifying and summarising what data items would be needed in order to conduct a full economic analysis to allow this to be carried out at a future date, if desirable.

Data Items Needed for a Full Economic Analysis

7.4 The evaluation suggests that the following data items would be required to allow a full economic analysis to be undertaken:

Police

- staff time and costs of completing enquiry and writing reports in time for court attendance, with comparison between custody, undertaking and liberation awaiting citation; and
- staff time and costs (printing/postage) spent executing warrants for people who fail to appear on undertakings and comparable costs for those who are cited but fail to appear.

COPFS

- staff time and costs (printing/postage) of issuing citations; and
- staff time and costs for changing case marking prior to first appearance in court
- staff time and costs associated with churn, in terms of staff time spent preparing for cases on multiple occasions and appearance at court.

Courts

- costs of individual court diets to allow a calculation of additional costs brought about by churn for undertakings cases;
- estimate of time wasted in court and by court staff due to failure to appear by accused; and
- estimate of time wasted in court and by court staff due to cases not proceeding as a result of alternative case marking ahead of the court appearance;

Prison Service

- staff time and costs for transporting accused held in police custody to first hearing in court;
- costs for harsher sentences (i.e. custodial costs) being used for breach of undertakings; and
- comparative costs of harsher sentences for those who fail to appear on citation or on bail.

7.5 Although this list of data items, if available, would allow for a cost-benefit comparison to be made for undertakings (compared to citation and custody) those consulted as part of this work were keen to emphasise that in many scenarios it was not possible to describe a 'typical' cost since the range of experiences 'on the ground' was vast between cases. Due to the complexities and variance in case handling, any future cost estimates are likely to be unreliable and possibly misleading if generalised too far.

7.6 That said, only if these can be estimated by partner agencies can any indicative cost and benefit impacts be compared to determine whether the benefits associated with the reforms to undertakings are sufficient to outweigh the costs.

8 DISCUSSION

Meeting the specific policy objectives

8.1 The evaluation has provided evidence, gathered from qualitative and quantitative sources, on both the use of undertakings post-reform, the use of conditions, compliance with undertakings by accused and compliance with the 28 day target among professional agencies involved in the system. These have enabled an assessment of performance against the specific policy objectives.

Increasing the number of accused who appear at court on an undertaking

8.2 The first objective of the reforms to undertakings was to increase the number of accused who appear at court on undertakings. The numeric and interview data show mixed messages for this objective.

8.3 While there has been a perceived increase in the use of undertakings in some areas, this is not supported by the KPI data which shows generally stable levels at the national and most local levels in recent years. Approximately 10% of all standard prosecution reports to COPFS are for undertakings cases (as opposed to cited and custody cases), and this proportion has remained steady over time. The absence of any pre-reform data in most areas, and at the national level, means that it is not possible to say anything conclusive about if there has been greater use post-reform, and so the only evidence to support that notion is the qualitative feedback from interviewees. What the data does show, however, is that while undertakings were traditionally used for motor vehicle offences (especially drink/drug driving), the removal of a large number of these case types from the court has not resulted in a corresponding drop in use of undertaking overall. Instead, the range of offences for which undertakings are being used has widened to include their greater use for more complex cases, including, for example, simple assault and drugs offences.

8.4 Qualitative data suggest that the police in some areas are making concerted efforts to increase their use of undertakings, often as part of discussions with their local Procurator Fiscal. Both police and Fiscals perceived that even greater use could be made of undertakings if the guidelines were revised. Greater flexibility in the types of offences for which undertakings are used would be welcomed by most of those interviewed, as well as some flexibility in the time required to get cases to court (i.e. closer to 40 days than 28). This was considered to be especially valuable in cases where there are complex evidential matters to be addressed. Whilst such flexibility may be welcomed, it is also recognised that such an extension may result in slower preparation of evidence and, as such, the same challenges with meeting deadlines may still continue to exist.

8.5 There does seem to be some evidence that there is some geographical variation in the types of offences for which undertakings are used, influenced by local agreements and practices and the individuals involved in the process.

One barrier that may be preventing officers from using undertakings more often is a fear of being challenged by supervising officers regarding their decision to release someone on an undertaking, especially if the accused offends once released. In cases where police are unsure whether to release on an undertaking, they reported using what they perceive to be the more objective and clearly defined options of release for citation or, in some cases, custody.

8.6 The use of the Lord Advocate's guidelines was evident from the evaluation and although some officers suggested that this may be restrictive, it does seem to be offering a clear framework in which to operate.

Bringing cases to court within the 28 day limit

8.7 The second specific policy objective for undertakings was to bring undertakings cases to court within 28 days of caution and charge, resulting in cases coming to court much more quickly than cited cases and reducing delay in the summary criminal justice system.

8.8 Respondents from the police, Sheriffs, Fiscals and Defence Agents seem to think that summary justice reforms are impacting on the speed of cases *to* court, and the police, in particular, seem to be attributing some of this to undertakings reforms. The KPI data supports the notion that a large number of cases are coming to court within the 28 day target, although some areas have a greater success rate than others in meeting this target. Again, police expressed some preference for greater flexibility in the 28 day target, in particular for cases where complex evidence gathering may be required.

8.9 Generally, accused seem supportive of the 28 day deadline, although for them, an appearance as soon as possible after release seems to be preferred, but only if accompanied by their liberation.

8.10 Whilst both the numerical and interview data provide strong support for the objective being met, the evaluation has shown that there may be problems with bringing cases to court more quickly. The data suggest that whilst cases are coming to court quickly when undertakings are used, some of those cases are not progressing through court at the desired pace and the average time taken for undertakings cases to move from caution and charge to verdict is increasing over time, post-reform, though undertakings cases are still faster on average than cited cases. The data also show that the percentage of criminal undertakings cases dealt with within 26 weeks has also dropped over time post-reform. Both trends are unique to undertakings cases.

8.11 This decrease in the speed of undertakings cases through the summary justice system was something that was also raised by all stakeholder groups consulted. There were suggestions from police, Fiscals and Defence Agents that lack of preparation time before the first appearance at court was resulting in cases being churned within the system. Again, the KPI data show that the average number of diets per case where an undertaking was used is slightly greater than the average for either custody or cited cases post-reform. This again may be due, in part, to a change in the nature of cases for which

undertakings are being used (i.e. more complex cases which present challenges for gathering and agreeing evidence and citing witnesses to court). The increased speed of the system for undertakings cases seems to be isolated, therefore, to getting people to court and this is, in fact, potentially having negative impacts on the later stages of the court process. In terms of the overarching objectives of SJR, it might be argued that speed at the front end is in some cases compromising efficiencies and effectiveness of court hearings at the later stages of the summary justice journey. However, in other cases continuations without plea may lead to a swift resolution when the case next calls, and is considered preferable to churn at later stages of the court process.

Use of conditions attached to undertakings

8.12 The final specific policy objective for undertakings was to enable the police to impose conditions when releasing accused on an undertaking. Interviews with the police suggest that they welcome the opportunity to impose special conditions, and the limited data that are available also show that there may be an increase over time in the use of special conditions in some areas since they were introduced.

8.13 The KPI data also shows that there were few convictions for breaches of conditions, including special conditions where applied, but where this does occur, there is evidence to suggest that Sheriffs and Justices are making use of their increased sentencing powers for breach of undertakings under the reforms.

8.14 Accused who were surveyed seemed to understand the conditions of their undertakings quite well, and they seem to support the notion that breach of conditions should be taken seriously.

Overlap with other areas of summary justice reform

8.15 Undertakings were seen by interviewees to be largely fair to victims, witnesses and accused. Data from the accused who took part in the evaluation also suggests that they considered they had been treated fairly in cases where an undertaking had been used.

8.16 Findings from the victim, witnesses and public perceptions evaluation, published separately as part of the SJR evaluation series, also show that members of the public support the rationale and principles for undertakings, as do victims and witnesses. This, however, does not hold for cases involving repeat offenders and those with a history of breach of bail or undertakings.

8.17 Responses from the accused interview group seem to show reasonably good levels of awareness of the reasons for undertakings and the conditions of their use. There seemed to be support for their use for lesser offences and accused agreed with the principles that, for some more serious offences, their use was not appropriate. Those accused who took part also showed support for the serious treatment of breach of undertakings and conditions, especially

given that the standard conditions were not difficult to comply with and allowed the privilege of liberation. Most of those who took part welcomed their freedom and also seemed to welcome a quick turnaround in getting to court.

8.18 Although not a specific focus of the evaluation, qualitative interview data indicates that there may be some issues around communication between both Fiscals and the accused, and between Defence Agents and their clients, which are linked to undertakings use. The first problem seems to be that Fiscals are marking some undertakings cases as Fiscal direct measures or no proceedings, but are failing to alert accused of this decision in advance of their appearance at court as per the undertaking. This can mean wasted time for some accused attending court only to be notified that the case has been dropped or is being dealt with by a non-court disposal.

8.19 Secondly, there seems to be evidence that some accused are failing to liaise with their Defence Agents ahead of appearing in court on an undertaking, possibly linked to the late receipt of the copy complaint in undertakings cases, compared to citation cases. Whilst this failure to communicate may not be unique to undertakings, the short time between arrest and pleading diet may be compounding the problem in undertakings cases. In particular, it seems that a lack of time for communication between accused and their Defence Agents in advance of the first calling may be resulting in missed opportunities for early pleas, since agents feel unable to provide accurate advice. Overall, it seems that more effective communication between Fiscals, Defence Agents and accused may be needed.

Gaps in the Data

8.20 Gaps in the recorded data on the use of undertakings and conditions has meant that it has not been possible to produce an accurate national picture of these measures. Police data regarding the use of standard and special conditions for undertakings also varied greatly between areas and is not systematically recorded. Although some data were manually extracted for this evaluation, there is little routine collection of this data at the national or local level.

8.21 Crown Office data on the number of standard prosecution reports submitted to COPFS is not available before April 2009, and so again cannot be used as a measure of changes in the total numbers of undertakings pre and post-reform.

8.22 There is no data on the numbers of warrants granted for people who fail to appear at court at pleading diets broken down for cited cases and so it is not possible to say whether use of undertakings is any more effective than citation at ensuring that accused appear at court when required. The collection of this data would allow monitoring of the reforms to undertakings to be considered over time, along with associated impacts.

8.23 From the data available, it has also not been possible to say what the true costs and benefits of the reforms to undertakings have been, and this is something that would be desirable in the future.

8.24 Finally, the evaluation has revealed that there is considerable local variation in the extent to which reforms to undertakings are being adopted and the extent to which use of undertakings has increased. More detailed analysis at police force level for the whole of Scotland may be useful in revealing what needs to be done to maximise the potential benefits of undertakings as a means of getting people to court.

Messages for Policy

8.25 Some of the main messages from the evaluation appear to be that:

- Greater flexibility in the terms of the Lord Advocate's guidelines is perceived as being necessary by all key stakeholder groups (police, Defence Agents and Fiscals) in order to ensure the optimum use and effectiveness of undertakings. In particular, greater flexibility in the time taken from release to appearance in court may mean that problems with gathering evidence and preparing quality reports may be overcome. This may also help to alleviate some of the communication problems that are occurring between Fiscals and the accused, as well as between accused and their Defence Agents, allowing both more time to initiate communications, where appropriate. Unlike custody cases whereby Defence Agents meet with their clients in cells ahead of court appearance, or citations wherein a copy of the complaint is issued at the same time as the accused is cited to court, the copy complaint is not issued in undertakings cases until the first calling in court. This, along with the short period of time between release on undertaking and first appearance at court, is what sets undertakings apart from other routes to court.
- There may be a need to review the communication strategy between Fiscals, Defence Agents and the accused. This is especially true in cases where alternative, non-court disposals are decided by Fiscals after undertakings have been issued, and in cases where no proceedings are marked. Ensuring that all relevant parties are aware of these decisions as soon as possible may reduce inconvenience to Defence Agents and accused, in particular.
- Although end-to-end targets are currently being met, the evaluation has shown that the percentage of undertakings cases being dealt with within 26 weeks has progressively declined over time since the start of 2009 with a corresponding upward trend in average time taken from caution and charge to verdict, both of which are unique to undertakings cases (and may be linked to a change in the case types for which undertakings are being used). A focus on getting people to court therefore needs to be carefully balanced with getting cases through court since it seems that, in some cases, a lack of time for communication and preparation is leading to ineffective first court hearings and continued churn, and undertakings cases not being dealt with at the earliest possible stage in some instances.

Conclusions

8.26 The evaluation has shown that there is generally good support for undertakings among criminal justice professionals and accused alike. The benefits to victims of bringing cases to court more quickly via undertakings is also recognised.

8.27 Despite some regional variation, police targets for getting undertakings cases to court, as well as Fiscal marking targets, are being met, as are the end-to-end targets for undertakings cases progressing through court. The speed of undertakings cases through court is also still faster than cited cases. Disappointingly, gaps in the data mean that it is not possible to say conclusively if undertakings are being used more post-reform, as was expected, or how compliance with undertakings compares to cited cases.

8.28 Despite some positive findings, there is also clear evidence of churn still occurring at the front end of the court journey for undertakings cases, as well as a lower rate of resolution at first calling. The evaluation perhaps, therefore, suggests a need to revisit some of the core principles of undertakings, and to consider further if speed at the early stages of the justice process has the desired impact on end-to-end summary justice performance overall. A key to the future success of undertakings, which will minimise negative impacts at later stages in the system, seems to be a more flexible timescale for the scheduling of undertakings cases in court and better communication between all parties concerned.

Appendix A – Methodology

Core Approach

The evaluation comprised a mixed methods approach that combined analysis of secondary data, collection of primary qualitative data from interviews and questionnaires, and a parallel cost-benefit analysis exercise. A staged approach was taken so that findings from early stages could inform the design and content of the later stages.

Secondary Data Analysis

Secondary data analysis focussed mainly on Key Performance Indicator (KPI) data from the Scottish Government's Criminal Justice Board Management Information System (CJBMIS) and the Monitoring Workbook. This included data from all partners agencies involved in the administration of undertakings including ACPOS, the SCS and COPFS. The KPI data analysed included:

- Number of undertakings issued;
- Number of standard prosecution reports submitted to COPFS;
- Alleged offences processed by use of undertakings;
- Use of undertakings conditions;
- Number of warrants granted for failure to appear at pleading diet or continued pleading diet while on an undertaking;
- Number of convictions for breach of undertaking conditions;
- Main penalty given for breach of undertaking;
- Percentage of accused appearing by undertaking on first calling in court within 28 days of caution and charge;
- Average number of diets per case;
- Percentage of summary criminal cases dealt with within 26 weeks; and
- Average time from caution and charge to verdict.

Following initial analysis of the KPI data and discussions with key stakeholders, four case study areas were selected in which to concentrate the qualitative research. These were based upon Local Criminal Justice Board (LCJB) areas, and were Ayrshire, Central, Lothian and Borders, and Glasgow and Strathkelvin.

Interviews with Key Stakeholders

In-depth interviews were conducted with a range of key stakeholders. This included 10 interviews with Sheriffs, six interviews with Justices of the Peace, nine interviews with Procurators Fiscal, nine interviews with Defence Agents, and 20 interviews with police operational supervisors (Inspectors and Sergeants). A total of eight group interviews were also conducted with police Constables with operational experience of undertakings.

As part of the evaluation, questionnaires were also issued to a small number of accused arrested and detained by the police where they were known by police to have previously been released on an undertaking. These participants were asked to comment on previous cases where they had been given an undertaking (not on the

current incident for which they had been arrested), and their responses were provided confidentially to the evaluation. Using this approach, a total of 11 responses from accused released on an undertaking were achieved.

Cost-benefit Analysis

A limited cost-benefit exercise was also attempted to assess whether the benefits i.e. savings generated by the reforms to undertakings, were sufficient to outweigh the corresponding burdens arising from the reforms. This encountered several challenges, not least being a lack of available data to inform its execution rendering a full economic analysis not possible. Instead, the evaluation considered the likely impact of the reforms on the workloads of the main criminal justice agencies involved in the administration of undertakings, as well as the impacts on failure to appear and repeat rescheduling of cases which may all have associated costs to the system.

Appendix B – Administrative Boundaries

Police Forces	COPFS	LCJB Areas	Sheriffdoms
Grampian	Grampian	Grampian	Grampian, Highland and Islands
Northern	Highland and Islands	Highland and Islands	
Tayside	Tayside	Tayside	Tayside, Central and Fife
Fife	Fife	Fife	
Central Scotland	Central	Central	
Lothian and Borders	Lothian and Borders	Lothian and Borders	Lothian and Borders
Strathclyde	Argyll and Clyde	Argyll and Clyde	North Strathclyde
	Glasgow	Glasgow	Glasgow and Strathkelvin
	Lanarkshire	Lanarkshire	South Strathclyde, Dumfries and Galloway
	Ayrshire	Ayrshire	
			North Strathclyde
Dumfries and Galloway	Dumfries and Galloway	Dumfries and Galloway	South Strathclyde, Dumfries and Galloway

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