UNIVERSITY OF LEEDS

Electronic monitoring in England and Wales

Anthea Hucklesby and Ella Holdsworth, University of Leeds, UK

Key Findings

- Electronic monitoring (EM) has become a credible tool of criminal justice.
- EM has universal appeal with many purposes identified. Chief amongst these was its perceived ability to bring about cost savings by operating as an alternative to prison.
- The recent development of EM has been hampered by problems with the procurement process.
- Radio frequency and GPS technologies have complimentary and distinct uses.
- The use of EM is highly structured, uniform and routinised, reducing the potential for its creative application to enhance its effectiveness.
- Private sector involvement in EM is accepted.
- EM remains largely disconnected from the wider criminal justice system.
- Policies and practices to ensure that EM is applied and used fairly with diverse populations are ineffective.
- Only limited data relating to EM are available restricting knowledge and understanding of EM.

Recommendations

Consideration should be given to:

- changing the eligibility criteria for HDC to remove the automatic exclusion of prisoners with a history of recall;
- the way in which HDC decisions are presented as the individual responsibility of prison governors;
- the legal regulation of GPS technologies for criminal justice purposes to ensure appropriate and proportionate use;
- piloting and evaluating new uses of EM such as bi-lateral victims' monitoring;
- ways to better tailor the use of curfews to the circumstances of individuals and cases to maximise compliance and completion;
- implementing mechanisms to incentivise compliance including structured phased reductions in curfew hours and ending orders earlier than planned;
- simplifying procedures to enable amendments to be made to monitoring requirements as a result of changes in individuals' circumstances;
- introducing new technologies and ways of working to improve the efficiency and effectiveness of EM such as 'plug and play' and biometric identification;
- ways to provide general support and advice unrelated to EM to monitored individuals;
- developing policies and procedures to ensure staff safety including effective communication of risk information and training;
- introducing consistent breach thresholds across EM modalities;
- developing mechanisms to improve awareness and appropriate use of EM amongst criminal justice practitioners;
- implementing mechanisms to improve joint working and lines of communication between the contractor and criminal justice agencies;
- implementing measures to ensure effective and timely data sharing between EM contractors and criminal justice agencies;
- introducing measures to ensure fair and consistent treatment of individuals from diverse communities
- reviewing contract requirements to ensure their workability, manageability and effectiveness for contractors and criminal justice agencies.

Co-funded by the Criminal Justice Programme of the European Union.
This briefing paper has been produced with the financial support of the Criminal Justice Programme of the European Commission (JUST/2013/JPEN/AG/4510). The contents are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

Introduction[1]

Electronic monitoring is used at all three stages of the English and Welsh criminal justice process: pre-trial as a condition of bail, as a sentence and in early release from prison (Home Detention Curfew). The principles behind the use of EM at each of these three stages are the same. Defendants/offenders are subject to a curfew, i.e. required to stay in at a particular address, for a fixed number of hours. Radio frequency (RF) technology is currently used for these schemes which are under the auspices of a nationally procured Ministry of Justice contract.

The Ministry of Justice has contracted the end to end EM operation to private contractors since the first trials in the late 1980s. During the research (2014-16) the way in which these contracts operated was going through a period of change. Between 2005 and early 2014, two private contractors, G4S and Serco, were responsible for EM provision. They operated in distinct geographic regions and were responsible for the entirety of EM provision. Since 2014, the configuration of EM has changed but not in the way envisaged originally when new government contracts were awarded in the summer of 2013. At the time of the research, a 'business as usual' model was operational whereby Electronic Monitoring Services (EMS), owned by Capita, was operating EM services across the whole of England and Wales using Serco/G4S equipment and software. New contracts, which split the operation of EM into four vertical lots (monitoring services including a processing centre, staff and vehicles; monitoring and mapping software; monitoring hardware (ankle tags); and the GSM telecommunications network) had not been implemented at the time of writing (February 2016). Therefore, the research was carried out at a time of considerable uncertainty. New contracts, which included new operating models and equipment, were anticipated but had been delayed. As a result, some of the work undertaken by EMS and many of the changes expected under new contracts were on hold. After the 2015 election the Conservative government were known to be exploring new and different uses of EM and potentially different organisational models. The drivers for this were numerous but included: pressure from the police and others to sanction more extensive use of GPS technologies; two influential reports also pushing for greater use of GPS as well as more flexible contracts,[2,3] dissatisfaction with the delays with the new contracts and the more general architecture of the new contracts; a growing consensus that prison was harmful and its population too high; and the need to find savings in government budgets. The Home Office was also keen to explore the contribution that EM could make in its areas of responsibility (immigration, policing and terrorism) and were in discussion with the Ministry of Justice about potential future uses under government contracts.

The fact that EM is operated by the private sector in England and Wales provides an important context to its development and use. The Probation Service was initially hostile to EM and has not been centrally involved in its implementation. This has had long-term consequences not least that EM is largely separate from, and runs in parallel to, other areas of criminal justice.[4] Private sector involvement in EM has also influenced its credibility mainly as a result of a number of scandals. Most notably allegations of over-charging levelled against G4S and Serco which resulted in a Serious Fraud Office investigation and a number of reviews of EM and the wider contracting landscape in criminal justice.[5] Despite these challenges there was widespread acceptance that the private sector would remain as EM equipment and service providers and there was little discussion, outside of the police, of greater involvement of statutory agencies or Community Rehabilitation Companies (CRCs). Indeed, one advantage of EM for some interviewees was that it was divorced from probation services bolstering its credibility.

EM modalities

EM is currently used in the following ways in England and Wales:

RF EM is used to monitor compliance with curfew conditions imposed on bail under the Bail Act 1976. Under the Act, bail conditions must be necessary *inter alia* to prevent absconding and/or reoffending and/or interference with witnesses. There is nothing explicit in the legislation which requires EM to be used only when defendants are at risk of pre-trial detention. Bail EM is usually a standalone order with no input from probation services. The Bail Support and Accommodation Scheme (BASS), which provides accommodation and/or support for defendants, may be imposed alongside other bail conditions including curfew conditions and therefore EM.

RF EM is also used to monitor curfew requirements of community orders and suspended

sentence orders. Curfew requirements are one of 12 possible requirements and can be used singly (i.e. a standalone order) or as one of a package (i.e. a multi-requirement order). Multi-requirement orders are managed by probation services (either CRCs or National Probation Service (NPS) depending on risk levels). Single requirement orders have no probation services involvement. The assumption is that multi-requirement orders are used for higher risk offenders and/or more serious offences than single requirement orders resulting in EM being utilised for a wide range of offenders/offences at the sentencing stage.

Home Detention Curfews (HDC) facilitate the early release of prisoners therefore impact directly upon the number of prisoners by reducing the time spent in prison. Until recently HDC was a standalone use of EM but since 2015 all prisoners released from prison are supervised by probation services. This development was not linked directly to the use of EM and the extent to which HDC and supervision are integrated is not clear. BASS is also available to prisoners released on HDC if they require accommodation and/or support.

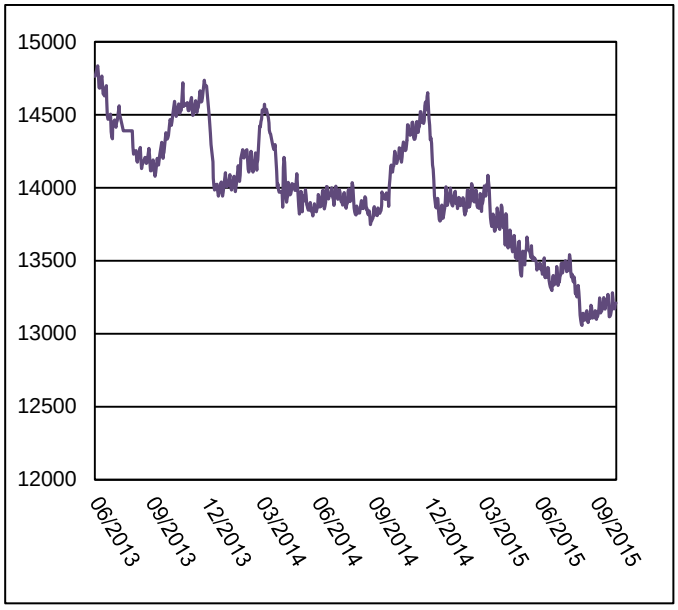
A small number of high risk offenders (mainly sex offenders) are monitored using GPS under the Ministry of Justice contracts. GPS is also used outside of these contracts in 'voluntary' police schemes. These schemes operate under Integrated Offender Management (IOM) schemes whose target group is usually prolific offenders involved in acquisitive crime. Offenders are 'volunteers' and they are GPS tracked 24/7. The schemes are locally funded initiatives (either by the police or Police and Crime Commissioners (PCCs)) and fall outside of any legislative framework. At the time of writing (February 2016) they were small-scale but some had been operational for significant periods of time. During the research the police were actively pursuing the use of GPS tracking as part of statutory orders including Criminal Behaviour Orders and Sexual Harm Prevention Orders.

A number of pilots were also taking place at the time of the research. A pilot of alcohol monitoring began in 2014 in four London boroughs operated and funded by the Mayor's Office.[6] An alcohol abstinence monitoring requirement (AAMR) may be attached to community or suspended sentence orders and requires offenders to wear a tag (so called sobriety bracelets) which measures alcohol use transdermally. The requirement can be attached singly or as part of the package of requirements. The original target group were those involved in offences linked to the night-time economy but it has been used predominately for different groups of offenders.[6] A second pilot of bilateral victims' monitoring was taking place in Northumbria funded by the PCC. It is a voluntary scheme aimed at defendants on bail awaiting trial for domestic violence offences. Take up was reported to be low because of defendants' reluctance to participate.

The use of EM

EM is available to any defendants and offenders who the courts consider are suitable for bail or community or suspended sentence orders. EM is therefore available to a wide spectrum of individuals and can be used as an alternative to imprisonment or other non-custodial sanction, to add credibility to bail or community sanctions, or to add an element of punishment to community sanctions. In both pre-trial and sentencing stages, RF EM is used as a tool to enforce curfew conditions or requirements. The use of EM in early release under HDC is more regulated. Prisoners serving 4 years or more or who have been convicted of violent or sexual offences or who have breached HDC at anytime in the past are ineligible.

Figure 1: Number of adults subject to EM June 2013 and October 2015



Data on the use of EM are not currently published but were provided by the Ministry of Justice specifically for this research. It is not possible to identify long-term trends in the use of EM because data were recorded differently prior to 2013. Shorter term data presented in Figure 1 suggest that there has been a significant reduction in the use of EM. It shows that between June 2013 and October 2015 the

number of individuals monitored reduced from 14,762 to 13,210 representing a decrease of 11%. Nevertheless, England remains the highest user of EM amongst the 5 jurisdictions in this study.

The impact of EM on the use of imprisonment is a complex question and no firm conclusions can be drawn from England and Wales. Figure 2 demonstrates that the prison population rose steadily between 2002 and 2014 mainly as a result of an increasing sentenced population, suggesting that the relatively high use of EM at both the sentencing and early release stages has not resulted in falls in the prison population. Indeed, England has one of the highest imprisonment rates in Europe at 147 per 100,000 population[7] and is also a high user of EM suggesting that EM supplements rather than provides an alternative to imprisonment. Yet, EM alongside other community sanctions has never been defined primarily or legally as an alternative to prison. Its potential applications and uses extend beyond this limited role. Nevertheless, there is no doubt that the prison population would be higher, albeit modestly, without HDC and potentially other applications of EM.

Figure 2 also shows that the pre-trial population has remained stable between 2002 and 2015 at a time when it could be expected to have increased as a result of legislative and policy change.[8] It is possible, therefore, that the introduction of EM for this group has reduced the use of pre-trial imprisonment but this is impossible to prove.

Figure 2: Prison population England and Wales 30th June 2002-2015[9]

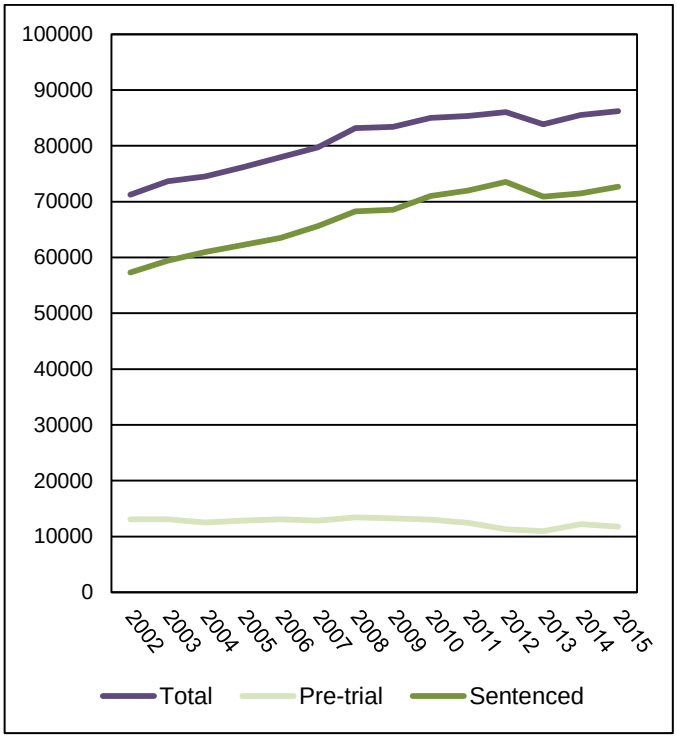


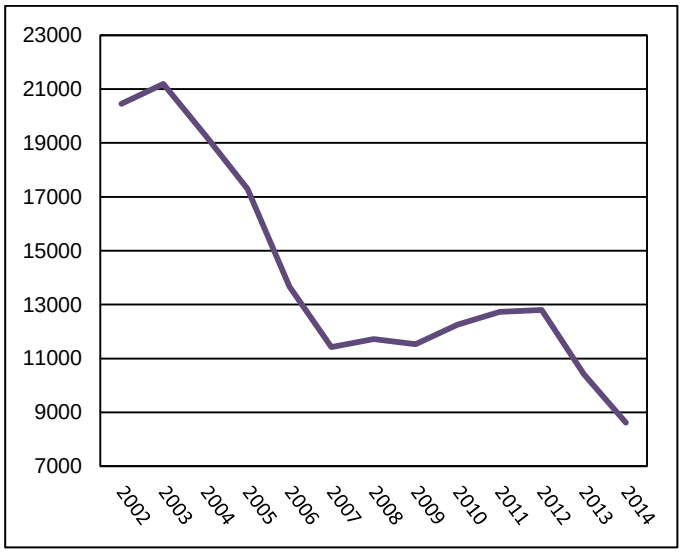
Table 1 provides an overview of the number of adults over 18 electronically monitored on 30th November 2015. It demonstrates that community sentences accounted for half of all EM use. Single and multi-requirement use of EM for community sentences was almost even at 2986 and 2931 respectively. Table 1 shows that just under a third of use was at the pre-trial stage as a condition of bail with a fifth relating to early release under HDC.

Table 1: Number of adults subject to EM 30 Nov 2015[10]

	Number	%
Bail condition	3617	31
Community sentence (community orders and suspended sentence orders)	5917	50
Home Detention Curfew (HDC)	2208	19
Total	11742	100

Much more data are published relating to HDC than other applications of EM. Figure 3 demonstrates that the use of HDC has decreased since 2002 dropping from a high of 21,188 per annum in 2003 to 8,614 in 2014. The decline is partially explained by a reduction in the eligible prisoner population as a result of a rise in the number of prisoners serving sentences of 4 years or more and/or serving sentences for sexual and violent offences.[9] Interviewees, however, were clear that risk averse attitudes of prison decision-makers, delays in the process and the ineligibility of prisoners who have previously breached HDC or been recalled were the primary reasons for HDC being used less.

Figure 3: Number of prisoners released annually on HDC 2002-2014[11]



The majority of monitored individuals are men. Women comprised 9 per cent of adults on bail (n=311), 12 per cent of those on HDC (n=262) and 17 per cent of adults on community sentences (n=1005) on 30th November 2015. No data are available on the use of EM amongst minority ethnic groups and these data are routinely missing from court orders received by EMS. There are geographic differences in the use of EM. Data show that EM is used in some courts significantly more than others. For example, 13 magistrates' and Crown courts imposed 50 or more EM bail conditions on one day in 2014 comprising 26 per cent of the total orders. Similarly, 24 courts imposed community sentences with EM requirements in 50 or more cases in one day comprising nearly a third of all community orders including EM imposed. Whilst some of the differences can be explained by the size of the courts it does not fully account for the varied use. Low levels of knowledge and understanding of EM and its potential uses was consistently highlighted by interviewees as a significant contributor to low use.

Technologies

Whilst the majority of EM utilised RF technology there was a general acknowledgment that GPS would be used more in future. The police and PCCs were the most enthusiastic about GPS technologies generally and specifically about their potential contribution to policing. Without exception, the police and PCCs were critical of the current government contracting arrangements which they viewed as restricting or preventing their use of GPS EM. Outside of these groups, however, interviewees were more circumspect about the police use of GPS specifically and the use of GPS generally. In relation to the former, concerns were raised about whether the police were using GPS and the data gleaned from it appropriately and the extent to which individuals freely consented to being tracked. In relation to the use of GPS more generally, interviewees outside of police circles viewed GPS as usefully supplementing, but not replacing RF technology. RF EM was viewed as fit for purpose in many cases, cheap, reliable and easy to operate and understand. It also has the added value of providing structure to monitored persons lives when compared to GPS. By contrast, GPS had the advantage of being able to implicate or exonerate individuals from specific offences and monitor compliance with exclusion zones which were viewed as particularly useful in cases of domestic violence. Indeed, the potential for EM to be used in cases involving domestic violence and the introduction of bi-lateral victims' monitoring schemes was supported by a significant number of interviewees, although only with clearly defined and readily available back up to deal with critical incidents. The drawbacks of GPS, limited battery life and weak signals, were widely acknowledged as restricting its usefulness. Requirements to charge equipment were often viewed an onerous, attachable chargers would assist but individuals running down batteries, whether on purpose or by accident was viewed as a significant challenge for the credibility of GPS, its enforcement and cost-effectiveness.

The delays in the implementation of the 2013 contracts were inextricably linked to delays in the delivery of the promised new equipment which were to provide dual RF and GPS capability, thereby dealing with the perceived inadequacies of both technologies.[12] Frustrations with the contract arrangements also related to their perceived inflexibility. Some interviewees pointed to different technologies (usually GPS but also alcohol and victims' systems) which could not be utilised under existing or new contracts. They derided the inflexibility of old and new contracts with one equipment provider over lengthy timescales echoing recent reports.[2] They wanted to see much more flexible and responsive arrangements whereby different and new technologies could be 'plugged into' a national platform whenever necessary. Yet, there are significant questions about how viable such a system would be given the complexities of implementing and integrating the four lots of the new contracts, which was viewed as a significant challenge by those involved and problems arising from integrating hardware and software not initially designed to operate together. There were also mixed views about the relative merits of local and national contracting arrangements with perceived increased flexibility provided by the former with consistency and equipment and operational compatibility provided by the latter.

Objectives of EM

EM was viewed as having multiple purposes. There was general agreement about what these were with different emphasis being placed on individual objectives. The most commonly reported purposes were reducing costs, reducing the prison population and increasing deterrence thereby potentially reoffending. EM was viewed as substantially

cheaper than prison and most, if not all, other community sentences. Cost reductions were linked to EM operating as an alternative to custody and a mechanism by which prison populations could be stabilised or reduced. IOM schemes reportedly saved police resources reducing the physical monitoring of individuals and investigation costs via exonerating or implicating individuals' involvement in specific offences. Pre-trial use of RF EM also saved police resources by eliminating the need to monitor curfews physically or impose reporting conditions. EM reduced reoffending primarily, but not exclusively, via deterrence. GPS added value: acting as a greater deterrent; providing more information about offenders' compliance; and operating as an intelligence gathering tool providing data on offenders, their associates and wider criminal activities. RF was less useful in this regard but had some deterrent value and helped to locate wanted individuals easily and cheaply.

Rehabilitative goals were subservient to cost, deterrence and prison reduction but were widely discussed. Supporting previous research, EM was viewed as 'habit breaking' disrupting negative routines and relationships whilst also providing structure in individuals' lives and improving and supporting community ties.[13] RF EM is arguably better at structuring monitored individuals' lives. For GPS to provide structure requires either inclusion zones or curfews to be imposed therefore reducing the increased flexibility of movement associated with its use. The most prominent official purpose of EM, punishment, was rarely mentioned perhaps because it was a taken for granted goal.

Creative use

The use of EM in England is highly structured and routinised with limited examples of creative use.

Duration and intensity of EM

Table 2 shows the maximum and minimum duration of EM for different modalities. It shows that at the pre-trial stage EM can be used indefinitely. By contrast, maximum durations of EM are prescribed for sentencing and early release modalities. However, it is possible for individuals to be monitored for much longer than the maximums due to multiple orders or bail periods being imposed consecutively and/or concurrently. Indeed, use of EM on multiple orders simultaneously was one of the practices highlighted by the overcharging scandal.[14] It also may be potentially confusing to monitored individuals. Such confusion is most likely to originate from differences in the duration of hours and breach practices between different modalities of EM but it may also occur when the modality is the same but different curfew hours are imposed. As Table 2 illustrates courts have considerable latitude in the curfew hours they can imposed. There are no core hours when individuals must be monitored, hours can be broken up during the day as many times as required and curfews do not have to be imposed 7 days a week giving courts maximum flexibility to be creative and flexible. In practice, however, hours are routinised, almost always involving overnight curfews of 11 or 12 hours between 19.00 and 07.00 seven days a week. So routinised are practices that a recent increase in the legal maximum hours from 12 to 16 hours for community and suspended sentence orders was reported to have had little impact. These practices reportedly resulted from references to examples of curfew hours in original policy documents and lack of knowledge and understanding of probation staff and judges and magistrates. However, standardised use is also easier and cheaper to manage for EM contractors and more diverse practices would increase operational challenges and costs.

Table 2: Durations and curfew hours

	Minimum duration	Maximum duration	Minimum hours	Maximum hours
Bail	Next court hearing		None	None
Community and suspended sentence orders	None	12 months	2	16
Home Detention Curfew (HDC)	14 days	4.5 months	9	None
Police GPS	None	None		
Alcohol abstinence monitoring requirement (AAMR)	None	120 days		

Similarly legislation does not preclude curfew hours being changed during the lifetime of orders as a reintergrative or exit strategy or to reward compliance. In practice, hours remain unchanged until the end of orders unless the circumstances of monitored individuals change. Problems arising immediately after release from prison are well understood and include higher risk of death.[15] There is a risk that similar behaviours take place when EM ends and that an exit strategy which reduces curfew hours and/or days may reduce the likelihood of harm and return to previous behaviours. Such practices would provide a structured phased return to freedom. In the Netherlands, three levels of restrictions exist and offenders move to less restrictive curfew hours over the lifetime of their orders automatically if they remain compliant. In England, there is also no mechanism to end EM earlier than planned to reward compliance as already exists for community orders.

Table 2 also demonstrates that the fact that the police IOM scheme fall outside of the legislative framework results in no maximum duration of GPS tracking. Consequently it can be used indefinitely raising proportionality and ethical issues.

Variations to monitoring requirements

Monitored individuals are able to request changes to curfew requirements at any time. The contractor is unable to make changes to the requirements although they were previously allowed to sanction minor or temporary changes to curfew requirements without consulting courts or prisons. Now all requests must be made to the agency which imposed EM although monitored individuals continue to contact the contractor suggesting limited knowledge of the policy and adding to the workload of the control centres. The process now involves courts (bail and single requirement community orders), probation services (NPS or CRCs) (multi-requirement community orders) or prisons (HDC) or any combination of these if individuals are monitored on more than one order. This adds complexity and the potential for confusion which may also arise if individuals are subject to different EM modalities at the same or over time. The extent to which variations are granted depends on the modality, reasons for the request and the evidence provided. Variations are reportedly more likely to be granted for community orders than bail or HDC and most likely to be successful if they are work-related.

Two issues of concern were raised. One, the time taken for requests to be processed was raised as a concern. The length of the process made it inflexible and unresponsive particularly to circumstances which may change at short-notice such as work shift patterns or as a result family illness or death. The delays resulted in difficult situations for staff who could not sanction changes in circumstances even when they expected that they would be agreed. It also heightened the likelihood of non-compliance and the instigation of breach proceedings which are later withdrawn. Two, delays in notifying the contractor of changes to monitoring requirements resulted in breach action commencing when variations had been granted. Both issues result in additional costs for the criminal justice process.

The monitoring process

The monitoring process is operated exclusively by the private sector who are responsible for installing and deinstalling equipment, dealing with queries from monitored individuals and investigating breaches. To facilitate this, two control centres run 24/7 alongside teams of field monitoring officers (FMOs) who visit monitored individuals' residences. A proportion of FMOs has always worked from home but numbers are increasing. This makes it logistically easier to cover large geographic areas and reduces costs but also raises security challenges relating to staff, data and equipment.

The monitoring process is regulated via the contracts between the government and private sector with payments and fines linked to specified activities. Some of these raise considerable logistical challenges for the contractor. Contracts stipulate the equipment must be fitted between the start of the curfew and 24.00 on the day that it is imposed by the courts or individuals leave prison as long as the contractor was made aware of the order by 15.00. Otherwise the equipment may be fitted the following day. Consequently, contractors rarely have more than 5 hours to ensure that equipment is fitted resulting in considerable logistical challenges. Communication difficulties with the courts also raise challenges for contractors. They reported receiving inaccurate or illegible information relating to curfews making it difficult to ensure that individuals are tagged within the required time period. Fitting equipment at courts or prisons, so called 'plug and play', would remove some of the logistical challenges and be more cost efficient. This could be facili-

tated by ensuring that monitoring boxes contained GPS trackers.

Similarly, deinstallations require visits to monitored individuals' addresses between the start of the curfew and midnight on the final day of EM under HDC and sentences. Alternatives, including requiring individuals to attend courts or prisons to have equipment removed are used in other jurisdictions with no apparent downsides. The process for ending periods of EM as a bail condition is different. Originally equipment was removed on the evening before court appearances and reinstalled if bail was reimposed therefore complying with the legal status of bailed individuals. Now, however, equipment is not removed for court hearings, instead staying in place as long as the defendants in on bail and until contractors are told to remove it by the court. Communication difficulties between the courts and the contractors were highlighted resulting in contractors being unaware that individuals were no longer on bail. This was reported to result in individuals being monitored illegally, confusion about payments due to contractors and unnecessary breaches.

The ability for monitored individuals to contact the control centre 24/7 is a strength of the English system. The control centres can be contacted via a Freephone number or the monitoring box. Individuals regularly contact control centres to explain absences or other violations, to seek clarification and reassurance about curfew related matters or to seek general support. FMOs are asked a similar range of questions during visits. Staff are trained to deal with curfew related queries but not unrelated matters, yet it is clear that more general support is required. Currently, calls are transferred to other organisations where possible and staff are provided with a list of relevant organisations to facilitate this. However, it is not always possible to put individuals in contact with organisations directly so staff deal with these situations on an *ad hoc* basis.

The control centres initiate contact with monitored individuals only in prescribed circumstances. No contact is made if individuals are fully compliant, although this is rare. Most contacts result from minor time violations or problems with the equipment. Individuals are contacted if they have not left their address for five consecutive days but no visits are routinely undertaken to check on monitored individuals' well-being. Consequently, routine support is only available by telephone and when initiated by monitored individuals. Visits take place only when problems arise and are mainly conducted to investigate issues with equipment or potential breaches. Text messages are sent to alert individuals of impending visits by FMOs but mobile telephone numbers are only available in approximately half of cases.

Most visits to monitored individuals were undertaken alone. EMS has policies and procedures in place relating to staff safety. Staff also receive training to deal with situations in which they feel threatened. However, FMOs reported a general lack of awareness of, and trust in, the procedures resulting in them sometimes feeling unsupported and unsafe.

Consent

In the other jurisdictions gaining the consent of individuals to be electronically monitored is an important aspect of the monitoring process.[16] In England, however, consent is assumed rather than actively sought. Individuals are asked to sign to confirm that the monitoring process has been explained to them but this is to avoid repercussions in the event of breach. Individuals are able to withdraw their consent at anytime but there are consequences for doing so. Householders are also able to withdraw their consent for monitoring to take place at their home but this involves contacting the contractor or taking the monitoring box to a police station. Several interviewees raised concerns about the potential for householders to feel coerced into accepting that individuals could be monitored in their homes.

Compliance, enforcement and breach

EM provides certainty and evidence of breach and this was viewed as its major strength over other forms of community sentences. Violation reports (detailing when monitored individuals leave and enter their addresses for RF EM or enter and leave exclusion/inclusion zones for GPS) can be produced but are not routinely available. The sensitivity of the equipment means that minor violations are common. All violations are followed up via the control centres with EMS contacting, and where necessary visiting, monitored individuals. The system for dealing with alerts which result from violations is highly automated so that both incoming and outgoing calls are randomly assigned to control centre staff thereby maximising the speed and efficiency with which they can be dealt with.

Violations are related to equipment (power loss or damage or interference with equipment), curfew hours (missing part or all of a curfew

period) or behaviour towards staff (violence or threats to staff). Time violations are the most common type of violation. Breach thresholds in relation to time violations vary between EM modalities potentially resulting in confusion for monitored individuals who may be subject to different modalities of EM simultaneously or at different times. The breach threshold for bail is very short resulting in a significant workload for the contractor and the police who have responsibility for processing the breach. The breach threshold in terms of missed curfews for other modalities is less strict: two hours of time violations must be accumulated over the duration of the whole order length or a whole curfew period is missed. Violations are split into two levels: more serious violations include: removing tags, missing whole curfew periods or more than one accumulations of two hours of time violations and threatening staff. Less serious violations include one instance of accumulated time violations, power failure and tampering with equipment. More serious violations result in immediate breach actions whereas warning letters are the initial response to less serious violations.

The breach policy is highly regulated and routinised. In the event of a breach, statements are prepared by EMS and sent to the responsible officer which is either the police (bail), CRC/NPS (community sentences) or the Public Protection Casework Section (PPCS) of the prison service (HDC). Short timescales are specified for the paperwork to arrive at its destination. Explanations are only then sought from monitored individuals who have 5 days to respond. Courts make final decisions relating to breach in pre-trial and sentence cases. In pre-trial cases, breaches result in a reconsideration of bail and may result in a remand in custody or on bail with the same or different conditions. Courts also make the final decisions in relation to community sentences which can result in community orders being revoked and replaced with any sentencing option including custody or additional punishment such as a fine or added days/hours under curfew. In both cases, interviewees were critical of the leniency with which courts dealt with breaches.

PPCS make decisions in relation to HDC and may recall individuals to prison to serve the remainder of their sentence. Statistics relating to breaches of HDC are published, in contrast to other EM modalities. In 2014, 842 individuals were recalled to prison, 601 as a result of breaching curfew requirements.[11] The number of HDC recalls has reduced significantly from a high of 3003 in 2004,[11] although a higher proportion of recalls now relate to curfew breaches. In 2011, 58 per cent (n=789) of HDC recalls related to curfew breaches compared with 71 per cent in 2014.[11] In 2014 three quarters of curfew breaches related to time violations (n=453) with nearly a fifth (n=105) resulting from equipment tampers.[11]

Various issues were raised relating to enforcement and breach. One, contracts require EMS to notify responsible authorities each time breach thresholds are reached during different curfew periods. Consequently, multiple paperwork is prepared by EMS and sent to agencies if individuals violate during more than one curfew period. This results in agencies, particularly the police because of the short breach threshold for bail, being overwhelmed with breach statements relating to multiple breaches for individuals. These may strengthen the case to instigate formal breach action but agencies were adamant that they only required one breach notifications and that subsequent notifications served little or no purpose. Two, the police were also notified of breaches involving tampers and attempts to tamper with equipment and they questioned whether it was necessary and proportionate to arrest someone in these circumstances. Three, efficient operation of the process requires that EMS are notified of the identity of responsible officers but it was reported that this was not always the case. Four, delays were reported in notifying EMS about the outcome of breach proceedings. In such circumstances, EMS was unable to close the case and continue to monitor individuals. Inaccurate or delayed paperwork was a broader concern. Multiple examples were provided of cases in which breaches were notified by EMS but variations had been agreed or the order had ended were identified. In the case of bail, this may lead to claims of unlawful arrest. For this reason, at least one police force spent time ‘quality assuring’ statements received from EMS to ensure that the breaches were real. The volume of breach notifications and the inaccuracies in the paperwork had reportedly contributed to the police losing confidence in RF EM. Five, questions were raised about the ability of the police and other agencies to deal with the level of breaches expected if GPS is more widely introduced. Given the short battery life of GPS and experience with the voluntary schemes, interviewees expected the num-

ber of breaches resulting from failures to charge equipment to increase significantly.

Multi-agency working and communication

EM continues to run largely independently from other parts of the criminal justice process. Criminal justice practitioners' awareness of EM and how it operates was reportedly patchy. Previously, contractors had resourced awareness raising activities with practitioners but this has stopped when the tendering process began. Several interviewees suggested that this may explain the drop in use of EM but it also limits the potential for messages about more creative use of EM to be conveyed. Communication problems between EMS and criminal justice agencies remained so that EMS was operating without being fully aware of information relating to monitored individuals including basic details such as addresses, curfew hours and so on which are required for them to do their work and risk information to ensure the safety of their staff. Communication issues were hampering the efficient and effective use of EM and had a negative impact on the credibility of EM.

Initiatives were being developed to improve lines of communication. Most significantly, a portal would enable information relating to monitored individuals to be accessed and updated by all relevant practitioners. There was general agreement that this would improve communication but this was one of the elements of the new contracts which was delayed and it was unclear when it was likely to be implemented.

Electronic monitoring data

EM produces a significant amount of data. GPS technologies collect considerably more detailed data on individuals' movements but both RF and GPS technologies collect data 24/7. Data collected via EM is stored indefinitely and the amount of data is significant given the number of individuals monitored and the length of time EM has been used in England. The data are owned by government but are stored on servers belonging to private sector companies including those who are no longer contracted to provide services. The Ministry of Justice do not currently have routine access to these data, instead they have to request information from the private contractors.

Data protection concerns were mainly discussed in relation to the police use of GPS tracking and the ways in which they may be utilising data. One of the advantages of the Buddi equipment (widely used by the police) frequently mentioned by police interviewees was that they had unfettered access to the data created. This allowed them to routinely match GPS tracking data with crime data and Google maps. These practices raise significant data protection issues which were of concern to many interviewees outside of the police. By contrast, government GPS schemes limit access to data by working with a system of alerts when restrictions are violated which was viewed as a more acceptable approach.

EM data including those gleaned from RF can be used in a number of ways to assist the police with their criminal investigations. The police regularly request and are provided with data relating to monitored individuals under Ministry of Justice schemes. The process is regulated to ensure that they only have access to information relating to specific individuals and circumstances. Generally, police interviewees were frustrated that they did not have greater and more routine access to EM data which they viewed as an important intelligence tool. Ministry of Justice and Home Office officials were generally concerned about police having greater access to data and were content with current arrangements which include a formal request procedure.

The use of SCRAM (a US based company) technologies for the Mayor of London Office for Policing and Crime (MOPAC) alcohol monitoring pilot raised issues about the storage of data outside of the European Union where data protection legislation does not apply. Consequently, a complicated process has been put in place to ensure that personal data are not identifiable but which increases the complexity of dealing with violations and which are unlikely to be viable for large groups of individuals.

It is clear that issues relating to the storage and use of EM data are becoming more urgent. Consequently consideration should be given to a thorough review of data protection policy particularly relating to uses outside of Ministry of Justice contracts.

Despite the significant amounts of data produced by EM, accessing data in a format useful for the research was challenging. In England, even basic statistical data are unavailable which enabled only a partial picture of EM use to be constructed. Very little data relating to EM are published and none in relation to its use as a condition of bail or a single requirement of a community sanction. This inevitably impacts upon levels of knowledge and under-

standing of EM and reduces its transparency and credibility as a penal measure. It is understood that plans were in place to publish data relating to EM and it is recommended that this is implemented without delay.

The lack of data, published or otherwise, hampered the current research and will inevitably limit future research activities as well as the public's understanding of EM. It also precluded any conclusions being drawn about the effectiveness of EM based on statistical analysis of quantitative data.

Diversity

Knowledge and understanding of diversity issues arising from the use of EM were limited, particularly in relation to religion. Relevant data and information were also scarce and no monitoring appears to take place. Court paperwork makes provision for such information to be recorded but in practice the data are often missing making it difficult for contractors to plan strategies to deal with issues such as disabilities and language support. Generally, gender was most visibly considered. For example, at least one female FMO always visits monitored females but this is primarily about protecting the contractor and their staff. Resources are in place to deal with monitored individuals whose are unable to understand English via a telephone translation service. However, there were mixed views about how effective this was in practice. In the field, the translation service was reportedly used as a last resort with family members usually assisting with communications. In the control centres, the process for accessing the service was a barrier to its effective use. Literature on EM was reportedly available in a range of languages but FMOs suggested that it was unavailable. In practice, staff reported receiving no training on diversity issues, dealing with situations which arose on the basis on their common sense and experience.

The future of electronic monitoring

Without exception interviewees expected and welcomed the expansion of EM in the future both in terms of the number of individuals monitored and monitoring modalities. The Government has also signalled its intention to use EM more extensively via its 2015 manifesto pledge[17] and announcements in 2016 to pilot the use of GPS and extend the MOPAC alcohol monitoring pilot.[18,19] There was a clear confidence that EM had the potential to be a credible and cost-efficient tool to support and enhance the work of the criminal justice (and immigration) system and to reduce the use of prison (and immigration detention centres) but that this had been hampered by the way in which the procurement of new contracts had been managed. The police and PCCs favoured local procurement arrangements, but other groups were more circumspect suggesting that existing arrangements with a national contract under government control which was procured and managed well also had advantages.

---

1. The research for this paper was conducted between May 2015 and January 2016 and included 18 days of observation and 68 interviews with policy-makers and practitioners.
2. Geoghegan, R (2012) *Future of Corrections: Exploring the Use of Electronic Monitoring*, London: Policy Exchange.
3. Lockhart-Mirams, G., Pickles, C. and Crowhurst, E. (2015) *Cutting crime: the role of tagging in offender management*, London: Reform.
4. Criminal Justice Joint Inspectorate (CJJI) (2008) *A complicated business: An inspection of electronic monitoring by HMI Probation, HMI Constabulary and HMI Courts Administration*, Manchester: HMIP.
5. Nellis, M. (2014) 'Upgrading electronic monitoring, downgrading probation: reconfiguring 'offender management' in England and *Wales' European Journal of Probation*, 6(2): 169-191.
6. Pepper, M and Dawson, D. (2016) *Alcohol Abstinence Monitoring Requirement: A process review of the proof of concept pilot,* London: MOPAC
7. Institute for Criminal Policy Research (ICPR) (2016) *World Prison Population List*, 11th Ed at: http://www.icpr.org.uk/media/41356/world_prison_population_list_11th_edition.pdf (24/02/2016).
8. Hucklesby, A. (2009) 'Keeping the lid on the prison remand population: The experience in England and Wales', *Current Issues in Criminal Justice*, 21(1): 3-23.
9. Ministry of Justice (MoJ) (2014) *Offender management annual tables 2013* at: https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-december-2013-and-annual; MoJ (2015) *Offender management statistics quarterly: October to December 2014 and annual* at: https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2014-and-annual; MoJ (2016) *Offender management statistics quarterly: July to September 2015*, London: MoJ at: https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2015 (accessed 24/02/16)
10. Ministry of Justice (2015) Unpublished.
11. Ministry of Justice (2015) Table A3.4
12. Contracts to provide new equipment were cancelled in February 2016 with the intention of procuring ready to use equipment.
13. Hucklesby, A. (2008) 'Vehicles of desistence: the impact of electronically monitored curfew orders', Criminology and Criminal Justice, 8(1): 51-71.
14. Comptroller and Auditor General (2013) *'The Ministry of Justice's electronic monitoring contracts'*, London: NAO.
15. Farrell, M. and Marsden, J. (2007) 'Acute risk of drug-related death among newly released prisoners in England and Wales', *Addiction,*103: 251-252.
16. Hucklesby, A., Beyens, K., Boone, M., Dünkel, F., McIvor, G. and Graham, H. (2016) *Creativity and effectiveness in the use of electronic monitoring: a case study of five European jurisdictions*, Briefing paper at http://emeu.leeds.ac.uk/.
17. The Conservative Party (2015) *The Conservative Party Manifesto: Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future* at: https://www.conservatives.com/manifesto
18. Cameron, D. (2016) 'Prison reform', 8 Feb at Policy Exchange, London at: https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech (accessed 29/02/16).
19. Ministry of Justice (2016) *'Sobriety tags' rolled out across London',* Press Release 25/02/2016 at: https://www.gov.uk/government/news/sobriety-tags-rolled-out-across-london. (Accessed 29/02/16).

Further information is available from: Professor Anthea Hucklesby, School of Law, University of Leeds, Leeds, UK, A.L.Hucklesby@leeds.ac.uk

This briefing paper is one output from the European project: 'Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states' by Professors Anthea Hucklesby (University of Leeds, UK), Kristel Beyens (Vrije Universiteit Brussel, Belgium) Miranda Boone Utrecht Universiteit, the Netherlands), Frieder Dünkel (Universität Greifswald, Germany), Gill McIvor (University of Stirling, Scotland) and Dr Hannah Graham (University of Stirling, Scotland). Further information about the project including briefing papers and full reports from each jurisdiction and a comparative report and briefing paper can be found at: www.emeu.leeds.ac.uk. Alternatively contact Professor Anthea Hucklesby (A.L.Hucklesby@leeds.ac.uk)