Bailed Out: Stakeholders and Defendant Experiences of the Bail Support Services Pilot Programme

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Abstract

Despite indications that the overall crime rate and full prison population in New Zealand has fallen over the past ten years, the pretrial population continues to increase and represents among the highest growth rates in the OECD. There is research suggesting that an increase in the pretrial population has numerous negative impacts on both defendants and the wider community. This qualitative study analysed the opinions of those involved in a new pilot program designed to address New Zealand’s pretrial population concerns run by the Department of Corrections. The goal of this thesis was to understand the strengths, weaknesses and opportunities for the programme from those who designed it, work under it or are clients of it.

Thirty-two participants were recruited via their contact with the program. These participants were divided into stakeholder and defendant groups. Stakeholders were selected from a variety of professional backgrounds, including bail support officer, bail support manager, defense lawyers, police prosecution and Judges. Thematic analysis found that stakeholders were mainly concerned with the level of communication both about and within the programme, the level of training that staff received and the amount of practical and cultural resources available. Defendants reported that person-to-person contact with professional staff and having access to services was important. Overall, both stakeholders and defendants spoke mostly positively about the program and the changes it was trying to make to the pretrial justice system. Concerns about the programme’s implementation, structure and perceived effectiveness were also raised by numerous participants.

A summation of the participants’ views is provided with an aim to see if the pilot program achieves its stated goals and function. Wider implications around the future of the programme and New Zealand’s pretrial justice system are considered, along with future
research directions and discussion of how the programme may move forward and address the concerns and opportunities raised by the participants.
# Table of contents

Acknowledgements .............................................................................................................................................................................. ii

Abstract ............................................................................................................................................................................................. iv

Table of contents ................................................................................................................................................................................. vi

Chapter One – Introduction, Literature Review and Purpose ............................................................................................................ 1

Introduction to this study ........................................................................................................................................................................ 1

How the New Zealand pretrial system works .................................................................................................................................. 3

The increasing rate of custodial remand ........................................................................................................................................ 4

Reasons behind the increase in the pretrial population .................................................................................................................... 6

The impacts of increasing custodial remand .................................................................................................................................... 7

Negative impacts of increased incarceration time ............................................................................................................................. 10

Racial disparity in the pretrial process .............................................................................................................................................. 10

Evidence based risk assessment ......................................................................................................................................................... 13

Pretrial supervision ............................................................................................................................................................................... 15

Pretrial around the world and in the United States of America ......................................................................................................... 16

The District of Columbia (Washington D.C.) ................................................................................................................................. 18

The State of Kentucky .......................................................................................................................................................................... 19

The State of New Jersey ..................................................................................................................................................................... 20

Australia ............................................................................................................................................................................................ 20

Canada ............................................................................................................................................................................................. 21

England and Wales .............................................................................................................................................................................. 22

Bail Support Services ......................................................................................................................................................................... 25

The current study: research aims and questions ............................................................................................................................. 28

Chapter 2: Methodology ................................................................................................................................................................. 30

The qualitative approach of this study ............................................................................................................................................... 30

Situating the research .......................................................................................................................................................................... 31

Qualitative research characteristics .................................................................................................................................................. 31

Reliability and validity ....................................................................................................................................................................... 32

Personal reflection .............................................................................................................................................................................. 32

Methodology ...................................................................................................................................................................................... 33

Ethics approval .................................................................................................................................................................................. 33

Recruitment ....................................................................................................................................................................................... 33

Participants ....................................................................................................................................................................................... 34

Data collection .................................................................................................................................................................................. 37

Stakeholder interviews .................................................................................................................................................................. 37
Defendant interviews ........................................................................................................ 37
Data analysis .................................................................................................................. 39
Step 1: Becoming familiar with the data .......................................................................... 39
Step 2: Generating initial codes ...................................................................................... 39
Step 3: Searching for themes ......................................................................................... 40
Step 4: Reviewing themes .............................................................................................. 40
Step 5: Defining and naming themes ............................................................................. 41
Step 6: Producing the report ......................................................................................... 41
Chapter summary ........................................................................................................... 42
Chapter 3: Responses of professional stakeholders to the Bail Support Service pilot and the wider New Zealand pretrial justice sector ................................................................. 43
The importance of early and clear communication and collaboration with stakeholders .... 45
Lack of clarity around the aims and function of the BSS when implemented ................. 45
Better communication and collaboration for the future .................................................... 46
Early and sufficient training of staff is crucial ..................................................................... 49
Early training of BSS staff was inconsistent .................................................................... 49
Future training needs to be specific, early and ongoing ................................................... 52
Sufficient practical and cultural resources are required ....................................................... 54
Practical and cultural resources are currently not satisfactory ........................................... 54
Building future practical and cultural resources is necessary ........................................... 56
Increasing bail ‘success’ is important and could be achieved through the BSS ............... 58
Willingness to engage with services ............................................................................... 58
Strong personal relationships are a protective factor ....................................................... 59
Communication skills are an important factor ................................................................. 60
Future changes to increase bail ‘success’ ......................................................................... 60
Accommodation is extremely important and a constant issue ........................................... 63
There is a lack of suitable accommodation for people on bail ........................................... 63
Practicality and reliability issues are a major contributor to finding accommodation ....... 64
The future of the BSS could be linked to pretrial system changes .................................... 68
Legislative change may be necessary for the BSS to survive, but it may be too early to change .................................................................................................................................. 68
There is no consensus as to whether further discretion should be given to the BSS team ........................................................................................................................................... 70
Summary .......................................................................................................................... 71
Chapter 4 – Responses of defendants using the Bail Support Service pilot ..................... 73
Person-to-person contact is most important ..................................................................... 74
The BSS helped defendants understand the justice system, to an extent ..................77
Defendants need more knowledge of the justice system ........................................78
The BSS helps defendants reach more services .......................................................80
The need for better communication and other services offered by the BSS ..........83
Varied and improved services .............................................................................83
Communication from the BSS could be better .....................................................84
Summary .................................................................................................................85
Chapter 5 – Discussion .........................................................................................86
The overall impression of the BSS .....................................................................86
What does the BSS do? .........................................................................................88
Key strengths of the BSS .....................................................................................89
Weaknesses of the BSS .........................................................................................92
Opportunities and threats to the BSS .................................................................94
Limitations ............................................................................................................96
Future research directions ....................................................................................98
Conclusions ...........................................................................................................101
References .............................................................................................................104
Appendix A: Participant Information Sheet .........................................................115
Appendix B: Consent Form ..................................................................................117
Appendix C: Stakeholder Interview Schedule ....................................................119
Appendix D: Defendant Interview Schedule .......................................................120
Chapter One – Introduction, Literature Review and Purpose

Introduction to this Study

This thesis study is a qualitative investigation of the opinions, beliefs and impressions of stakeholders and clients involved with the Bail Support Services (BSS) pilot initiative. The pretrial population has become an increasingly analysed facet of the criminal justice system in New Zealand, with an urgent need for alternative approaches becoming apparent over the past twenty years (Lambie & Hyland, 2019). The pretrial population in New Zealand has more than doubled in size since the year 2000, with around 35 percent of all currently incarcerated people being held in remand (Department of Corrections, 2019). This trend appears to be mirrored around many other jurisdictions in the OECD, particularly in systems that operate somewhat similarly to New Zealand’s (Byrne et al., 2015).

The research on the impact of an increasing pretrial population suggests that there are numerous negative repercussions for both defendants and the wider community. There are indications that even small amounts of time in custodial remand can have negative impacts on financial stability, family connections, job maintenance and discovery, and the exacerbation of mental and physical health issues (Aizer & Doyle, 2015; Lowenkamp, et al., 2013). There is also evidence to suggest that those who go through pretrial remand are more likely to end up with significant sentencing outcomes compared to controls, such as increased likelihood of a guilty verdict and longer sentencing lengths (Oleson et al., 2014). There is also consideration that this burgeoning pretrial population may have compounding negative repercussions for Māori and Pasifika defendants, given that they are already vastly overrepresented in New Zealand’s prison population statistics (Lambie, 2018).

This study aims to investigate the opinions and beliefs of those involved with a recent initiative aimed at making changes to the established pretrial procedure in New Zealand. The
BSS team was developed in 2017 and launched in 2018 by the High Impact Innovation Programme (HIIP) under the Ministry of Justice in Wellington. This team was developed with a purpose towards addressing New Zealand’s rising prison population, and made fundamental changes to how the pretrial process operated in both the community and the courts. This study used qualitative research methods of analysis to consider the opinions of the programme by those with the most direct exposure to its initial pilot. This involved interviewing both the stakeholders of the programme (which included team members, managers, lawyers, police and Judges who work in and around the service) and the clients of the programme (the defendants who are engaged within the community on bail). The purpose of this being to establish if the service was considered to be achieving its goals and whether it marks a way forward in addressing pretrial process concerns, or a step backward.

The first chapter of this thesis provides an overview of the relevant literature that establishes the context of this study. Chapter two outlines what methodology was used and how this was applied. Chapter three presents the results of the thematic analysis of both the stakeholders and defendants views of their experience with the service. Lastly, chapter four attempts to consolidate the opinions of the service presented to see if any conclusions or suggestions about the programme’s future and place within the pretrial process emerge, whilst also considering the limitations of this study and any directions that future research could take.

The current chapter begins with a brief overview of how the New Zealand pretrial system operated in general prior to the BSS’s development. The impacts of the burgeoning pretrial population will then be covered in greater detail, along with some reference to other initiatives used in other jurisdictions to address pretrial issues. A comparison between New Zealand’s system and other relevant jurisdiction’s pretrial populations will then be made,
before an overview of the BSS and how it changes the current New Zealand pretrial system will conclude this section.

**How the New Zealand Pretrial System Works**

New Zealand’s pretrial remand system is primarily informed by the Bail Act 2000. When a person is arrested and taken into police custody, the police have discretion, as outlined under Section 21(1) of the Act, as to whether or not that person can be bailed to the community until their pretrial court hearing. At the pretrial hearing, there are four main outcomes for the accused, as outlined in the Act: to be bailed back to the community at large; to be bailed back to the community after signing a bail bond promising to return by a certain date; to be bailed back to the community under supervision (including electronic monitoring); or to be remanded in custody until trial.

In New Zealand, the primary bail decision-maker during the court hearing is the Judge. The Judge completes an assessment of risk based on the balance of the information provided by the prosecution (the police) and defence counsel (Green, 2016). When presenting their case in either opposing or not opposing bail, police prosecutors commonly use factors such as statutory considerations under the Bail Act, number of previous convictions, number of previous sentences of imprisonment, number of offences committed on bail, number of new and active charges, and the accused’s next court appearance date (Green, 2016). Police will oppose bail if indicated by reverse onus provisions outlined in the Bail Act. These are provisions that require the defendant to prove to the court that bail should be granted, and applies in situations when either a serious charge is laid (such as sexual violation, robbery, kidnapping) or when the person is a repeat offender. Police can also oppose bail based on a multitude of other factors, such as type of offending while on bail, previous breaches of bail and breaching instructions such as Police Safety Orders.
This represents an outline of the bail procedure throughout New Zealand at the time of data collection (2018). Whether a BSS team is active in a particular jurisdiction will impact the exact procedure of how this bail procedure will activate. A full description of how the BSS alters the regular bail system is outlined towards the end of this chapter.

The Increasing Rate of Custodial Remand

New Zealand’s rate of adults held in custodial remand pretrial had tripled from the years 2000-2017 (the period prior to this study beginning) and made up 29% of the total prison population by the end of this period (Department of Corrections, 2017). This figure was just 20% three years prior (New Zealand Department of Corrections, 2014). The most recent statistics provided by the Department of Corrections suggest that this proportion is continuing to grow, with the remand prisoner population rate being approximately 36.5% of the total prison population as of June 2020 (New Zealand Department of Corrections, 2020).

This growth is far exceeding the increase in the sentenced prison population, which grew approximately 7% over the three-year period from 2014-2017, as opposed to the remand population which grew approximately 67%. The 2017-2020 period saw an overall prison population decrease of around 8%, whilst the pretrial population increased by around 14%. This suggests that the increase in the pretrial population is a key driver in the overall prison population increase over the 2014-2017 three-year period (approximately 20%), and it represented the only section of the prison population to increase during the years 2017-2020. This growth is even more alarming considering that from 2009 (the earliest year pretrial statistics are displayed) to 2014, the pretrial population only increased by around 3% (New Zealand Department of Corrections, 2009). Although it appears the overall growth rate of the pretrial population has slowed in recent years following data collection, its proportion of the overall population continues to increase, suggesting that it is an area in need of greater scrutiny.
These statistics reflect poorly when compared to the average growth of pretrial populations in the rest of the world. The average growth of the world’s pretrial population from the year 2000-2016 was 15%, which suggests that New Zealand had more than four times the average growth in their pretrial remand population in around one sixth of the time during this period (Walmsley, 2016).

In terms of the most recent comparisons to other international jurisdictions, it does not appear that a direct comparison review for the year 2020 or onwards has been compiled. However, data gathered from the statistics bureaus of some of New Zealand’s most comparable jurisdictions suggest that New Zealand’s pretrial population remains a significantly higher proportion of the overall prison population than some of its contemporaries. For example, in the United States of America, as of 2018 their pretrial population made up around 23% of their overall prison population, an increase from around 20% in 2015 (Carson, 2020). In England, as of 2020 the pretrial population makes up around 15% of the total prison population (Sturge, 2020). This represented an increase from around 13.5% in 2015, but an overall decrease from 17.5% in the year 2000.

Canada and Australia both represent jurisdictions with more comparable pretrial statistics to New Zealand. In Australia, as of 2020 the pretrial population makes up around 32% of the total prison population (Australian Bureau of Statistics, 2020), which represents an increase from 27.5% in 2015. In Canada, as of 2018 the pretrial population made up around 39% of the total prison population, which slightly increased from 37.5% in 2015 (Prison Studies, 2018). To summarise, New Zealand has the second highest proportion of the prison population being made up of pretrial prisoners from those compared, only slightly less than Canada. New Zealand compares poorly to both the United States and particularly England when it comes to pretrial remand population percentage growth. These statistics and
other elements of these other jurisdictions will be covered in more depth below in this chapter.

With suggestions that the overall crime rate in New Zealand is decreasing (Lambie, 2018), it is of note that the proportion of those being detained prior to being sentenced is making up a greater proportion of our prison population year on year. But what are the potential ramifications of this?

**Reasons Behind the Increase in the Pretrial Population**

There are a range of reasons discussed in literature that may suggest why New Zealand’s pretrial population has been increasing. For example, policy documentation from within government organisations suggest that the increase in the pretrial population may be driven by government policy that reflects an increased aversion to risk at both an individual and societal level (Ministry of Justice, New Zealand Police & the Department of Corrections, 2015). Some of the main suggested changes to policy and legislation that may have impacted this include amendments to the Bail Act 2000 which made it more difficult for those with serious offences to receive bail and increased the amount of potential crimes that could prevent someone from receiving bail (Lambie, 2018).

Researchers in other countries have also made suggestions as to why pretrial populations are increasing. As mentioned above, Australia has seen somewhat similar increases to its pretrial population as New Zealand, and due to some similarities in cultural make up direct comparisons between the two countries may be applicable. Some of the systematic factors considered in this jurisdiction are a shift in focus from the individual case before the court to the overall category of offense, the addition of double jeopardy through an increased focus on previous convictions and an erosion of the presumed innocence of a defendant (Brown, 2013). There has also been reference to the impacts of changes in police
policy, such as an increase in the number of people proceeded against by the police for a breach of bail conditions, an increase of police proceeding in offense categories highly correlated with a refusal of bail conditions and an overall increase in the likelihood of bail refusal (Weatherburn et al., 2016). It seems that it is difficult to pinpoint what factors are primarily or disproportionately accountable for this sharp increase in pretrial populations. It may be that there has been a cumulative effect of the combination of these factors which has led to this extreme growth. But what are the problems associated with this increasing pretrial population?

**The Impacts of Increasing Custodial Remand**

Although there has been little research completed in New Zealand around the impacts of an increasing pretrial prison population, studies in the United States of America have suggested that there are numerous negative impacts from both a community well-being and financial standpoint. Lowenkamp et al. (2013) suggested that detaining low or moderate risk defendants pretrial is strongly correlated with a higher chance of being sentenced to prison, approximately five times as much. They also found that those who were held in custody for the entire pretrial period were two to three times more likely to receive a longer sentence than those who did not.

A potential issue with this study’s conclusion is that it is uncertain whether this result is due to factors other than the remand itself. It is possible that the reason behind someone being remanded longer may also influence the increase in likelihood of sentencing and sentence length. For example, a more serious crime such as murder or aggravated robbery is more likely to result in someone being remanded than a minor crime, and it is also more likely to result in a greater sentence purely based on the nature of the crime (Ulmer, 2012). Lowencamp et al. (2013) however suggest that it is low-risk defendants who are the most impacted by custodial remand. They state that defendants who were considered at low-risk to
the community who were remanded for the entire pre-trial period were given sentences on average three times longer than low-risk defendants who were not remanded. This is a greater impact on sentence length than the finding for medium and high risk defendants who were remanded versus those who were not, which were both just over twice as long. This finding is potentially evidence against the assumption that longer sentence lengths may be due to the seriousness of the crime rather than being influenced by custodial remand, as those who were associated with less serious crimes or a lesser history of offending showed a greater impact on their sentence length.

In further support of the above point, when Lowencamp et al. (2013) controlled for all variables except for whether a defendant was detained for the entire pretrial period, they found that someone detained for the entire period would be more than three times as likely to be sentenced to prison as those who were released before trial. This included controlling for type of offense, risk level and offense class. In support of these findings, Harrington and Spohn (2007) found that pretrial detention was significantly related to an increased probability of a prison sentence being handed down, while Tartaro and Sedelmaier (2009) found a significant relationship between pretrial detention and longer sentence lengths.

Some studies have looked into the potential explanations regarding why the above findings occur. Williams’ (2003) suggestion that being out on bail gives a defendant more opportunity to demonstrate good behaviour could be possible. Although it is potentially arguable from the contrasting viewpoint that being out on bail could increase the likelihood of further criminal behaviour (as opposed to those held in remand). Reitler et al. (2013) suggested that those who are detained during the pretrial period are less able to contribute to their own defence compared to those who are bailed, due to factors such as higher rates of illiteracy, substance abuse issues and mental illness among this group. Overall, it is difficult to confirm or accurately explain the mechanism behind this finding, but pretrial detention
appears to increase the risk of conviction, incarceration and sentence length. The effect appears to be greater the longer the person is detained. Oleson et al. (2016) further supported these findings even when controlling for factors such as age, gender, ethnicity, criminal history and offense severity. Oleson et al. concluded that detention itself appears to influence sentencing length.

There are also noted fiscal costs associated with pretrial remand. Stevenson and Mayson (2017) note that the United States of America spends an annual $14 billion or 17% of the total annual budget of corrections just on remanding defendants pretrial. Baughman (2017) conducted an analysis on the relative costs of pretrial detention in the United States of America, and suggested that the direct cost to society of detaining someone pretrial compared to releasing them was around double, that being approximately $40,000 for detention as compared to circa $20,000 for release. Baughman went on to also outline the potential costs for the detainee, taking into account loss of wages, loss of employment, and potential stigma preventing further employment. Gupta et al. (2016) suggested that this loss of ability to acquire finances through being remanded pretrial can have a direct impact on recidivism, as much as a 6-9% increase. However, this result is likely influenced by the presence of money bail in the majority of the United States of America, in that a further financial pressure is applied that is not present in New Zealand. The exact overall fiscal cost of detaining a person pretrial, as opposed to bailing them to the community, is more difficult to ascertain in a New Zealand context, but it is estimated to be far more expensive to detain than to release from a purely fiscal standpoint (Green, 2016).

In terms of a New Zealand context, Lunt (2017) discussed the potential impacts those who are placed in custodial remand face in the New Zealand justice system as opposed to those bailed to the community due to a lack of rehabilitation programs in place for those in remand. She stated that defendants often face a myriad of compounding issues, such as
health, access to work and lack of social relationships. She argued that these issues are best targeted by a therapeutic rather than a punitive approach, but those remanded in custody are not offered that chance (Lunt, 2017). It stands to reason based on the above that those who are remanded into custody may face disproportionate compounding difficulties that may not necessarily achieve the long-term goal of increasing public safety that the courts remanding them sought to achieve.

**Negative Impacts of Increased Incarceration Time**

The negative impacts to society of increased time in prison in terms of mental health outcomes, recidivism and increased fiscal costs are well-established and documented (Haney, 2017). Haney suggests that long-term imprisonment can have an observable effect on the mental, financial and social well-being of both the person incarcerated and their families. Cullen et al. (2011) argued that increased incarceration has a noticeable effect on both an individual and society at large, particularly in terms of increased recidivism and criminogenic behaviour. A drastically increased pretrial population therefore could have significant follow-on effects if it is increasing the likelihood that those detained will be sentenced to prison for longer; which in turn increases the likelihood of future reoffending. If the current trend of pretrial remand continues in New Zealand, there appears to be a high likelihood that this will have long-term impacts both on the well-being of those incarcerated and the increased risk to society if it begins to show an increase in criminogenic behaviour.

**Racial Disparity in the Pretrial Process**

Another key factor to consider is the impact this increasing pretrial population has on ethnic minorities. Leslie and Pope (2017) suggested that ethnic minorities in the United States of America are overrepresented in the overall prison population and are therefore disproportionately impacted by being detained pretrial. Similarly, New Zealand Māori may be disproportionately affected by the same pattern as they make up a significant portion of
both the pretrial and overall prison population (Department of Corrections, 2017; New Zealand Department of Corrections, 2020). In the 2017 offender population report, Māori made up 55% of remand cases, which is greater than the 51% figure given as their representation in the overall prisoner population during this period (Department of Corrections, 2017). This figure had increased from 53% in 2002, suggesting that this has been an ongoing issue in New Zealand. In the 2020 statistics, Māori made up around 52.5% of the entire prison population, which represents a slight increase from the 2017 report. There was no direct data found as to what the ethnicity breakdowns are of the pretrial population specifically as of 2020.

Māori make up around just 16.5% of the New Zealand population (Statistics New Zealand, 2019) which highlights their overrepresentation in the justice system. If the pretrial population continues to grow at rates similar to what it has over the past eight to ten years, then Māori will continue to be disproportionately impacted due to this overrepresentation at the pretrial and wider prison population level.

The racial disparity at the pretrial stage has been examined in more depth in the United States of America. The United States of America has a comparable racial breakdown to New Zealand in terms of its largest minority population. In the United States, African Americans make up around 13% of the population but make up more than 40% of the incarcerated population (Sakala, 2014). Therefore, it is pertinent to look at the research conducted in the United States of America on this racial disparity and point to parallels that could be drawn with New Zealand’s Māori population. Frieburger et al. (2009) found that race had a significant impact on Judges’ decisions to bail a defendant back to the community at their pretrial hearing, with black defendants less likely to receive this least restrictive condition than other races. Demuth and Steffensmeier (2004) found that black defendants are overall more likely to be detained pretrial than white defendants. Schlesinger (2013) found
that Latino and black men are less likely to be granted diversion than white men with similar legal characteristics. Schlesinger maintained that this effect for black people was found regardless if the offense was more minor like a drug offense, or a more serious violent offence.

It has been suggested in the literature that discretion may be a key driver of this racial disparity. Jones (2012) suggested that personal discretion comes into consideration at multiple points of the pretrial process. From the police making the decision to approach or arrest, to the pretrial hearing, to the sentencing hearing, in much of the United States of America the pretrial process is rife with discretion. It is comparable to New Zealand’s situation in that discretion from police and Judge’s is the main key defining factor as to whether someone is bailed or remanded. Dhami (2005) reviewed judicial decision making and discretion in the United Kingdom, and found that there was a high variability in the decisions made by Judge’s around defendant’s bail status and bail conditions even when presented with apparently similar cases. Dhami suggested that relying purely on judicial discretion around bail decisions may lead to unequal outcomes for those travelling through the criminal justice system which may infringe upon inherent rights to a fair trial. Although criticisms of pure judicial discretion are well documented, some argue that a move towards more automated assessment systems may reduce the ‘human element’ around sentencing and bail decisions (McKay, 2020). Nevertheless, modern research around discretion seems to mostly be predicated on how statistical risk assessment can either support or replace judicial discretion.

Parts of the United States of America are therefore beginning to move away from pure discretion, towards using evidenced-based risk assessment to inform decisions. One of the key aims of pretrial risk assessment is to reduce potential discretionary bias and racial or gender disparity in the pretrial system (Arnold Foundation, 2014). The Arnold Foundation
reported in 2014 that after six months of their pretrial risk assessment tool being used in Kentucky, that there were no significant differences based on either race or gender observable in terms of numbers of people held in remand at different risk levels. The use of a risk assessment tool may have merit in limiting racial bias if compiled with care and normed to the population it is used on, by helping to inform discretion with clear, objective information. The research supporting or criticising these tools are discussed below.

**Evidenced Based Risk Assessment**

A large degree of the literature regarding pretrial change has been around the shift towards evidenced-based practise, particularly in the United States of America. Myburgh et al. (2015) summarised in their review of pretrial risk assessment that the evidence suggests that risk assessment tools may have validity in increasing the efficiency of the criminal justice system, decrease the amounts of people held in jails and prisons, and may help support the presumption of innocence, in that low-risk defendants will get released more often. According to Summers and Willis (2010), pretrial risk assessment instruments (PRAIs) have two primary goals: to standardise pretrial recommendation decisions; and maximise the number of successful pretrial decisions made. Typically, risk assessments will assess defendants based on their risk of flight or non-appearance at court and their threat to community safety. Specific risk categories are usually given; from low risk (individuals can be released with no supervisory needs) up to highest risk (individuals who cannot be released with reasonable assurance that they will not be a threat to community safety) (VanNostrand & Rose, 2009).

PRAIs are not designed to replace the decision-making or discretion of Judges or other stakeholders involved in the pretrial stage, but to supplement it. The literature suggests that there are promising results when quantitative, standard risk assessment is used. VanNostrand and Keebler (2009) found that Federal pretrial officers who relied solely on
qualitative risk assessment (interviews or in-person judgement) significantly over-
recommended pretrial remand for offenders in all risk categories, and recommended
unnecessarily high supervision of low risk offenders who were bailed. This finding was
supported in Myburgh et al.’s (2015) review which stated that PRAIs represented a move
towards more objective decision-making in the pretrial sphere, in order to reduce the
inconsistent decision-making that can occur when only personal judgement is relied upon. It
is important to note that PRAIs do not completely replace professional discretion. Judges,
preatrial officers and others involved in decision-making will consider the risk scores and
assessments that arise from the use of these tools, but ultimately the final judgement will
usually fall to the Judges at hand.

There are however, some suggested issues with PRAIs that show that they are still a
practise in constant development. Muller (2009) noted that failure conditions for PRAIs are
not standardised across different tools, meaning that what one tool considers to be a success
may be different for another. The example given was that ‘re-arrest’ would be read as a
pretrial failure by some tools but not others, given that offenders will not always be
technically rearrested but could face other sanctions such as revised charges. Campbell
(2003) also suggested that PRAIs do not utilise protective factors to anywhere near the same
rate as they do risk factors, whereby protective factors could provide valuable information
that may then reduce the considered risk of a defendant. Siddiqi (2009) suggested that there is
a large variation across demographic groups such as gender, race and age that may indicate
that the measures used in these assessments may not be equally effective across all the
groups.

There are also indications that there are issues with the structural design of the tools.
Myburgh et al. (2015) stated that the risk factors used within PRAIs have had few
comprehensive studies done on them to ensure their validity and reliability across multiple
jurisdictions. They also noted that there are several methodological issues around the construction of all the PRAIs so far, particularly around the consistency of outcome measures, suggesting that tools often differ in how they define or track outcome measures such as failures to appear, new crime or other forms of release failure. Despite these criticisms, structured risk assessment appears to be a significant consistent factor in jurisdictions with improving pretrial success rates. They appear to be the focus of the current literature around pretrial reform in the United States of America and seem to offer some promising results thus far. There seems to be a need for further study in this field to truly ascertain whether structured risk assessment is the way forward in all jurisdictions and what the potential pitfalls are to their use. For example, how they impact personal discretion and choice, how they are updated and maintained over time, and whether cultural considerations need to be made when applying them are all areas that remain somewhat unexplored in the literature.

**Pretrial Supervision**

An aspect of the pretrial system that is showing a growth in interest as an alternative to pretrial remand is that of pretrial supervision. Pretrial supervision can take a variety of forms and is utilised differently based on the jurisdiction. Supervision ranges in intensity and coverage, and can be applied through means such electronic monitoring, phone calls and in-person visits. The success of supervision techniques appears to vary based on the risk level of the defendant. VanNostrand (2003) found that pretrial conditions or supervisory stipulations had no impact on the recidivism of low risk defendants, which provides support for the argument that establishing the risk level of defendants could be beneficial in terms of helping with supervision resource allocation. Lowencamp and VanNostrand (2013) found that pretrial supervision can have a positive impact on pretrial appearance rates, particularly for high risk defendants. This suggests that pretrial supervision’s success could depend on the assessed
level of risk of a defendant, meaning that a structured risk assessment process could help support this process by giving a clearer indication of a person’s level of risk, reducing the fiscal and resource costs to society.

There is research to suggest that the type of supervision used should also be examined. Goldkamp and White (2006) found that requiring defendants to meet with pretrial officers in person does not have an impact on appearance rates or rearrest rates for neither low nor high risk defendants. Defendants in this study were randomly assigned to a low or no supervision group or a high supervision group. One-on-one meetings are considered an expensive intervention, as it requires the time and energy of a paid member of the state (Stevenson & Mayson, 2017). It places time pressure on the defendant and increases the requirements of release to the point where it may become difficult for the defendant to fulfil them. Stevenson and Mayson went on to describe that meeting with a pretrial officer is a reductive practise that has little evidence supporting its use. There seems to be little research conducted on less intrusive forms of supervision however, such as phone calls. Calls could reduce the time required by a pretrial officer and may be less restrictive on defendants.

**Pretrial around the World and in the United States of America**

Due to the burgeoning nature of New Zealand’s pretrial reform, it seems pertinent to look to the rest of the world to see how different jurisdictions have dealt with the pretrial sphere. The United States of America appears to have the largest base of research around pretrial specific topics and is therefore a useful region to analyse more closely. The United States of America has some key differences from New Zealand when it comes to its pretrial system. One of the key differences is the differentiation between jail and prison, which does not occur in New Zealand. In the United States of America, people who are remanded pretrial are held in county jails, and are only sent to prison upon sentencing. New Zealand does not differentiate between the two terms, and those held in remand are kept in prisons along with
those who have been sentenced. It is therefore important to take care when comparing New Zealand and United States of America figures around pretrial, to make sure it is specified if the figure only refers to jail populations and not overall incarceration statistics.

As mentioned above, the United States of America’s overall pretrial prison population rates compare favourably with New Zealand. Walmsley (2016) notes that Australia and New Zealand have among the highest rates of increase in pretrial population in the world, with Australia being particularly onerous in having its pretrial remand rate increase from approximately 21% in 2010 to 31% in 2015. This means that Australia and New Zealand have seen a more than 300% increase in those held in pretrial remand overall from the year 2000 to the year 2015, as opposed to the world figure of just 15%.

The United States of America’s record in terms of pretrial population as a percentage of its overall prison population compares favourably to the rest of the world, with the world rate of remand population as of 2015 being at 27% of the world’s prison population (Walmsley, 2016). However, the United States of America has a greater number of pretrial remand prisoners per 100,000 population as of 2016 (146 per 100,000) which was much greater than the world average of just 33. However, this number had fallen slightly since 2010, suggesting that the overall numbers of those held in pretrial was not increasing faster than the population is growing. Compare this to Australia, which has seen its pretrial population per 100,000 population nearly double from 29 to 50 over the same five year period, or New Zealand which has grown from 44 per 100,000 in 2010 to 57 in 2017, and has tripled since 2000 (Walmsley, 2016). This means that as of 2015 the remand population in the United States of America was not worsening like it had been as seen in Australia and New Zealand, and in contrast to most of its incarceration and prisoner statistics actually had a lower percentage than the world average.
The most updated statistics from the United States of America suggest that this trend has continued to develop over the past five years. Not convicted pretrial defendants made up approximately 24.4% of the United States of America’s total prison and jail populations as of March 2020 (Sawyer & Wagner, 2020). This represents a steady increase of approximately 3.4% over the past five-year period. Sawyer and Wagner suggested that pretrial detention has accounted for nearly 100% of the United States of America’s net jail growth in the past twenty years. This further reinforces the importance of addressing the pretrial sector more directly, as it seems any change to the pretrial system could have a near direct one-to-one impact on the overall jail system.

The key issue with the United States of America statistics is that they cover a massive population and multiple distinct jurisdictions. There are a few state jurisdictions within the United States of America with populations more comparable to New Zealand, which are considered to be highly progressive in the design of their pretrial systems and have become markers of successful pretrial reform and management (Green, 2016).

**The District of Columbia (Washington D.C.)**

Washington D.C. could be seen as a standard bearer of successful pretrial change and improvement both in the United States of America and the wider world. Washington D.C. is relatively unique in that it does not use a money bail system as is widely used in the rest of the United States of America. Instead, Washington D.C. relies primarily on using evidence-based risk assessment, and aims to follow a progressive viewpoint that the default decision should be to bail someone back to the community unless they are considered of high risk to society (Arnold Foundation, 2013). Washington D.C. consistently released more than 90% of its bailed defendants without any financial bond over the years 2013-2016 (Pretrial Justice Institute, 2017).
Washington D.C. has reported compelling figures over the period of 2013-2016. In the years 2013-2016, Washington D.C. released 92% of all criminal cases pretrial, with 88% of those released remaining recidivism-free before trial (Pretrial Justice Institute, 2017). During 2016, 94% of cases resulted in the defendant being released pretrial, with 91% of all defendants released during this period making all of their scheduled court appearances. Most importantly, The Pretrial Justice Institute (2017) reported that in the years 2013-2016 between 98 and 99% of defendants released pretrial remained free of violent crime before trial. The Pretrial Justice Institute also reported a 72% Judicial Concurrence rate, meaning the percentage of cases where initial release orders match the Washington Pretrial Services Agency’s recommendations.

The State of Kentucky

The State of Kentucky is a key example of a jurisdiction that has followed the example set by Washington D.C., and over the last forty years has continually updated and changed its pretrial system. In 2013, Kentucky adopted the risk assessment tool developed by the Arnold Foundation, in an effort to move away from money bail practices and follow evidenced-based procedures. In the period between the years 2014-2017, Kentucky released 66% of all people arrested pretrial, and of those released 92% went on to commit no offenses before their trial (Kentucky Pretrial Services, 2017).

Kentucky has been used as a site of research around pretrial reform and risk assessment tool testing in recent years. A study conducted by the Arnold Foundation (2013) analysed data of over 150,000 defendants in Kentucky over the years 2009-2010, with Kentucky being chosen as it already utilised a form of a validated risk assessment tool. One of the key findings to emerge from this study was that for high-risk defendants, there was no relationship found between pretrial remand and increased new criminal activity. This suggests that there is no indication that remanding those considered high-risk for longer
periods before trial will lead to a higher chance of pretrial criminal behaviour. The opposite effect was found for low-risk defendants, in that those held for two to three days were 40% more likely to commit new offences pretrial than those who were held less than 24 hours. These findings suggest that the validated risk assessment tool that Kentucky was using was likely correctly estimating the difference between low and high risk defendants, and it further supported the common finding that detaining low risk defendants seems to correlate with higher criminal activity in the future.

**The State of New Jersey**

New Jersey is an example of a State making large changes to its pretrial programme relatively recently, which makes tracking its results and feedback more pertinent for other jurisdictions considering making changes to their own systems. New Jersey only began making large changes to its pretrial system in 2015, when it moved from a system dominated by money bail towards evidenced-based practise (such as using the Arnold Foundation Risk Assessment Tool). VanNostrand (2013) had done a previous analysis of the New Jersey jails, and found that 75% of the people within were awaiting trial, and that the average time spent in these jails was 10 months. This has made noticeable changes to the pretrial population of New Jersey, with the jail population being decreased by 35% in two years (New Jersey State Judiciary, 2017). It is important to note that 71% of the people released in this period were released on some form of monitoring, but the New Jersey Judiciary consider the costs of implementing and supervising these defendants is offset by the original extensive costs to detain them. This process was informed by experts from the pretrial programmes in Kentucky and Washington D.C. and the system now reflects the ones found in these jurisdictions.

**Australia**

As previously mentioned, Australia’s overall trend in its pretrial population growth is somewhat comparable to New Zealand over the period of 2015-2020. Chen (2020) stated that
the Australian and New Zealand pretrial process are similar and that both jurisdictions have followed a similar path in terms of increasing pretrial populations in recent years. Research conducted in Australia may therefore have some implication to the New Zealand population. Galouzis and Corben (2016) noted that in New South Wales there was little to no support available to remand prisoners compared to long term prisoners, which they argued meant a missed opportunity to address key criminogenic factors that may inform recidivism.

Chen (2020) suggested that New Zealand and Australia share a similar difficulty in that those either remanded or bailed to the community have limited access to services or resources that may help increase their chances of success whilst on bail. There was also indication that there are disproportionately negative outcomes for the indigenous population in Australia as there are in New Zealand when it comes to being remanded pretrial (Nadesu, 2008). There does not appear to be evidence thus far in the literature that Australia has addressed pretrial population concerns any more effectively than New Zealand. Both jurisdictions appear to be growing at similar rates and have some shared processes when it comes to the pretrial sphere. It is possible then that successful changes made in one country may be directly applicable to change in the other, making it important for each jurisdiction to continue studying the other.

Canada

As discussed above, Canada has an even greater proportion of its prison population made up of pretrial prisoners. Canada is considered to be in the top ten countries in the world in terms of its overrepresentation of its pretrial population in comparison to its overall prison population (Cunneen, 2006). Explanations as to why this phenomenon is occurring appear to have little evidence based on the current literature. Based on the existing research, there are two main reasons as to why the Canadian rate of pretrial remand is so high. The first is that potentially Canadian Judges are harsher in determining that a defendant is a violent threat to
society than other countries, and the second is that there are harsher penalties in Canada for breaching bail conditions than other jurisdictions, resulting in more defendants being remanded pretrial (Malakieh, 2019). This does not appear to have been studied directly however, and there does not seem to be a general consensus as to why the Canadian rates are so high.

Research undertaken on pretrial services in Canada has also looked at the impact on indigenous people. Indigenous adults represented around 30% of all admissions to Canadian jails in 2018, despite only making up around 4% of the population (Malakieh, 2019). This continues a trend seen in New Zealand and Australia in terms of overrepresentation of the indigenous population in pretrial populations. Bressan and Coady (2017) found that indigenous people who were remanded in custody and denied bail were more likely to plead guilty than those who were bailed to the community. They suggested this was due to a general distrust of the justice system or a desire to reduce their sentence and ‘escape’ remand. They also suggested another factor was differing notions of guilt and responsibility from the predominant Western culture. It is unknown if this trend was also found in Canada on non-indigenous populations.

**England and Wales**

Of the countries cited above, England has the lowest pretrial population rate compared to its overall prison population and is the only one of these countries to have had the pretrial rate decrease in the last twenty years. Compared to research into these other countries, the general consensus among studies done on the remand process in England and Wales suggest that it comparatively has a better remand system, with evidence of good practise and rational decision-making (Smith, 2020). Smith (2020) suggested that a focus on seeing liberty as a human right until proven guilty may have been a part of why England and Wales tend to have lower rates of pretrial remand. However, he stated that the research in this
region suggests that the remand system has not been adapting to changes over time, due to its relatively stagnant and unchanging numbers of those detained year-on-year.

Another factor that may suggest why England and Wales have seen lower amounts of people held in custodial remand is the existence of external support structures designed to aid those who are on bail. Hucklesby (2009) stated that in 2007 a national bail accommodation and support team was developed in England which aimed primarily to provide a series of supported accommodation across the country. Hucklesby argued that this venture provided a sense of security for both defendants and Judge’s, which may have made the court system feel more secure in bailing defendants to the community. Research conducted by England’s justice board also suggested that addressing accommodation needs within a wider holistic framework is the most successful intervention in reducing recidivism among younger defendants (Thomas & Goldman, 2002).

The national bail accommodation and support team mentioned above eventually developed into the Bail Accommodation and Support Scheme (BASS). This system uses a dual approach of trying to link defendants with suitable and safe accommodation whilst also providing bail support (Needs assessment, link to wider services, mentoring and supervision) (Hucklesby, 2011). Hucklesby argued that there are notable benefits this system may provide over jurisdictions with no bail support structures, such as reducing fiscal costs, increasing compliance with bail conditions and linking up defendants with a greater variety of support services. However, Hucklesby suggested that there are potential problems associated with this scheme, such as increasing the amount of restrictive bail conditions placed on defendants which may interfere with the presumption of innocence and ‘blur the boundaries’ between pretrial and post-conviction services. This point is reflected also in Myers (2017), which suggested that comprehensive pretrial supervision and support services may be initially positioned as providing greater liberty and freedom to those awaiting trial, but may in turn
provide further restriction through increased supervision, upholding of onerous bail conditions and potential sentencing repercussions of those who ‘opt out’ of the service. This research suggests that comprehensive bail support systems can provide valuable services to those awaiting trial, but may also be a source of tension between the international presumption of innocence and best practise.

Smith’s (2020) review of remand practises in England and Wales also suggested that the time spent on remand decisions was a crucial factor in determining their outcome. He suggests that turning the focus on lengthening these procedures along with empowering and training relevant staff to be able to provide sufficient information and materials to the court could be important in ensuring that only those of high risk are remanded pretrial. It seems based on the research around England’s pretrial sphere, that there is a current effort aimed at refining their process as opposed to overhauling it or making drastic changes. For instance, there is little research around bringing in the United States of America designed structured risk assessment. Based on the research presented, it seems that attempting to find ways of improving the pretrial system and analysis of risk has aided England and Wales in keeping their pretrial rates lower than the OECD average (Walmsley, 2016).

**Cross Jurisdiction Comparisons**

Although it is important that research from across the world is referenced and reflected on when making decisions around future bail support initiatives, there are some inherent risks associated with making comparisons across jurisdictions. Many descriptive elements of different parts of criminal justice systems may vary in definition without this being clearly described. Examples of this include direct definitions of legal terms or crimes, how crimes or offences are tallied or considered and the general procedures and structures of systems (Harrendorf, 2012). It is therefore difficult to make direct comparisons about the
efficacy or applicability of initiatives in other criminal justice systems as the fundamental data and structures of these systems may vary considerably whilst appearing to be similar on the surface. Harrendorf (2018) suggested that although little research provides guidelines on how to accurately compare across jurisdictions, finding research where methods are similar or attempts to control for varied elements were made may be more applicable when comparing studies from one system to another. Due to the complexities and difficulties of making direct comparisons across jurisdictions, it seems pertinent that research specific to a particular system will be most useful in informing change within that system. Pretrial justice research in a New Zealand context should therefore be informed by the lessons learned overseas whilst also holding that there are informative elements only research conducted within this jurisdiction may directly provide.

**Bail Support Services**

Based on the current available data, the New Zealand pretrial remand system is identifiable as an area of concern amid a burgeoning prison population. The research and statistics indicate that New Zealand has a growing pretrial population which may have far reaching negative repercussions in the future, such as higher recidivism, overrepresentation of Māori in the justice system, higher likelihood of low-risk defendants reoffending, increased fiscal costs and spending, and exhausted pretrial labour resources. This growth is at a rate only matched in the Western world by Australia, and does not appear to be likely to trend down unless changes to the current system are made.

It is apparent from the research conducted in the United States of America that making changes to a jurisdiction’s pretrial system can have positive flow on effects in terms of reduced jail/prison populations and low recidivism by those released pretrial. In terms of New Zealand, it has been identified already that changes need to be strongly considered in order to address this rising pretrial population; the significant question is how these changes
might happen and what they might look like (Green, 2016). Beyond this, it may be the case that stakeholders within the criminal justice system in New Zealand may not hold these beliefs and may have a different interpretation of where the problem lies, or indeed if there is even a problem to begin with. There could be an information gap between here and the United States of America, or it is also possible that people may not believe that changes made in the United States of America are applicable here, or vice versa. There is not enough research thus far in New Zealand to suggest how those involved in the pretrial system view this trend and what solutions they envisage.

As a response to the concerning data surrounding New Zealand’s pretrial rates, in 2017 the Department of Corrections utilised their High Impact Innovation Team (HIIT), aiming to find ways of increasing the operational efficiency of the Justice Sector. One of these changes was to help instigate New Zealand’s first Bail Support Services (BSS) programme. The main purpose cited by the creators of this initiative was to address the burgeoning wider prison population, by targeting an area of growth concern: the pretrial population. The BSS team was developed with two key arms, the court and the community. The court arm of the BSS was aimed at providing needs assessment for defendants when first processed at court with the purpose to provide a written document to the Judge outlining any individual needs that would need to be met if the defendant achieves bail. Needs that could potentially be identified were income, education, health, cultural and accommodation. If the defendant is remanded into custody, the BSS would aim to link the defendant with their assigned counsel. The BSS officer positioned in the court would then observe the initial hearing and answer any questions around the defendant’s listed accommodation or needs from the Judge, although at the time of this study occurring officers were not permitted to give their opinion of the safety or suitability of any accommodation, just any facts or information that may assist with the Judge’s decision making.
The other arm of the BSS is the community arm. This arm would activate upon a defendant being bailed to an address in the community. These staff would aim to work with their assigned defendants to implement their bail plan, identify and mitigate risk of reoffending, and support the defendant day-to-day to try and adhere to their court-imposed bail conditions. The community staff would achieve this by travelling to the addresses of the defendants to meet with them in person on at least a weekly basis, with regular phone calls featured in-between. This community arm would be a completely optional service for defendants, with staff approaching them soon after they are granted community bail. Officers under the community arm would work to link defendants with valuable services provided by NGOs (such as mental health support, substance counselling and job placements) and build connections with their assigned defendant’s that help support them through their time on bail.

The overall aims outlined by the HIIT were that the BSS would:

1. Increase the number of defendants managed in the community.
2. Decrease the time defendants spent waiting in custody awaiting a bail outcome.
3. Decrease the number of defendants that return to custody due to a breach of bail.
4. Enhance the defendant’s opportunity to achieve a community-based sentence if convicted.

The service began with a Wellington District pilot trial beginning in March 2018, followed by trials from December 2018 in Manukau and Christchurch. According to statements made by managers and staff of the Wellington-based team, the majority of BSS staff employed came from either the already established Electronic Monitoring (EM) team or from parole officers.

The inclusion of the BSS represented a change in the overall process of how the pretrial system operates in New Zealand. In theory, the BSS provides Judges with greater opportunity
for deeper information about placement suitability, potentially increasing the numbers of those placed on bail instead of held in remand. This system in theory is more in line with systems in place in jurisdictions such as Washington D.C., which has a dedicated pretrial officer staff force. As this is a novel endeavour for New Zealand, ongoing analysis of the service’s impact and development could be crucial to its success or failure, which is where the current study is situated.

The Current Study: Research Aims and Questions

Due to the BSS representing a direct change to the established pretrial justice system process, it appeared important to provide some analysis on whether this change was proving successful or failing to meet its aims. As this service represented an evolving programme that was open to change as it moved through its various pilot stages, it seemed that there could be an opportunity to gather data from those directly involved with the BSS on their opinions of the current level of success and development.

The current study aimed to develop an in-depth understanding of:

1. The opinions and beliefs of stakeholders involved with the creation, implementation and operation of the BSS as to its perceived success (or non-success) in achieving its goals;
2. The opinions and beliefs of defendants accessing the BSS whilst on bail as to what the perceived strengths/weaknesses are of the service;
3. Given the above, what future directions and considerations the BSS and wider justice system should take in regard to pretrial change given their experience of the BSS.

The research questions guiding this study are as follows:

1. What are the key areas of the pretrial process that the BSS addresses or fails to address?
2. Based on their experiences with the service, what do stakeholders and defendants believe will change the New Zealand’s pretrial process for the better?

This study aimed to contribute to the field of pretrial research by providing some direct perspective on both the process of changing the pretrial system and what the experience of pretrial bail is like for those sentenced to it in New Zealand. The aim of this study is to gain some insight into whether this change in New Zealand’s pretrial system is well-received or if it represents a misstep based on the perceptions of those most acutely involved. This study does not aim to prove whether the BSS directly changed prison population numbers, but instead aims to provide some sense of whether this change gives any hope or promise to those involved in the pretrial process that this could represent a promising step forward.
Chapter 2: Methodology

This study aimed to examine the new Bail Support Service (BSS) from the perspective of relevant stakeholders and defendants. It aimed to gauge participants’ views of the strengths and weaknesses of this programme and gain their perspectives on how it could be further developed in the future to address New Zealand’s burgeoning pretrial population. It utilizes qualitative data taken from interviews with 32 participants, which included 18 stakeholders and 14 defendants.

This chapter outlines the qualitative approach used in this study, including the efforts taken to try and ensure the findings have validity and reliability. The methods of the study will then be presented, which includes the process of recruiting participants, the demographics of these participants, and how the data collection was undertaken. There will then be a description of the process analysis used to conclude this chapter.

The Qualitative Approach of this Study

Quantitative research was considered the dominant research paradigm in terms of studying human behaviour and experience for more than a century (Guba & Lincoln, 1994). Qualitative research has emerged in more recent times in order to address some of the criticisms and potential gaps that quantitative cannot address (Flick, 2009).

Qualitative researchers are concerned with deeper, more complex data, leading to an understanding of human experience in different contexts (Mason, 2002). Qualitative researchers are often more concerned with the meaning behind certain phenomena, rather than just the direct statistics or data (Merriam, 2009). Qualitative research covers many varied paradigms within its umbrella definition, with some key fundamental characteristics remaining the same (Guba & Lincoln, 1994). In this following section, I will cover the different paradigms within qualitative research and will situate this research within them.
Situating the Research

As mentioned above, qualitative research has several key characteristics that are shared amongst the paradigms within it. Qualitative studies are considered naturalistic, which means that data is collected via direct interviews, observations, or written texts (Creswell, 2007). The purpose of this is to attempt to find an understanding of how people make sense of the topic discussed (Merriam, 2009). Qualitative research often features the researcher responding and interacting with their participants, and often relies on multiple sources of data such as gathering data from different participants and then making sense of that data through organisation (Creswell, 2007).

According to Merriam (2002), there are three key approaches considered to fall into what is called the post-positive paradigm of qualitative research: interpretive, critical, and post-modern. The majority of qualitative research follows an interpretive approach, as does this study (Merriam, 2009). This study is considered a basic qualitative study, in that it focuses primarily on a single dimension of scope, whilst still encompassing the ‘shared characteristics’ of all qualitative research. This is expanded upon in the section below.

Qualitative Research Characteristics

There are four primary characteristics considered to be characteristic to all qualitative research. The first is that it aims to deepen understanding of the process of meaning-making within a particular context or area (Merriam, 2009). The second is that the researcher is the primary instrument of research gathering and analysis, and this human element is vital in addressing potential shortcomings and biases (Merriam, 2009). The third is that the research process is inductive, meaning that the researcher continually develops and contributes to hypotheses, rather than just test them (Carr, 1994). Lastly, qualitative research aims to be descriptive and attempt to understand and acknowledge the complexities that exist within both people and society (Merriam, 2002). This approach is well-suited to this qualitative
study as it aims to understand the experiences and perceptions of the BSS from the perspective of stakeholders and defendants.

**Reliability and Validity**

Reliability and validity are considered to be important elements of any qualitative research. These concepts refer to the accuracy, trustworthiness, credibility and consistency of the findings and method of the research (Golafshani, 2003; Brink, 1993). Researcher subjectivity is a primary factor that can threaten the validity and reliability of research if it is not accounted for. Therefore, it is important that the researcher pays attention to their own thoughts and behaviours throughout the study and attempts to reflect and manage their own responses to the data (Brink, 1993). This process includes the researcher attempting to understand how their own history and personality can impact the themes put forward in their research. Bryman (2016) suggests that the values, assumptions and beliefs of the researcher will inevitably have an impact on both the interpretation and gathering of data.

**Personal Reflection**

It is important to acknowledge my own potential biases that may impact the data based on my background and current beliefs. I have majored in both criminology and psychology throughout my time in tertiary study, and have some background working with criminal juvenile populations. However, my knowledge and experience of bail issues was negligible prior to my undertaking of this research, and I attempted to approach all the interviews with an open mind. I attempted to maintain impartiality as much as possible throughout the data gathering process, which was an easier process during the stakeholder group than the defendant’s group, which is discussed in more detail below. I also continually wrote down my thoughts and feelings as data collection progressed, trying to remain curious towards not just the data but my own approach and understanding of it.
Throughout the process of preparing for and during data collection, I frequently consulted with my primary supervisor Dr Ian Lambie on various factors such as mitigating data corruption or collusion, making minor adjustments to the interview schedule to promote open dialogue, and the initial development of potential themes and trends. Following data collection, I met with both Dr Ian Lambie and my secondary supervisor Dr Claire Cartwright regularly to discuss the development of themes and the overall write up of the results. I continually attempted to reflect on my own thoughts and behaviours throughout this process, using note keeping and reflections to try and mitigate my own biases as much as possible.

Methodology

To meet the aims of this study, 32 relevant stakeholders and clients of the BSS from a wide range of roles and experience were interviewed. The interviews were audio recorded and transcribed by the researcher. The interviews took place over a period from October 2018 – February 2019. Braun and Clarke’s (2006) method was used to conduct a thematic analysis of the data. This method is described in detail below.

Ethics Approval

Ethics approval for this research was granted by the University of Auckland Human Participants Ethics Committee on the 28th of September, 2018 for a period of three years (reference number 020896).

Recruitment

Following ethics approval, stakeholder participants for this study were recruited through contact with the Ministry of Justice’s High Impact Innovation Team (HIIT). This was because at the time of data collection there were few individuals who had specific experience with the BSS directly, and the HIIT were aware of those who had the most experience with the service. The study was primarily advertised at individuals who had the highest degree of
contact or involvement with the BSS pilot programme. An effort was made to recruit from as wide a range of backgrounds, roles and positions as possible, to ideally provide a more varied perspective of the service. At the time the Wellington interviews begun, the programme had been in operation for approximately six months.

Defendant participants were recruited through advertisements provided to them by the BSS staff member they were currently assigned to. Defendants were asked either over the phone or in person if they would be willing to discuss their experience of the BSS thus far. Defendants were given the participant information sheet (Appendix A) and consent form (Appendix B) prior to the interview taking place. Defendants were clearly informed by the researcher that agreeing or disagreeing to the interview would have no impact on their sentencing or bail term, and that the nature of their alleged offending would not be discussed. Defendants were approached if they had at least some direct exposure to the BSS, with those who had the most contact with the service being prioritised.

Participants

Eighteen relevant stakeholders and fourteen defendants were interviewed throughout the course of data collection. Tables 1 and 2 below show the relevant demographic breakdowns of the participants. The stakeholders group came from a wider variety of backgrounds and experience with the BSS, from both inside and outside its development and operation. All of the stakeholders had experience of either working within the BSS team, or had directly witnessed the BSS in operation in either the courts or the community. The eighteen stakeholders included 6 BSS officers, 3 BSS managers, 4 defense lawyers, 2 police prosecutors, 2 HIIT strategy team members and 1 Judge. Seventeen of the stakeholders interviewed were based in the Wellington district while one was based in the Manukau district.
The fourteen defendant participants were mixed between the Wellington and Manukau districts, with seven coming from each area. Defendants were all interviewed in the community within their own homes. All defendants were on either electronically monitored (EM) or standard bail awaiting trial at the time of interview.
Table 1

**Stakeholder demographics**

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Number of participants with this characteristic (N=18)</th>
<th>Percentage of participants with this characteristic</th>
</tr>
</thead>
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<tr>
<td><strong>Gender</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>7</td>
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</tr>
<tr>
<td>Female</td>
<td>11</td>
<td>61.1%</td>
</tr>
<tr>
<td><strong>Occupation</strong></td>
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<td></td>
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<tr>
<td>BSS staff</td>
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<td>33.3%</td>
</tr>
<tr>
<td>BSS management</td>
<td>3</td>
<td>16.7%</td>
</tr>
<tr>
<td>Defense lawyer</td>
<td>4</td>
<td>22.2%</td>
</tr>
<tr>
<td>Police prosecution</td>
<td>2</td>
<td>11.1%</td>
</tr>
<tr>
<td>HIIT strategy team</td>
<td>2</td>
<td>11.1%</td>
</tr>
<tr>
<td>Judge</td>
<td>1</td>
<td>5.6%</td>
</tr>
<tr>
<td><strong>Location</strong></td>
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<td></td>
</tr>
<tr>
<td>Wellington</td>
<td>17</td>
<td>94.4%</td>
</tr>
<tr>
<td>Manukau</td>
<td>1</td>
<td>5.6%</td>
</tr>
</tbody>
</table>

Table 2

**Defendant demographics**

<table>
<thead>
<tr>
<th>Characteristics</th>
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<th>Percentage of participants with this characteristic</th>
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</tr>
<tr>
<td>Manukau</td>
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Data Collection

Stakeholder Interviews

The stakeholders group was the first to be interviewed, following a process whereby the HIIT reached out to those with the most experience in working with the BSS (both inside and outside of it) to see if they would be interested in conducting a research interview aimed at analysing their perceptions of the BSS pilot. All stakeholders were provided with the participant information sheet (Appendix A) via email in advance, and were again provided it in person to read through if chosen prior to each interview beginning. The interview timings were scheduled in collaboration with the HIIT, and I conducted them. Stakeholders were also given the consent form (Appendix B) in person prior to the interviews beginning, and I encouraged them to read it thoroughly before beginning the interview. Interviews were only begun once the participant had confirmed they had read the information sheet and signed the consent form.

These interviews took place in a variety of locations. All were conducted in private, soundproof rooms with no other people present. The majority of interviews were conducted at the Ministry of Justice building in Wellington in one of their private rooms. The rest were at the person’s place of work, also in private. The interviews lasted between 35 and 68 minutes, with the average time being 49 minutes (refer to Appendix C for the stakeholder’s interview schedule). These interviews were semi-structured in nature, with the questions focusing on their perception of the BSS so far in terms of its perceived success or failure, its areas for growth and change, and its place within the wider pretrial justice sphere.

Defendant Interviews

The defendant interviews were conducted entirely in the homes of the participants. As mentioned previously, all of these defendants were informed both by the BSS and myself that declining or accepting the interview would have no impact on their upcoming trial, and that
there would be no questions around their alleged offending. This was reiterated by myself prior to each interview, where each defendant was provided an opportunity to review the information sheet and consent form again (Appendices A and B) in person to see if they understood. I explained to all defendants that the audio recordings would be stored securely and privately, and would be destroyed in concordance with the University of Auckland Human Participant Ethics Committee guidelines following the report’s completion, and that I was not employed in any form by the justice system, but rather represented the University of Auckland.

These interviews were considerably shorter than the stakeholder interviews due to accessibility and participant engagement, and ranged between 5 and 30 minutes in length, with an average length of 14 minutes (see Appendix D for the interview schedule). These interviews were also semi-structured in nature and the questions focused on their experience and perceptions of the BSS, including its perceived positives and negatives, areas for improvement, and some discussion of the wider experience of being on bail.

Unfortunately, despite an appeal to see the defendants one-on-one and in private, this was denied due to safety and legal reasons. As such, a member of the BSS team had to accompany myself to each interview, and they were present in some form during the recordings despite remaining silent. These BSS officers were not directly present for all of each interview, but they did remain at the premises in case of a safety issue. Prior to the interviews, these officers encouraged the defendants to speak openly, and attempted to stay out of direct ear shot of the interviews if feasible.

Throughout all of the interviews, participants were encouraged to share their experiences and reflections about the BSS as fully as they were comfortable with. Participants were highly varied in the depth and breadth of their answers to the interview
questions, which contributed to disparity in the interview lengths. Defendants were gently led back to the discussion of the BSS if they began to talk about their alleged offending or other topics not relevant to the study.

Data Analysis

As previously mentioned, Braun and Clarke’s (2006) method of thematic analysis was used to analyse the data. This method is a six-step process and these steps and how they were applied are discussed below.

Step 1: Becoming familiar with the data

I spent time both during and after conducting the interviews listening to the data recordings and beginning to identify potential themes. Once all the data was collected, I ran the audio recordings through an AI-driven online secure transcription service called Otter to generate the initial transcription. Following this, I reviewed each interview again to correct any mistakes or mistranslations. Throughout this time, I was continuously noting patterns and consistencies that were emerging from the data. I also began noting down potential key quotes during this time. I kept adding my thoughts and questions during this process as well to try and truly familiarise myself with the data.

Step 2: Generating initial codes

Once I had become familiar with the data, I went through a subset of both the stakeholder and the defendant interviews to identify what Braun and Clarke (2006) refer to as ‘initial codes’. These codes varied in length depending on meaning and type, and I then ran these codes through each of these interviews and recorded if they were represented in the data. I used highlighters to indicate patterns that were emerging.
Step 3: Searching for themes

During this review process, I examined these codes and began organising them into potential themes by linking together related codes. I established six potential themes for the stakeholders group and four potential themes for the defendants group. The initial themes suggested for the stakeholder group were as follows: ‘Early and concise communication to stakeholders is vital’; ‘Sufficient early training of staff is crucial’; ‘Defendant willingness to engage is the most prominent predictor of success’; ‘Practical and cultural resources are required to help the BSS adhere to best practice’; ‘Creating and assessing suitable accommodation is a major challenge across stakeholders’; and ‘Legislative change may be required if the BSS is to survive and thrive’.

The themes suggested for the defendants group were as follows: ‘Person-to-person contact is the most important aspect for defendants’; ‘The programme gave defendants a greater understanding of the justice process’; ‘The programme helped defendants access services they previously would not have’; ‘Communication from staff and the breadth of services provided could be improved’. All of these suggested themes were noticeably long, and they were all intended to be shortened and focused depending on how they checked against the other interviews. These themes were discussed with both my primary supervisor Dr Ian Lambie and my secondary supervisor Dr Claire Cartwright and were approved to progress to the next step.

Step 4: Reviewing themes

This step involved checking these suggested themes against the rest of the data to see if they fit the whole picture. For this process, I used different colour highlighters to represent different suggested themes and reviewed the data, at first focusing on the stakeholder interviews. Although these themes appeared to match well with the rest of the data, there were definite themes that related more specifically to some stakeholders rather than others.
For example, ‘Sufficient early training of staff is crucial’ appeared to be mostly relevant to stakeholders within the BSS team itself, whereas ‘Legislative change may be required if the BSS is going to survive and thrive’ was mainly relevant to the stakeholders not directly involved with the BSS team, such as lawyers and police. As such, I noted where this was occurring with the aim to describe this in the report. Throughout this period the theme titles began to change to become more indicative of the themes that were emerging.

This process was then completed for the fourteen defendant interviews, again using colour highlighters to see if there was consistency emerging to give credence to the pattern of themes emerging. There was greater consistency in terms of patterns seen in these interviews compared to the stakeholder interviews.

**Step 5: Defining and naming themes**

During this stage, drafts of each of the proposed themes were created in order to identify potential sub-themes located within. The stakeholder interviews were again the first to be focused on, and each theme was reviewed in person with my secondary supervisor Dr Claire Cartwright, a qualitative researcher. Throughout this time the theme names were reworked and defined, and prominent sub-themes were identified and named. This process was completed for all of the stakeholder themes before progressing to the defendant themes. The same process was then used for the defendant interviews, defining the overall theme titles and identifying sub-themes that better captured the patterns in the data. These themes and sub-themes can be viewed in Table’s 3 and 4 below in the Results section.

**Step 6: Producing the report**

I wrote out a full draft analysis of each theme before moving onto the next one. I used quotes to capture the ‘personality’ of the data and made connections between the data and the aims of the research. I continued to rework the names of themes and sub-themes in
collaboration with Dr Claire Cartwright throughout this period to try and provide a clearer analysis and avoid repetition. Each theme report was reviewed and re-written with support from my supervisors. Once the stakeholder themes were complete and re-written, I moved onto the defendant themes, following the same process. As the defendant interviews were shorter in length, I attempted to provide more quotes in order to capture the essence of the data more accurately than generalized statements. I then reviewed each of the themes in context of each other to ensure there is a cohesive ‘story’ being told. The results of this study are shown in depth in the following chapter.

Chapter Summary

Hence, this study aimed to use a qualitative approach to analyse the thoughts, opinions and beliefs of those involved with the BSS on its successes, failures and areas of improvement. Eighteen stakeholders involved with a direct link or exposure to the BSS were recruited via the Ministry of Justice in Wellington. Fourteen defendants currently accessing the BSS were recruited through the service. They all participated in semi-structured interviews focused on exploring their opinions and perspectives of the BSS and its role in the wider New Zealand pretrial sphere. An inductive process of thematic analysis was used following Braun and Clarke’s (2006) method. A systematic method was used during both data collection and analysis in order to try and reduce subjectivity, which included regular reviews with both of my supervisors. Reflexivity was sought through a process of self-reflection, which included note taking of my own observations, thoughts and feelings about the data as I underwent both data collection and analysis.
Chapter 3: Responses of Professional Stakeholders to the Bail Support Service Pilot and the Wider New Zealand Pretrial Justice Sector

This chapter presents the results of the thematic analyses of the data from the interviews with professional stakeholders involved in the BSS pilot. During these interviews, all professional stakeholders were asked about their views and experiences of the planning and implementation of the BSS were, and what they considered most important to the programme’s success. They were also asked their perceptions of the obstacles to the BSS’s development.

Six key themes emerged which are presented in depth below. All of these themes featured sub-themes that emerged upon further analysis of the relevant data under each theme. The themes and sub-themes for the stakeholders group are presented below in Table 3.
Table 3

Overview of the relevant themes and sub-themes for the stakeholders group

STAKEHOLDERS OF THE BAIL SUPPORT SERVICE

The importance of early and clear communication with stakeholders

Lack of clarity around the aims and function of the BSS when implemented

Better communication and collaboration for the future

Early and sufficient training of staff is crucial

Early training of BSS staff was inconsistent

Future training needs to be early, specific and ongoing

Sufficient practical and cultural resources are required

Practical and cultural resources are currently not satisfactory

Building future practical and cultural resources

Increasing bail ‘success’ is important and could be achieved through the BSS

Willingness to engage with services

Strong personal relationships are a protective factor

Communication skills are an important factor

Future changes to increase bail success

Accommodation is extremely important and a constant issue

Lack of suitable accommodation for people on bail

Practicality and reliability issues are a major contributor to finding accommodation

The future of the BSS could be linked to pretrial system changes

Legislative change may be necessary for the BSS to survive, but it may be too early to change

There is no consensus as to whether further discretion should be given to the BSS team
The Importance of Early and Clear Communication and Collaboration with Stakeholders

This theme relates to participants’ views that successfully communicating and collaborating with relevant stakeholders is important in ensuring that relationships remain strong throughout the programme’s implementation. This theme emerged from the vast majority of interviews, but was particularly common in interviews with lawyers, police, managers of the BSS, and HIIT team members. The first sub-theme relates to participants’ opinions and beliefs around the communication process that occurred before, during and after implementation of the Wellington pilot. The second sub-theme relates to stakeholders’ views of how future pilots of programmes should approach communication and collaboration with stakeholders to better ensure chances of success. These sub-themes are presented below.

Lack of clarity around the aims and function of the BSS when implemented

Some external stakeholders felt that the Wellington pilot was introduced without sufficient articulation of what the aims of the BSS were and its roles or functions, both in the community and especially in the Courts. Some of those in the Wellington pilot felt that this had still not been addressed months into the programme’s implementation, and stated that they still were ‘not sure’ whether the BSS was supposed to be neutral or a tool for the defence. As one stakeholder said, ‘We felt that they just appeared in court and no one really knew what they were, whose side they were on and what power they had. We still aren’t really sure’ (Participant 12).

When describing the process of the BSS being introduced to the courts, participants both inside and outside the BSS team used terms like ‘confusing’, ‘abrupt’ and ‘not well explained’. Participants who were part of the BSS team reported feeling ‘a bit lost and not sure what we were supposed to do’ (Participant 7). Many in the team described feeling
‘intimidated’ in joining the courts as other stakeholders kept ‘questioning who we were’ (Participant 2).

Participants who were not directly involved with the BSS team such as defence lawyers and police prosecutors also appeared to have differing ideas and reactions to the appearance of the BSS. The defence lawyers appeared to be positive. They were ‘excited’ and ‘relieved’ to have something that could ‘support us’ in the courts. Police prosecutors also appeared to be of the belief that the BSS was there to support the defence, describing the BSS as a ‘tool for the defence’ (Participant 20). This was contrary to the perception that those involved with the development of the BSS aimed to convey, ‘We set this up to aid the court process by gathering more information on defendants and accommodation, it’s not aligned with any side’ (Participant 9).

Prosecutors said that they became ‘aware’ over time that the BSS was not intended to be aligned with the defence, but that they still felt at the time of the interview that the BSS was still ‘positioned’ as such. Prosecutors said that because of how the initial stages were ‘handled’ it had created an ‘us versus them feeling’ (Participant 12). The framing of the BSS also appeared to be strongly linked to that participant’s role in the court, with defence lawyers giving more answers around the current strengths of the programme whereas prosecutors talked more about ways it could be improved. Despite defence lawyers seeming to not fully understand the intention of the BSS programme creators, they still spoke mostly positively about its implementation, using words like ‘clear’ and ‘well-handled’, which contrasted strongly with the prosecutors who felt ‘side-lined’ and ‘ignored’.

Better communication and collaboration for the future

The majority of stakeholders recommended that the programme’s role and function should be more directly communicated to external stakeholders before the programme is
implemented in future, to ensure that all parties feel that their voices are heard. Prosecutors felt that if they had been approached by the BSS team in advance and ‘consulted’ about its implementation and ‘purpose’ they would have been more readily able to accept it sooner,

’We were never brought in to discuss this until it was suddenly there, it made us think that this was something we weren’t supposed to be a part of’ (Participant 20).

Even those within the BSS team felt that things could have been communicated more effectively at first. BSS officers felt that ‘no-one knew who we were and even we didn’t really know’ (Participant 8), and those involved with strategy and planning stated that ‘resistance’ from stakeholders convinced them to ‘prioritise stakeholder engagement’ in future pilot studies.

Communicating to non-government organisations (NGOs) that interact with the BSS was also put forward as being of importance to stakeholders. The main NGOs identified included the Salvation Army, Community Alcohol and Drugs, Victim Support and Work and Income. Some participants felt that successful engagement with NGOs was crucial to ensuring the success of the BSS,

’We need to work together with everyone involved if this is going to work ... if they don’t know what NGOs are around and the NGOs don’t know about this then it will be difficult to get traction’ (Participant 10).

BSS officers consistently stated that they were ‘learning on the fly’ (Participant 1) about what NGOs were available and how to access them. They said that they were always a ‘big help’ and that the defendants ‘got a lot out of them’ (Participant 3). BSS officers talked about how they ‘wished’ they had been given a list of the NGOs to contact ‘in advance’, as they said they had to ‘kind of just figure them out as we went’ (Participant 5). Alongside this, lawyers and restorative justice staff were all seen as being key to engage with, if BSS were to have ‘any chance of success in any particular region’ (Participant 11) going forward.
Hence, participants stated that they believed that a lack of a clear and collaborative communication process to stakeholders during development and implementation of the BSS was a major issue. Ensuring that future pilots did not make this same mistake was considered of high priority amongst all participants and was considered crucial to its survival and success going forward. Simple communication and making the process feel like a collaboration between police, lawyers, Judges, BSS officers and NGOs was considered vital in ensuring that the BSS had a future in the criminal justice system.
Early and Sufficient Training of Staff is Crucial

This theme is relevant to those directly involved with the day-to-day running and implementation of the BSS, namely BSS officers, managers and strategic advisors. It emerged primarily from the interviews with BSS staff and was commonly discussed among these participants. All but one of these interviews was conducted with the Wellington pilot, with the remaining interview being with a manager from the Manukau district. The first sub-theme relates to participant’s views of the early training given to BSS staff during the Wellington pilot’s implementation. The second sub-theme relates to participants opinions on how training could be better utilised in the future to help ensure staff are well-equipped to best represent the BSS, or any other similar service. The sub-themes are presented below.

Early training of BSS staff was inconsistent

The majority of BSS staff who worked day-to-day both in the courts and in the community thought that they were insufficiently prepared or informed as to the nature and activities of their role. Staff referred to the initial days as feeling ‘unsure’ as to how they were supposed to act and ‘what we were supposed to do’. Staff who had previously worked in courts felt that there was an ‘easier’ transition for them, as they reported they understood the general ‘flow’ and power structures of how court operates, allowing them to fit in more easily. Those who had not come from a court background said they had to ‘learn quickly’ on the job, and that they felt they were not given many resources to help them understand this beforehand,

‘I felt a bit overwhelmed by it all really... especially those first few days. I just tried to listen and pick things up as I went’ (Participant 2).

BSS officers who worked primarily in the community talked of feeling ‘isolated’ and ‘lonely’ while doing their jobs. These officers often said that they felt like they were ‘just
dropped in’ and told the general gist of their role without being given explicit guidance as to what they should be doing whilst in the community,

‘We knew we had to go out there and engage with the defendants... but we weren’t really told how we were supposed to do that’ (Participant 3).

Most of these officers said that they were often alone for a large part of their day, travelling around the community engaging with defendants. They said that this did not give them a lot of time to ‘learn from each other’ which they felt would have been helpful in ‘seeing what others do’.

BSS officers also felt that there was not enough knowledge of the relevant stakeholders and NGOs that they needed to connect to. The majority of these officers mentioned finding out about new NGOs ‘almost every week’ and thinking that if they had known about them earlier, they could have linked them up to other defendants they previously worked with ‘Every now and then someone will mention this or that service and I’ll be like, I could have used them!’ (Participant 1). These officers said that knowledge of these NGOs and stakeholders was ‘crucial’ to engaging ‘successfully’ with defendants in the community, and they felt more ‘comfortable’ and ‘confident’ the more of these resources they had to access. Some of these officers said that they had compiled their own lists of services and important people over time, and had been sharing ‘as much as I can’ with their fellow officers. Some of these staff talked about how training may have been able to ‘help with’ this, with one participant saying that a ‘seminar’ or similar initiative could have been useful in ‘letting us know what’s out there’.

Some of the BSS officers stated that they felt they had some safety concerns that could have been mitigated by early in-depth training. One participant felt that they were often
going into defendants’ homes with ‘no information’ as to the safety concerns or risks that could be present,

'I know it’s our job to get more information ... but sometimes it can be intimidating knocking on the door and you don’t know who is in there or what state they are in’ (Participant 7).

Officers who came from a probation officer background felt more ‘prepared’ for these kinds of interactions, whereas those who were not of that training felt ‘less capable’. This appeared to be a clear distinction depending on the background of the officer in question, with those who had initially been trained as probation officers being able to utilise their initial training from that career in their current role at the BSS. Those who had not received that training felt ‘behind’ and ‘underprepared’. Managers also expressed that they wanted more training, saying that they did ‘the best we could’ with what was provided to them.

Despite the issues many of the officers had with the amount and quality of training they had received, all were very positive when talking about the support of their current team and management. They said that despite feeling a bit ‘isolated’ a lot of the time, when they were engaged with their team they felt ‘supported’ and ‘understood’. One participant said that it felt that they were ‘all in it together’. They spoke highly of the current management team, ‘When I have questions I know I can go to them and they will help me however they can, I know they are under stress too’ (Participant 8). They also remarked that over time more training had been added into their schedule, such as motivational interviewing, which was ‘very helpful’. Overall, BSS officers highly stressed the need for early, thorough and ongoing training for BSS staff to ensure that the role has an ‘identity’ going forward. These officers all appeared to be passionate and excited about the potential of this role, but were equally frustrated by a lack of direct guidance. Learning new skills through training appears to be a strong tool for ensuring that this initial enthusiasm for the role does not burn out into apathy.
Future training needs to be specific, early and ongoing

Many of the BSS staff involved with the day-to-day running and engagement of the programme at the Wellington pilot felt that they required further training in order to feel more comfortable in performing their roles to a high level. In response to how they would like to see the programme developed, the BSS officers and managers discussed the areas and types of training they think would be beneficial in developing the current and future staff.

The key areas identified as being particularly useful for training included risk assessment and management, client engagement, knowledge of stakeholder roles, and knowledge of local services that could be linked to clients. In terms of specifics under these areas, participants stated that they felt they needed further ability in assessing and managing risk of potentially dangerous defendants and situations, ‘I feel we need more training on risk stuff … I feel better about it now but it’s still in the back of my mind’ (Participant 1). They also talked about having seminars and information ‘brochures’ on the various related stakeholders and NGOs, which was ‘vital’ in getting new officers ‘up to speed’ quickly. Some officers felt that having all of this information in one area would prevent ‘inconsistency’ amongst new officers and would help them feel they have ‘something to offer’ (Participant 3) to defendants.

Motivational interviewing was viewed as an especially critical skill for BSS officers to have. Motivational interviewing is an approach that helps people more effectively assess the pros and cons of their actions and make better choices to change (used especially in the addictions field but also relevant to helping people make a stronger commitment to abiding by bail conditions). Almost all the BSS officers interviewed identified motivational interviewing as being the ‘most valuable’ training they had received. Some stated that they felt it took ‘too long’ to be integrated into training, and once they had it, they felt more ‘assured and comfortable’ talking to defendants. In terms of building client engagement (seen as a core skill in community-based BSS officers), motivational interviewing emerged as the
most widely supported avenue of future and early training, as dealing with ‘people who don’t want you there at first’ (Participant 3) and building rapport was seen as core to the challenge of being a BSS officer.

Overall, having consistent, early and specific training was seen as vital to the success of the future of the BSS programme. BSS officers near universally labelled lack of this as the first and main difficulty they had adapting to the service. All the training they had received was spoken about positively, and it seemed that it was the lack of training rather than the quality that was the main concern. Although I had limited access to the BSS workers in the more recent Manukau pilot, it seemed that some of this early lack of training had been addressed as the manager interviewed there spoke of ‘learning from Wellington’ (Participant 27) and that training in terms of motivational interviewing and client engagement had been undertaken. A true difference is difficult to say with certainty, however, as none of the BSS officers in the Manukau pilot were interviewed directly.
Sufficient Practical and Cultural Resources are Required

This theme relates to participants’ views and experiences on the level and quality of practical and cultural resources at the disposal of the BSS. From this, two sub-themes emerged. The first sub-theme relates to the opinions of stakeholders on the current amount and quality of the key resources the BSS has, and how this has impacted its ability to function successfully. The second sub-theme relates to participants views on the practical and cultural resources that are required to ensure the BSS can stay relevant and functional in the future. This theme and sub-themes mainly emerged in interviews with BSS staff, managers and HIIT members. The sub-themes are discussed below.

Practical and cultural resources are currently not satisfactory

Stakeholders either employed by or involved in designing the BSS were concerned with the access and development of both practical and cultural resources. BSS officers were particularly interested in addressing the lack of access to cars and computer spaces within their workspace, ‘We have to share cars … and it’s tough sometimes when I need to be across town but I can’t get the car until the afternoon’ (Participant 8). These participants all stressed that mobility was key to ‘getting the job done’ in the community. They said that not having full-time access to cars was hindering their ability to provide the ‘best service’ they can. The large Wellington area that the team cover by car also appeared to be a hindrance to ‘productivity’, ‘Sometimes we have to drive forty minutes to do a fifteen-minute check, then another forty minute drive back and there’s half your day gone’ (Participant 2). Similarly, BSS officers said that shared computer spaces within their office was also problematic, as it can reduce the time officers have to ‘process’ all their work. All these officers felt that these ‘logistical’ issues were key in enabling the team to work at their ‘highest level’ possible.
Another practical resource area commonly discussed was both the numbers and demographic make-up of the staff. Some BSS officers felt that without growing the staffing base the team would eventually be ‘overwhelmed’ by the amount of work required of them,

‘I get that this is what we have now, but I can see it getting tougher with all the visits we have to do if we don’t keep growing the team in some way ... we could get burnt out’ (Participant 7).

These officers felt that an increased number of staff, even ‘two or three more’, would help take some of the ‘load’ off and allow officers to ‘focus’ more on the defendants they are already working with, ‘I’d want to spend more time with each defendant if I could … but sometimes you don’t have the time and you can only do a quick check’ (Participant 1).

These beliefs were consistently mirrored by those involved in the management and development of the BSS team. Managers often remarked that they were ‘aware’ of the ‘building’ gap between the time capacity of the officers and their case loads, ‘The case loads are exploding, even two extra people would make a big difference’ (Participant 5). Some of these stakeholders discussed the funding difficulties during the pilot stage which meant everything had to be ‘balanced’ as much as possible, and they could not ‘over-exert’ at this stage. Stakeholders noted that currently multiple staff were required to contribute to reports on each defendant which often ‘slowed the process’ down ‘significantly’. Some of these stakeholders felt ‘comfortable’ with officers doing each report alone as they are ‘competent enough’ to manage this.

In terms of the demographic make-up of future staff, some officers pointed to a lack of ‘diversity’ amongst the current BSS team, especially when compared to the demographics of the defendants they work with. One participant felt that having more Māori and Pasifika staff was ‘definitely needed’, as they felt that sometimes staff from different ethnic backgrounds might not always ‘get’ the cultural needs of defendants from these demographics,
‘I think we need more Māori and Pasifika staff yes ... I think if we want to do best practise this needs to happen and there needs to be a push for it’ (Participant 3).

This belief appeared to be held across a number of BSS staff and managers regardless of their ethnic background, and was considered ‘front of mind’ by some members of the strategic planning team.

**Building future practical and cultural resources is necessary**

According to the views of the participants, it appears that a strong focus for the future of the BSS is on balancing and readjusting the resources they are allocated. Stakeholders directly involved with the BSS all raised either concerns or ideas around how practical resources such as cars, staffing and computers could be managed more effectively to ensure that the team is making the most of the resources it has. All of the managers thought that the Wellington pilot required at ‘least two’ more officers to ensure that the team was ‘future-proofed’ against rising case loads, and thus potentially worker burnout. As ‘officer enthusiasm and commitment’ was consistently flagged as a major strength and ‘cornerstone’ of the success of the BSS, ensuring that staffing numbers match the required workload was considered a ‘necessity’ going forward.

Managerial stakeholders reported that other practical concerns appear to be more ‘tricky’, as ‘funding is always an issue’ (Participant 16). Although most stakeholders agreed that more cars and computers were needed, getting the funding necessary for these is ‘more difficult’. It seems that these participants have committed to try and work around these constraints, with many discussing how they had already adjusted their workdays to ‘maximise time’ with defendants and reduce time on ‘paperwork’. Hence, it seems that stakeholders are saying they are well aware of the practical difficulties the BSS pilot faces going forward, but a lot of time and energy has gone into trying to work within budgetary constraints and maximising useful time with the staffing that exists. Despite this, stakeholders
seem to be saying that ‘expanding’ the team may be necessary to ensure that standards do not fall as case loads increase.

Building up the cultural expertise and diverse relationships the BSS has with the community was also seen as ‘vital’ by many stakeholders. A few suggested that engaging with local Kaumatua’s in the wider Wellington region was important in ‘ensuring we are giving best practise that fits the people we work with’ (Participant 6). This was considered most important by the majority of these stakeholders when it came to discussing rolling out further pilots across the country. Some stakeholders spoke about how varied different regions are around the country, and how the BSS would have to adapt to this in terms of its staffing in order to have a chance at success,

‘There’s so much cultural variation ... Iwi, Kaumatua’s around the country that need to be brought into this somehow ... we have to try and reflect our population that we work with’ (Participant 10).

Although the lack of diversity and engagement with important cultural leaders and groups was raised by the majority of stakeholders, it appeared to be more difficult for them to provide a clear or specific goal in terms of how this could be achieved. One stakeholder suggested that cultural education should be included in training all officers, along with ‘understanding Tikanga ... some Te Reo ... and more could help … we have to acknowledge that we’ve got it wrong so far’ (Participant 9). A ‘collaborative’ and ‘transparent’ approach to the cultural composition of the team was raised by a large number of stakeholders. Overall, it seems that most if not all stakeholders are seeking a change in the way the BSS operates in order to better cater to the diverse population in which it serves, but that the exact way to achieve this remains elusive.
Increasing Bail ‘Success’ is Important and Could be Achieved through the BSS

The stakeholders group commonly referred to various factors they believed to be the main predictors of or factors that influence how likely a defendant’s bail will be a ‘success’. In terms of this theme, stakeholders believed it was important that the BSS lead to greater success in terms of defendants attending all court appearances, not breaking the terms of their bail, and remaining engaged with justice system staff throughout their term of bail. The participants thought that bail success is an extremely important metric in defining how effective a programme like the BSS is, which led to it being a common factor discussed during the interviews. This theme emerged from a wide variety of stakeholder backgrounds, and did not appear limited to any particular sub-group of stakeholders. From this theme, four sub-themes emerged that cover different facets of how bail success could be achieved. The sub-themes are explained below.

Willingness to engage with services

In terms of what leads to success, the most common response across stakeholders, regardless of their role, referred to a defendant’s willingness to engage with services and commit to their bail conditions as the key predictor of a successful bail period. Many stated that it is too ‘difficult’ to force a defendant to comply with services, and that their ‘attitude’ to approaching bail is the most defining characteristic of their term’s success,

‘It depends on how they are looking at ... their bail, if they are keen to engage I think things tend to go better for them’ (Participant 6).

All of the BSS officers also agreed that those who ‘actively’ participated in the programme and also with NGOs such as drug and alcohol support typically had a successful bail period.
As involvement with the community arm of the BSS was entirely voluntary at that stage, stakeholders appeared to be split as to whether involvement with the BSS should become mandatory for those granted either Electronic Monitored (EM) or standard bail,

‘If the defendants aren’t willing to engage ... you’re not going to get anywhere. The number one most important factor is if they want to change, if they want to do well on bail’ (Participant 12).

Those who were against the idea of the BSS being mandatory talked about how ‘forcing’ unwilling defendants to try and engage would not be ‘conducive to success’ nor a ‘productive’ use of the BSS team’s time. However, there did not appear to be any consensus nor trends among the different backgrounds of stakeholders as to whether they were supportive or not supportive of mandatory BSS involvement in the future. It seemed that most stakeholders wanted to see the BSS become ‘more settled’ before discussing whether it should become mandatory, and that it was more ‘important’ that those who want to engage are ‘targeted’ by the BSS.

**Strong personal relationships are a protective factor**

Participants perceived that the presence and quality of defendants’ personal relationships contributed to the likelihood of bail success. Stakeholders from all different roles and backgrounds stated that defendants with ‘long-lasting’ and ‘supportive’ family and friends were more likely to be successful in their bail period,

‘You need that buy-in from family and friends etc ... and strong support in your community ... otherwise it is tough for these people to not break their conditions’ (Participant 14).

Participants thought that there was ‘not much you can do’ or ‘can’t help much’ if defendants do not have these supports already involved, but some stated that it could be a role
of the BSS officers to try and ‘re-establish’ familial and friend connections through interviews with defendants.

**Communication skills are an important factor**

The majority of BSS officers and staff observed that their ability to communicate effectively with defendants was another key factor in achieving bail ‘success’. Many stakeholders believed that the first engagement with a defendant was ‘crucial to success’, as it could help ‘set up the relationship’,

“You have to be able to make a connection quickly or you might lose them ... if you can get that trust early, I think they have a better chance” (Participant 8).

In terms of how to achieve this, BSS managers said that the interview process with potential BSS officers was ‘key’ in making sure that ‘personable, motivated people’ were selected for the role. Communication skills of the BSS officers were mentioned frequently throughout the interviews, with some saying it could ‘make or break’ an officer’s ability to be productive in the community.

**Future changes to increase bail ‘success’**

Defence lawyers who were interviewed had some other perspectives on what could help increase the likelihood of bail ‘success’. A common idea that emerged from these interviews was the need for ‘targeted’ bail conditions. Some of these stakeholders said that bail conditions can often be ‘confusing’ or ‘non-specific’ to defendants. Some stated that they believed that defendants were not always ‘adequately explained’ what their exact conditions were, which they said they believed to be increasing the chance that these conditions would not be followed, ‘Sometimes you can tell the defendant does not fully understand what they can or can’t do ... sometimes it’s too vague and anyone could be caught out’ (Participant 7). Following on from this, defence lawyers felt that the BSS officers were helpful in mitigating
this problem, due to having ‘more time’ to engage with defendants following court proceedings. BSS officers interviewed reported that explaining bail conditions ‘carefully and slowly’ was something that they believed was a ‘necessary and important’ part of their work.

Most stakeholders from across professions thought that better identification of risk factors was ‘vital’ in helping defendants to have successful bail periods. Stakeholders who primarily work inside the courts often stated that they felt that a person’s accommodation had ‘too much weighting’ when it came to risk factors and that a lot of the decision-making was up to the ‘Judge’s discretion’,

‘There should be a more formal way of identifying risk factors ... I think it seems that it often comes down to what the person’s living situation is as to whether they get bail ... there’s not always enough information’ (Participant 15).

Some of these stakeholders stated that they were aware and supported some risk identification systems overseas such as the United States of America, but it appeared there was a large concern that this could reduce Judge’s discretion by too much ‘in the other direction’. Overall, it seemed that most participants were open and encouraging a further exploration of risk identification methods, but maintaining some level of Judge discretion remained important across the stakeholders.

Hence, it seems that all of the participants interviewed agreed that defendant motivation to engage both with the system and services was vital in predicting their ‘success’ on bail. It appears that the BSS is trying to address this by focusing on communication and engagement as being a ‘priority skill’ amongst its officers. However, the participants appeared to maintain that there are ‘always’ certain elements that are beyond ‘control’, such as a person’s family relationships and inherent willingness to engage with the system. Despite this, it seems that in theory the BSS is primed to address the consensus issue with bail ‘failure’, but as of the time of the interviews it could not be determined whether it was fulfilling this role or not. Based
on the participants responses, it seems that further future changes to bail condition systems and risk identification may be necessary to increase the chances of bail ‘success’.
Accommodation is Extremely Important and a Constant Issue

This theme relates to the importance of a defendant having access to appropriate and safe accommodation. By far the most frequently raised issue across stakeholders was that assessing and finding suitable accommodation for defendants was challenging, and also important. This theme mainly emerged from stakeholders within the BSS team, such as officers and managers, but was also a commonly discussed topic among the wider group of stakeholders. From this theme, two sub-themes emerged. The first sub-theme refers to the participants beliefs that there are currently substandard accommodation options for defendants, and what forms these take. The second sub-theme refers to why this may be the case, and in ways in which it could potentially be addressed. The sub-themes are described below.

There is a lack of suitable accommodation for people on bail

Many stakeholders mentioned that creating or assessing suitability of accommodation for defendants was a major, ongoing challenge for the BSS. Many cited the lack of ‘half-way house’ style, bail-centric accommodation options. These stakeholders said that a ‘creation of this style’ of housing would reduce much of the pressure on BSS and the court systems in general in finding defendants suitable housing and giving an ‘alternative option’ to holding low-risk defendants in remand.

‘Definitely housing … there just isn’t enough available for people we have coming through. If we had more housing available, it would solve half our problems’ (Participant 3).

Some spoke of how the Salvation Army ran some of the options available in this sphere, but that currently it was ‘insufficient’ to keep up with the demand presented in the Wellington region.
BSS officers often reported difficulty in finding ‘suitable’ accommodation for the defendants they worked with, due to there being ‘too few beds’ and ‘not much outside of what people already have access to through families’ (Participant 2). A Judge who was interviewed commented that the state of a person’s bailable accommodation was a ‘key decision factor’ in influencing their discretion as to whether to bail someone to the community or to hold them in remand,

‘If they don’t have safe accommodation to go to ... it makes it hard to decide in having them go back to the community ... it would be great if there were more safe options like supervised halfway houses’ (Participant 4).

Stakeholders appeared to be unanimous in declaring that more safe accommodation options would be welcomed in reducing some of the pressure on the pretrial system and remand prisons, but how this would be achieved appeared to be more difficult to ascertain. Most participants were unable to give what they felt were a ‘satisfactory’ answer, saying that the ‘ideal’ situation would be to have greater funding for NGOs that provide housing and some mentioned that addressing increasingly ‘unaffordable’ housing in general in the Wellington region would be helpful in reducing the ‘strain’ of lack of suitable housing.

Practicality and reliability issues are a major contributor to finding accommodation

BSS staff talked about the difficulties in accurately assessing the suitability of a given address in the timeframes required, mainly due to practicality and reliability issues. Practicality issues referred to the lack of transportation and time for BSS officers that was discussed at length in a previous theme. This was reiterated by many of the BSS staff (both officers and managers) when speaking directly about housing issues, with one saying that,

‘It’s one of our core area’s ... and yet sometimes it’s a struggle to accurately assess their accommodation in the time frames we are given, sometimes we can’t get there quick enough’ (Participant 5).
These participants stated that they felt ‘rushed’ when it came to assessing accommodation, with some feeling that they could not do a ‘thorough’ job. When speaking about these issues, managers often alluded to the ‘tension’ of the pilot study, in that they needed to show results to ‘prove themselves’ in order to acquire more funding, but it was often difficult to show the ‘potential’ of the BSS without that future funding being secured.

These participants also talked about reliability issues when it came to assessing accommodation. One of the key issues that was discussed by multiple participants was that the BSS team were often ‘unaware’ of the situation and what they were ‘walking into’ when they went to assess housing. As an example, the BSS team often interviewed people at a defendant-nominated address as to whether it was suitable accommodation for the defendant to be bailed to without knowing details about the interpersonal dynamics of the defendant and the nominee,

‘Sometimes all we get is an address and that’s it ... or a few lines about who might be there ... we end up doing most of the information gathering at the scene and they don’t often know we are coming’ (Participant 1).

Other BSS officers and managers said that they felt this was an issue, as sometimes the nominee became ‘hostile’ or ‘unwilling to speak’, leaving the team with ‘not much to go on’. On the other hand, other participants stated that the nominee could be an ‘accomplice’ or ‘enabler’ of the defendant’s potentially criminal behaviour, and may not give a ‘truthful’ account of the accommodation’s risk.

BSS officers and managers also spoke about difficulties in assessing larger housing complexes in terms of accurately calculating risk of a bail breach. These participants said that assessing large apartment complexes was always ‘tricky’, due to it being ‘hard’ to assess the crime, drug use and other activities present at such a site that may increase the defendant’s risk of reoffence,
‘Apartments are always harder ... owners or rental agency staff don’t always know who is in their building or what kind of (criminal) activity goes on there ... it’s hard to say with certainty there is low risk in those cases’ (Participant 9).

Some of these participants said that it was difficult even ‘finding the owners’ to discuss these potential concerns with them before a defendant’s bail conditions are ‘set’. Even when it came to NGOs, participants expressed ‘concern’ that large-scale accommodation designed to hold multiple defendants at once could make it ‘very difficult’ to ascertain the various risk factors and pre-existing relationships that could exist within these complexes,

‘Tough to say ... we need more accommodation options but I’m not sure bigger places with heaps of defendants will necessarily reduce risk ... there’s no one way’ (Participant 13).

This position was upheld by many of the stakeholders across professions, and yet all said that more suitable accommodation options were ‘needed’ as well.

Accommodation concerns were an extremely common topic brought up by all participants. BSS officers and managers spoke mainly of their ‘frustration’ trying to locate and assess for safety the various accommodation options put forward to them, given the resourcing that they currently have. Other stakeholders outside of the core BSS team such as lawyers, police and a Judge all agreed that there needed to be more safe, reliable, and consistent accommodation options for defendants if decision makers want to be more ‘confident’ bailing defendants to the community instead of remanding them in prison. Most agreed that NGOs could have a large role in helping increase the quantity and quality of ‘bailable’ accommodation, but there were still many concerns shared such as the risk issues of housing many defendants together for months at a time. It seems that addressing accommodation concerns will be an ongoing topic of debate for the foreseeable future in the
pretrial sphere in New Zealand, as it seems no consensus around the best way to achieve this has been found as of yet.
The Future of the BSS could be Linked to Pretrial System Changes

This theme relates to the perspectives of stakeholders regarding potential structural changes in the wider pretrial sphere that may relate to the BSS’s future development and maintenance. Stakeholders commonly discussed that the BSS or other future developments in the pretrial sphere may require structural overhauls that go beyond just the BSS itself. This theme was relevant to all stakeholders but was particularly important to HIIT team members and external stakeholders such as police and lawyers. This theme covers the main threats and opportunities participants could foresee in this sphere, with two main sub-themes emerging. The first sub theme covers legislation and how changes to this may impact the BSS. The second sub-theme refers to the nature of discretion among pretrial workers and how changes to this may impact the system. These sub-themes are described below.

Legislative change may be necessary for the BSS to survive, but it may be too early to change

Stakeholders mostly agreed that legislative changes are required to protect the BSS’s position going forward, but some argued that this may not be necessary. The Bail Act 2000, as described in more depth in Chapter 1, was the most often cited piece of legislation by stakeholders as being the ‘crucial’ document required to be amended to ‘legitimise’ the BSS and also to ‘define in law’ what the BSS is and what BSS officers are,

‘The Bail Act sets everything out in regards to bail ... if the system is going to change or a new service is going to become predominant then the Bail Act would ... reflect that’ (Participant 15).

Some of these stakeholders spoke of how crucial the Bail Act is to understanding the impact of Judge’s ‘discretion’ and could help ‘ratify’ the BSS and what their position is more carefully. Some stakeholders talked about the need to clarify and define ‘what a BSS officer is and does’ (Participant 16), which both those inside and outside the BSS team agreed would be useful in helping ‘clarify’ the role of BSS team members.
Although the majority of stakeholders agreed that more clarity and ratification around a definition of the BSS is important, some said that changing legislation was not necessarily needed for this. These stakeholders argued that the ‘current outlay of the Bail Act is fine’ (Participant 12), and they were ‘hesitant’ to suggest ‘broad-sweeping’ changes to legislation while the BSS was still ‘unproven’. These stakeholders said that legislation questions should mainly focus on where the ‘onus’ of proof lies in terms of making remand decisions based on current risk, be it on prosecutors or defence, with some stakeholders saying this was still ‘confused’ often due to lack of legislative ‘clarity’.

Some stakeholders stated that changing legislation could be useful in providing a more clear, structured pretrial process. A variety of stakeholders across professions thought that there is a ‘somewhat’ unstructured approach at times to the way the court approaches bail decisions,

‘I think we would benefit from a formal, structured approach at the courts sometimes ... really set out what the pretrial process is’ (Participant 11).

This view was held by a large number of stakeholders, with the key term consistently spoken about being ‘discretion’. Many participants stated that they felt that the current system relies on Judge discretion as to whether a defendant receives bail and what those conditions are. Some stakeholders who work within the courts said that at times it seemed that a defendant’s ‘fate’ was often up to a particular Judge’s ‘mood’ or ‘past history’, although all participants stopped short of saying that a Judge’s discretion was not important,

‘I think that obviously you don’t want to take all the decision making away from the Judge and just leave it up to numbers ... but I think some consistency to their decisions would be ideal ... maybe we need something in law ... ’ (Participant 9).
There is no consensus as to whether further discretion should be given to the BSS team

The topic of discretion and legislation was not just spoken about in terms of Judges, but also extended to the BSS team itself. Competing opinions amongst stakeholders emerged as to whether the BSS officers should be given decision-making discretion as to whether accommodation is safe and ‘fit for purpose’. At the time of interviewing, BSS officers were not permitted to pass any ‘personal opinion’ based on the evidence they had collected as to the risk level of any accommodation they had assessed. This placed them in a more ‘limited’ capacity than bail officers in certain overseas jurisdictions, whereby the officer discusses with the Judge in person both the information and their opinion as to the defendant’s potential risk level if bailed to that address.

Whether or not BSS officers should be given this kind of discretion going forward therefore emerged as a point of contention amongst stakeholders, with there being no clear consensus as to what the correct path should be. Supporters of BSS officer discretion spoke of it being a ‘necessary’ and ‘comprehensive’ change to the BSS that could ‘take pressure off’ the court system,

‘We need to move towards discretion in the BSS ... it could help the Judge’s decision and also reduce stress for defence and prosecution ... and I think it needs to be in legislation too’ (Participant 10).

Many officers and managers felt that the BSS could ‘offer more’ by giving officers some discretion-making ability, as they said that they felt the BSS team members who assess the accommodation have ‘more of the context’.

Stakeholders also discussed whether the BSS should become an involuntary service and whether law change should be a part of that. At the time of interviewing, engagement with the BSS is a fully voluntary process based on defendant’s willingness to engage. Stakeholders
had varying positions on whether it was best the service stays this way long-term or if it needs to become involuntary to be successful, ‘That’s the big question, should this be involuntary? There’s evidence either way, but I think those in the (BSS) team would want it to stay voluntary’ (Participant 8). Those who said that they felt it should become involuntary pointed to this making it more ‘consistent’, ‘trusted’, ‘taken seriously’ and ‘legitimised’, also saying that they felt that if it remained voluntary ‘the ones you need to get might … slip through’ (Participant 5). However, the majority of BSS officers and managers felt that the BSS should remain voluntary for the ‘foreseeable future’, stating that those who ‘actively engage’ are more likely to be ‘successful’ and that ‘forcing people to take part doesn’t mean they will actually ‘take part’ … it might just make our work more difficult’ (Participant 2). Although little consensus could be gleaned around this question, most agreed that clarity around the BSS’ ‘official’ definition and ‘position’ was needed to ensure the BSS remained ‘relevant’ in the future.

**Summary**

The results of the thematic analysis of the stakeholders group suggest that there are six main themes that were consistent across multiple participants. Firstly, they suggest that stakeholders believed that early communication and collaboration amongst stakeholders of the BSS was extremely important, and that they thought that this process could have been done better. They also suggest that stakeholders believed that a lack of suitable accommodation, sufficient training for staff, and practical and cultural resources were all concerns that may hinder the BSS’s development in future. Stakeholders also suggested that the BSS could be a valuable tool in increasing bail ‘success’, and described how key factors such as willingness to engage and relationship building could impact bail ‘success’. Finally, the stakeholders believed that pretrial system changes may be necessary to ensure the BSS’s
survival, and how these changes might occur. These results are discussed in more detail in Chapter 5 below.
Chapter 4 – Responses of Defendants Using the Bail Support Service Pilot

This chapter represents the results of the thematic analysis of the interviews with defendants who were currently released to their homes on either standard or electronically monitored bail, in either the Wellington or Manukau districts. All of these defendants were asked about their personal experiences of the Bail Support Services programme, and in particular what elements of the service they saw positively and what things they would like to be different. From this analysis, four key themes emerged and are presented in Table 2 below. Sub-themes did not appear necessary in this analysis for some of the themes, with only the second and fourth themes having relevant sub-themes emerging from the data.

Table 4

Overview of the relevant themes for the defendants group

<table>
<thead>
<tr>
<th>Defendants engaged with the bail support service</th>
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<tbody>
<tr>
<td>Person-to-person contact is most important</td>
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<tr>
<td>The BSS helped defendants understand the justice system, to an extent</td>
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<tr>
<td>Defendants need more knowledge of the justice system</td>
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<tr>
<td>The BSS helps defendants reach more services</td>
</tr>
<tr>
<td>The need for better communication and other services offered by the BSS</td>
</tr>
<tr>
<td>Varied and improved services</td>
</tr>
<tr>
<td>Communication from the BSS could be better</td>
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**Person-to-Person Contact is Most Important**

The strongest theme to emerge from the defendant interviews was the importance of person-to-person, direct contact. Many defendants found that building a ‘relationship’ with the BSS officer assigned to them was the most beneficial part in terms of helping them to feel understood or have more ‘faith’ in the system. ‘It just makes a difference having the same guy come each week you know? … Like you can rely on them’ (Participant 28). Others spoke about feeling ‘respected’ in contrast to previous engagements with the criminal justice system, ‘This lady came and she was like, respectful … which is new for me … it makes it easier to trust them’ (Participant 31). Some of those who had been on bail previously prior to the BSS being implemented spoke of how they felt ‘treated different’ while one defendant described before they felt ‘left to rot’,

‘On bail before it felt like I was just left in the lurch … it wasn’t good for my health mentally or physically … I was so keen for this when I heard about it. (Participant 17).

This difference in experience being on bail previously without the BSS was remarked upon by all of the participants who had previously had bail experience.

There were other attributes that participants pointed to which they felt made a ‘difference’ in engaging with the BSS as opposed to previous engagements with the justice system. Examples of adjectives that described their experience were ‘motivational’, ‘consistent’ and ‘positivity’, seeming to state that this represented a change from their previous experiences on bail, ‘For me it’s the consistency … like they say they are going to show up and they do … heaps of times in the past others wouldn’t turn up’ (Participant 30), ‘They helped give me like the motivation to get out and try stuff … like I got a job interview tomorrow … they make you feel like you can do it’ (Participant 23).
Another participant described getting positive feedback from his BSS officer,

‘It felt great just to have someone catch you doing something positive for once ... like they would actually talk about things I’d be doing well which hasn’t happened before’. (Participant 17).

These defendant’s statements mainly appeared to describe the approach and mannerisms of the BSS staff themselves, reflecting how important these participants found the ‘personal touch’.

Those who discussed having been able to build a relationship with their BSS officer often spoke more favourably of the programme in general. Some defendants spoke of being suspicious or ‘wary’ at first, as to the ‘intentions’ or ‘agenda’ of the programme officers. Almost all of them said that this suspicion was somewhat alleviated by the efforts and engagement of the staff,

‘After a while it just feels like there’s no judgement as well ... just feels like they are here to help ... I can vent to them like I can’t with my other associates ... who just tell me to do more drugs’ (Participant 29).

Defendants appeared to value these relationships they had built with the BSS staff, and some spoke of how they appreciated how future-focused the staff were as well, ‘They helped me at the start set goals that were like, achievable? And we kept working on them all the way through ... felt good to tick a goal off’ (Participant 22). Some participants also said that they would like to see their experience become the ‘norm’, ‘This should be the standard I think around the whole country ... people like me need a bit of a push and I’ve never had that before on bail until now’ (Participant 21).

Hence, the defendants were positive when speaking about their direct engagements with the BSS staff. This contact was often compared very favourably relative to previous
engagements with the justice system, where many said they often felt ‘lost’ or ‘ignored’. It seems that the emphasis on personal engagement and relationship building that the BSS aims to offer was seen as a major contributing factor to helping defendants stay busy, set goals, and have an outlet while on bail.
The BSS Helped Defendants Understand the Justice System, to an Extent

The majority of defendants stated that they found the programme useful in helping them understand the court and bail systems of New Zealand better. These defendants said that they often found the court process ‘confusing’ and many placed on bail did not feel that they fully ‘got’ the terms and conditions given to them. ‘The court stuff was so confusing … and shifty … I got it maybe a bit more talking to these guys after … but I still don’t really know aye’ (Participant 26). Some of these participants also talked about their dissatisfaction with the overall bail system in NZ, and how ‘let down’ they feel:

‘The bail system here sucks ... it’s ruined my whole year ... I keep trying to pass CV’s out and get my conditions changed but it feels like no one in the courts wants to help you ... I want to get out of this rut, but I’m stuck here and I haven’t even been found guilty yet ... it taunts you ... makes you want to do something dumb’ (Participant 17).

These defendants mostly said that their assigned BSS officers were able to give them more time and explanation than they received in court as to their conditions and how the overall justice system operated,

‘I went through the whole thing (the courts) and I didn’t know what was going on. I’ve just been asking him (the BSS officer) and he’s been telling me what it means. It’s good.’ (Participant 29).

‘The lawyer didn’t even know what was going on ... she said EM bail is going to ring you ... then these guys (BSS officers) showed up and they said they were different ... the lawyers didn’t know’ (Participant 19).

The above quotes appear to reflect the general confusion and lack of information defendants referred to throughout the interviews. Nearly all defendants made similar statements to the ones above, with very few talking about any confidence in their understanding of what was happening to them. The majority of defendants talked about it being a ‘hard’ time trying to receive an in-depth explanation of ‘what was going on’ in court,
but this was somewhat alleviated by the greater time and ‘effort to understand’ put in by the BSS officers.

Relationship building, discussed in a previous theme, by officers appeared to help facilitate this process. Some defendants spoke of trusting their officer more than court-appointed lawyers, which enabled defendants to feel more able to believe the explanations put forward by BSS officers ‘I like asking them like what do I need for court and stuff … when do I need to go? … and they’ve been helping me with that’. (Participant 22). When asked about why these defendants felt this way, the majority responded that the ‘extra time’ that the BSS officers put into ‘actually listening’ was the most important factor for them. Some defendants mentioned feeling ‘intimidated’ by the court process and said they did not feel like they could ask ‘what I wanted to’. It seems that building relationships with the BSS staff may have impacted positively at some level on defendant’s understanding of the justice system, according to the defendant’s responses.

Defendants need more knowledge of the justice system

Despite the mostly positive responses from defendants about the BSS’s impact on their justice process understanding, some participants stated that they still felt ‘overwhelmed’ by the system. Some of these defendants said that the BSS officers did not or could not ‘fully explain’ some of the difficulties they were experiencing while on bail,

‘The Judge and stuff talked about wanting to keep me out of trouble ... but then they won’t let me go to my job interview ... wouldn’t that keep me out of trouble? ... it just makes me go fuck it ... kills my motivation to work hard’ (Participant 21).

It appears that some defendants were dissatisfied with their BSS officer’s answers on why certain conditions were in place, and this resulted in them stating things like ‘they can’t change that much’ and ‘they won’t tell me why’. 
Hence, it seems from the perspective of the defendant participants that the introduction of the BSS has had a mainly positive impact on their understanding of their bail conditions and the justice system in general. Almost all of these defendants spoke of being confused and overwhelmed by the court process, which could potentially be a major factor in cases where defendants later breach their bail conditions; based on responses from those who had been through the system before. The introduction of the BSS appeared to give defendants an opportunity to increase their knowledge about the justice system, and give them a greater understanding of how to stick to their bail conditions. However, many defendants still spoke of a deep frustration born from confusion and mistrust of the justice system.
The BSS Helps Defendants Reach More Services

Many of the defendants interviewed had been placed on bail multiple times in the past. These defendants were asked about their experiences on bail with and without the engagement of the BSS. These participants all spoke positively of the programme compared to experiencing bail without it ‘I’ve been to drug treatment stuff through this … I’ve been on bail before … I didn’t get anything like this … they just ignored me’ (Participant 24). Many of the participants stated that beforehand on bail they got ‘nothing’ once they had been placed back into the community.

One of the key areas of difference for these defendants was knowledge of and access to other services. These services included mental health support, drug and alcohol addiction support, work experience, job matching, and housing/accommodation support, among others ‘I wish something like this had been around last time I was on bail, I didn’t know you could do all this stuff until now.’ (Participant 25); ‘Yeah I’ve been on bail before this kind of thing was around … and it has helped me find stuff I never knew about before … like jobs and help and stuff … way better than Google which is all I used to have’ (Participant 30); ‘It hooks you up with like, professional programmes and stuff … stuff I didn’t know was there that lets me understand the law and myself more’ (Participant 26). Support that was particularly important to most participants included work and job support, ‘I need to work, I have to’ and addiction support ‘I need to get clean’.

Many defendants spoke of not being aware that they could access these services while on bail, and those who were aware still did not know how to go about approaching these services. ‘Yeah before going on bail I didn’t think I was allowed to do courses and that ... so it was good when they told me I could … to be honest I don’t think I would have actually stayed in my course without them’ (Participant 22). The idea that on starting bail they could do ‘nothing’ appeared to be pervasive among many of the participants. This seems to link
with the previously discussed theme around knowledge of the justice system and bail conditions appearing to be lacking among many defendants pre-BSS involvement. With some defendants describing their thoughts before going on bail as being ‘hopeless’, ‘boring’ and ‘empty’, it seems that providing an understanding that they can engage with courses and support services could be a large protective factor in encouraging bail success.

The defendants also stated what they felt are the key benefits that the BSS providing this service gave to them. The most referred to benefit was alleviation from ‘boredom’, which was a primary difficulty associated with bail that almost all defendants referred to. Increasing ‘social’ engagement was also commonly stated with many participants saying this had a positive impact on their ‘headspace’ and ‘mood’. The BSS helping to organise job interviews was considered a key factor in reducing financial strain or ‘money troubles’, another commonly mentioned concern while on bail. Finally, defendants also believed that the BSS gave them a chance to show their ‘commitment to change’ at their trial, by giving them an ‘opportunity’ to ‘show I want to fix everything’. The BSS’ knowledge and links to these valued services appeared to be a major force of these benefits, in the view of the defendants.

Overall, the majority of defendants spoke highly of the BSS’ ability to link them up with services they believed to be valuable to them. Most seemed unaware of the variety of services and support that they were entitled to engage with while on bail, suggesting that this information is not often being passed onto defendants throughout the court process. Defendants from the Manukau district appeared to be somewhat more knowledgeable about the support services they could engage with than those in the Wellington region, which could be due to the Wellington trial taking place at an earlier stage. Due to the large amount of perceived benefits defendants referred to when discussing their time engaging with services, it seems that providing them with the knowledge and empowerment to research and approach
these programmes could be an important tool in both improving bail success records, and increasing defendants’ quality of life while on bail awaiting trial.
The Need for Better Communication and other Services Offered by the BSS

Defendants observed several ways they believed that the BSS could be improved or changed. This theme refers to the most frequent responses given by defendants around this topic. There are two sub-themes contained in this theme which refer to the two most common responses around the ways the BSS could change from the perspective of the defendants. Sub-theme one refers to the need for more quantity and quality of services offered by the BSS and the wider community. The second sub-theme refers to the need for better communication from the BSS team towards defendants. These sub-themes are discussed below.

*Varied and improved services*

When discussing the ways the BSS could improve or change, the most common answers revolved around the need for more services that those on bail could access or be made aware of. Some defendants observed that, despite the positive aspects of their engagement with the BSS, they thought that they were not offered the right types of services to fit their needs, and believed that, overall, the BSS did not do enough to help them achieve some of their goals, such as getting regular work. ‘Yeah just more job opportunities and counselling and stuff … I want to be able to prove myself and stay out of jail … feels like I can’t do that sometimes’ (Participant 21); ‘Even like if there was volunteer stuff in the area that I could do … I want to get out the house and show the courts that I’m like trying aye’ (Participant 18); ‘Something like tailored to the person’s needs you know? … that gets them the support they need not just the same for everyone.’ (Participant 31). It seems that the majority of participants wanted to engage with services, but due to either lack of availability or bail condition stipulations, this was a common point of frustration. The quotes above seem to reflect a commonly held attitude by many defendants, in that many had a desire to engage with services of some kind but felt that they have been unable to do this. It appeared that nearly all the defendants did not
blame the BSS specifically for this, but as their main contact during bail it seems that BSS officers drew the brunt of criticism around this based on the responses of the defendants.

Communication from the BSS could be better

Some defendants also found BSS as a service difficult to communicate with at times, saying that despite their efforts to call in and seek information, someone was not always there to answer their calls or return them, leaving them ‘upset’. ‘Last few times I called no-one picked up … It’s just frustrating … She’s all right when she comes (the BSS officer), but there should be someone at the phone as well’ (Participant 29); ‘They need to pick up the phone more … sometimes I call heaps of times and they don’t pick up or get back to me’ (Participant 32); ‘More contact on the phone would be good aye … just to see how you going’ (Participant 23). Many of these defendants spoke of the ‘loneliness’ and ‘irritation’ that came from feeling ‘left alone’. It seems that ‘consistency’ was an important factor for these participants, as they appeared to be hoping for some kind of contact in the justice system that they could ‘rely on’. As many of these defendants talked about feeling ‘confused’ and ‘let down’ by the justice system in general, not having someone call when scheduled or answer them could be seen as reinforcing the belief that the justice system is not interested in ‘helping us’.

Despite the above points listed, some defendants could not or would not identify a specific way they felt that the BSS itself could improve. They instead would most often reflect on their (mainly negative) experience of bail as a whole. However, a commonly shared experience was that they were not sure what the BSS actually is or does, ‘I guess I just don’t always know what is there still … I’m still not really sure all the ways this can help me’ (Participant 30). This seems to reflect one of the points made in the stakeholders analysis, in that many people involved in the BSS are still unsure as to what form and function it takes. This ‘confusion’ appears to have extended to the defendants, as many were unable to give a
description of what they felt the BSS is, instead mainly discussing their opinions on bail as a whole. Participants from the Manukau district appeared to be slightly more aware of the BSS’ functions than those in the Wellington area, but there still seemed to be no consensus among these participants as to what the BSS does and does not do.

Hence, defendants were mostly positive about their experiences with the BSS and almost universally negative about their experiences on bail in general. It seems that defendants sometimes struggled to find specific issues with the BSS itself beyond some communication issues, but this may be due to them not having a solid understanding of what the BSS does or is supposed to do. The consensus around the need for more services was extremely strong, and appeared to be the most crucial aspect to the bail experience of defendants from their perspective. Although this may not be something the BSS can alter directly, increasing their knowledge and engagement with a wider range of services appears to be a highly desirable prospect from the opinion of the defendants they work with.

Summary

The results of the thematic analysis of the defendants group suggest that the participants had four main areas of experience with the BSS that were consistent across interviews. Firstly, these results suggest that person-to-person contact with professional staff was extremely important to defendants. Secondly, they also suggest that the BSS helped give defendants a greater understanding of the overall criminal justice system in New Zealand. Thirdly, it was suggested that the BSS helped defendants access a wider variety of external services (such as NGOs) that they previously would not have felt able to access. Finally, they suggest that defendants believe that the BSS could improve its communication with defendants, and that ideally defendants would like to see improved amount and breadth of services that they can access. These results are discussed in greater depth in Chapter 5 below.
Chapter 5 – Discussion

This study aimed to investigate the views and experiences of stakeholders and defendants regarding the Bail Support Services pilot programme. More specifically, it aimed to explore what these participants thought were the key strengths, weaknesses, opportunities, and threats to the BSS; whether they felt it had been successful in achieving its goals, and what changes need to be made to it going forward. This study captured a moment in time in which the BSS was still in the process of developing and changing. The results will be interpreted with this in mind.

The results of the thematic analysis in the previous chapters suggest that both stakeholders and defendants have multiple perspectives on the BSS and how it could operate and change in the future. These results will be discussed in more detail below, followed by some of the wider implications of this research such as future research pathways and practical factors. The limitations of this study will also be discussed in this chapter.

The Overall Impression of the BSS

One of the key considerations for this study was the overall perception of the participants of the BSS and the changes it was seeking to make. In terms of the stakeholders group, responses seemed to infer that the majority of the participants interviewed were positive about the changes the BSS was trying to make, whilst having some reservations about the way these changes were made. It seemed that nearly all participants in this group were in agreement that the pretrial system in New Zealand needed some form of change, but many felt that the BSS had been introduced in a confusing manner. The subgroup of participants that showed the most consternation around the BSS was the police. This seemed to be mainly influenced by how the BSS has initially been implemented from their perspective, where they felt it was positioned as an opposition to police prosecution and was
mainly targeted at getting as many people out on bail as possible, which was not reflected in the stated goals of the programme.

This showed the importance of how a programme such as the BSS is advertised and implemented to stakeholders. Based on their responses, participants seemed to all hold varying beliefs on what the purpose of the BSS is, and this confusion was one of the most commonly mentioned issues many stakeholders had with the programme. Almost all external stakeholders (those not working directly for the BSS) stated that they recommended that all relevant stakeholders be integrated into discussions and development of future pilots and programmes, in order to reduce the chances of any resistance or mistrust hindering the chance of the programme developing smoothly. Crane and Livesey (2003) discussed the importance of stakeholder communication from the earliest stages of planning and development, and that despite there being some risks to open communication, the positives of involving as many stakeholders as possible outweighed the negatives. Alongside this, it has been argued that including stakeholder opinions and beliefs when planning organisations and programmes is necessary for ethical, performance and strategic reasons (Evan & Freeman, 1998; Frooman, 1999). The responses of the participants suggest that it is important that programmes like the BSS are as clear with stakeholders as possible during implementation, otherwise they may face difficulties in having stakeholder buy-in and support.

In terms of the defendants group, almost all participants had a positive experience with the BSS, despite overall negative reactions to the experience of bail as a whole. The responses of those who had been on bail before without the BSS were especially valuable in ascertaining some perspective on what difference the BSS makes for defendants, with these participants being universally positive about the increased level of contact and services that the BSS provides. Their responses suggest that the BSS provided a service that improved upon the overall bail experience for defendants, which could be leveraged for addressing the
suggested negative impacts of bail. There are, however, some issues with interpreting these impressions that are discussed in the limitations section below.

What Does the BSS do?

One of the key points of contention amongst all participants was the differing beliefs about what the BSS does, or what it offered. For the stakeholders group, this seemed to be somewhat linked to their respective careers and point-of-contact with the BSS. However, even those who worked for the BSS, such as BSS officers, showed some confusion as to what the purpose of the BSS actually was. This confusion could have been impacting upon the levels of trust some stakeholders had in the BSS, and also might be influenced by the lack of communication to external stakeholders during implementation. This dynamic reflects a concept referred to in literature as ‘cacophony’, in that unsuccessful communication efforts can create ‘noise’ which further disrupts stakeholder relationships and communication pathways in programmes as they develop (Andriof & McIntosh, 2001). Based on the responses of participants, it seems that this confusion about the nature of the BSS fueled a large portion of some stakeholders mistrust in it, and also may have led some stakeholders to hold overly positive opinions about the programme, such as some defense lawyers believing that the programme was designed to help them win their case. It is also possible that this confusion may have hindered the programme in achieving its goals in these early stages, as those working within it were not yet aligned on how the programme was supposed to be run or what it was supposed to achieve, based on their responses.

In terms of the defendants group, there was also some confusion reported from participants around the nature and function of the BSS. Some appeared to think that the BSS was designed to help them specifically get out of going to prison later by proving their commitment to working on themselves, whereas other defendants appeared to see it as the courts keeping tabs on them. There appeared to be less frustration around this discrepancy
from defendants as compared to stakeholders, with defendants seeming to be more content with the BSS regardless of what they felt its function was, whereas stakeholders showed more frustration at this disagreement. It seems that the defendants, regardless of whether they had built a strong relationship with their officer or not, were positive about BSS contact, particularly those who had been on bail before without it. This could reflect findings such as Lowencamp and VanNostrand (2013), in which pretrial supervision was suggested to increase trial attendance and adherence to bail conditions. This suggests that some element of supervision alone may have a positive impact on a defendant’s position on the bail process, regardless of the quality of relationship between officer and defendant.

Hence, these responses from both groups show the importance of communication when it comes to designing a programme of this kind. Although there are naturally likely to be frequent changes and alterations made over the course of a programme’s development, continually informing all relevant parties of these changes and the nature of the service seems extremely important based on the participants responses. As this was the most commonly referenced frustration among stakeholders, it seems that some of the key difficulties the BSS faced in gaining the trust and support of the wider criminal justice system could have been addressed more swiftly with stronger communicative practices across the initial stages of the pilot’s development. To reiterate, this study examined a period of time reasonably early in the pilot’s implementation, which may have influenced why this issue was front-of-mind for many participants.

**Key Strengths of the BSS**

In terms of the main strengths of the BSS, stakeholders were mostly in agreement that the person-centered approach to building relationships with defendants was a positive outcome and intent of the BSS. Receiving more personalised and direct information was viewed as a positive by stakeholders in the courts, whilst those within the BSS reported that
they thought those who built a stronger rapport with their defendants saw more success in supporting them through the bail period. The defendant group also shared similar responses that supported the findings of the stakeholder group. Personal contact from the BSS was one of the most common positive responses in regard to their experience with the service, with many defendants saying that having someone they felt they could trust remain in contact with them made a huge difference to their experience of being on bail.

This finding presents potentially a juxtaposition to other findings in the literature, such as Goldkamp and White (2006), who suggested that in-person meetings with defendants did not have any significant outcome on rearrest rates or bail condition adherence. Although this study was not examining quantitative data of this nature, it seems plausible that based on defendant responses, a meaningful relationship with their bail support officer was considered to be a strong protective factor to them. It seems that the BSS provided a human-based element that was previously somewhat absent in the pretrial system. This system presents as being more aligned with the systems in certain jurisdictions within the United States of America, which are considered to be progressive pretrial systems (Green, 2016). As several of the participants stated that their engagement with the BSS provided some hope and focus for them within the pretrial period, it could be the case that the BSS or similar ventures could have an impact on improving pretrial ‘success’. It appears that some of the difficulties going forward could be proving whether in-person meetings are necessary, or whether their potential costs outweigh their benefits (Stevenson & Mayson, 2017). Based on the findings in this study, it is inferred that from a defendant’s perspective in-person supervision is a positive improvement of the original system.

Another noted strength by the participants was the increased access to services that the BSS provided. The stakeholders group (particularly those within the BSS) often reported discovering new NGOs and groups that could support defendants and help increase the
likelihood that defendants have a successful bail period. It seems that prior to the BSS these services did exist, but both defendants and a large number of stakeholders were either unaware of their existence or unsure about how to connect with these services. The BSS’s induction therefore seems to have provided an opportunity for defendants to access services that may help increase their well-being and help with their recovery, at a stage in which it appears that prior to the BSS most defendants were relatively unengaged with outside services. Chen (2020) discussed how those in pretrial remand in Australia and New Zealand receive far reduced access to relevant services compared to sentenced prisoners, and based on participant responses it was suggested that prior to the BSS, this may have been the case also in those bailed to the community in New Zealand.

Thirdly, another key strength of the BSS according to the participants was the increase in knowledge of and contact with the criminal justice system that the BSS provided for defendants. Pretrial officers in the stakeholders group stated that in their experience, defendants initially had little understanding of how the criminal justice system operated, and by extension, how their bail period and conditions functioned. This was widely supported in the defendants group who reported confusion and disengagement with the justice system due to a mistrust and lack of understanding of the process. The criminal justice system has been found to be among the least trusted and least understood institutions across the Western world (Van de Walle & Raine, 2008), and there have been indications that there are structural issues with Western justice systems that are seemingly designed to confuse defendants and encourage them to please guilty (Petersen, 2019). It could be that the BSS had some perceived success in addressing this, as defendants said they felt more comfortable going forward to their BSS officer with questions about their bail conditions and what dates they should appear in court. This could suggest that the BSS may be able to have a direct impact on increasing court attendance and adhering to bail conditions, which are factors considered
to be vital in assessing pretrial ‘success’ (Lowencamp & VanNostrand, 2013). From this, it is probable that it may have been difficult in the past for defendants to follow conditions they did not fully understand and attend court dates they were not aware of.

**Weaknesses of the BSS**

There were several noted weaknesses of the BSS at the point in time when the interviews took place. Besides the aforementioned issues regarding communication and implementation, stakeholders also reported concerns on the gaps in staff training and lack of access to sufficient resources. Robinson et al. (2012) suggested that officers who had specific supervision training showed greater evidence of skill use and lower client failure rates. Similarly, Labrecque and Smith (2015) suggested that parole and probation officers who received coaching sessions and specific supervision-based skills training showed greater evidence of using performance and evidence-based skills over an 18-month period. Although there has not been specific work completed on pretrial officers, the supervision skills necessary appear to be similar based on the responses given by participants who had worked as parole officers in the past.

In terms of training, it was mainly BSS officers who spoke of their concerns about the amount of training they had received prior to beginning the pilot, whereas managers spoke of the problems they had in assessing early what training would be necessary due to the speed of the pilot’s development. According to these participants, some BSS staff felt underprepared to undertake the demands of the job at first, and some were concerned for their safety at times. Previous studies on officers in the United States of America suggested that safety concerns have been the leading issue for officers in the past (Lowry, 1999). Lowry (1999) suggested that this could be mitigated with specific safety-based training such as defensive tactics and de-escalation training. If these training concerns are not addressed in future iterations or development of the pilot, it seems that the overall programme could be at risk.
due to the greater chance that mistakes are made by undertrained staff, reflecting poorly on the entire service and its utility.

Another weakness identified by the participants was the lack of cultural and practical resources. Staff within the BSS reported concern that they did not have access to the right resources necessary to help the programme function at its full potential, which may have limited its ability to prove its worth or overall success. Stakeholders within the BSS discussed the difficulty in attaining scarce resources that they felt are required by the programme, whilst also ascertaining that staff could quickly become burnt-out over time if changes were not made. The lack of cultural resources could also be considered concerning based on literature which suggests that indigenous people across the Western world are overrepresented and have worse criminogenic outcomes in the criminal justice system (Bressan & Coady, 2017; Nadesu, 2008). Without specific input on indigenous issues, it may be difficult for officers to successfully navigate these areas and avoid perpetuating systemic inequalities.

Based on participant responses, it appears that in terms of this weakness there was somewhat of a paradox wherein the BSS needed to demonstrate its value to attain more funding and support, but also may need that funding and support to prove their worth in the first place. This seemed to set the BSS in a challenging position that other pilot studies, regardless of the field, may also face (Hazzi & Maldaon, 2015).

Defendants also discussed what they believed are the weaknesses of the BSS. However, the majority of defendants could not list a direct concern they had for the BSS, instead more often reflecting on their negative experience of bail as a whole. This made it somewhat difficult to ascertain weaknesses of the BSS from the defendant’s perspective beyond more surface-level topics, such as more frequent contact from officers. The reasons
as to why it was more difficult for defendants to talk about weaknesses of the programme are
discussed in more depth in the limitations section below.

Opportunities and Threats to the BSS

Participants also reported their opinions on what they think will be the key areas of
development and struggle for the BSS in future. It seemed that stakeholders were concerned
about whether the current weaknesses such as lack of training and resources would continue
into future iterations of the programme, if not addressed. Beyond this, many stakeholders
seemed concerned with how the BSS would survive without some alteration of pretrial
legislation or discretion.

Based on the responses given by stakeholders on this question of legislation, it appears
that in some capacity the future of the BSS could be tied to how well it establishes itself in
New Zealand law. Beyond the BSS, it seems that most, if not all, stakeholders believe that the
pretrial process in New Zealand could benefit from a more structured layout in law that could
help clarify and streamline what is at times an ‘opaque’ system. Most stakeholders seem to
indicate it is a point to contend with in the future, after the BSS has spent more time
establishing itself and its place in the justice system first and foremost. Most appear to agree
that if BSS is to survive long-term and be a respected and consistent part of the court and
community process, then legislative change and official clarification of the pretrial system
would be required. As discussed in Chapter 1, several legislative and policy changes
(particularly to the Bail Act 2000) in the past ten years in New Zealand may have directly
impacted the increase in those held in custodial remand (Lambie & Hyland, 2019; Ministry of
Justice, New Zealand Police & Department of Corrections, 2015). It follows from this that
changing legislation within the pretrial sphere is not only possible, but could offer direct and
meaningful change to the pretrial population, either positively or negatively.
Specific elements of the BSS such as discretion and whether it remains voluntary also appeared to be pressing challenges in decision-making that the BSS team faced as it rolled out further following the interview period. Willis (2017) stated that evidence from other bail support teams around the world suggest that the programme remaining voluntary would increase the likelihood of it being a success. Willis argued that the research holds that involuntary systems may place overemphasis of resources on defendants unwilling to engage or change, reducing the overall chances of success of the programme. The international requirement for the presumption of innocence also requires initiatives such as the BSS to remain optional and to be as least restrictive as possible. There is still an apparent tension present despite the aims of programmes such as the BSS, in that increased connection and supervision may have the secondary effect of increasing the impact and enforcement of onerous bail conditions (Hucklesby, 2011). It therefore seems important based on the results of this study that the BSS continues to build on the elements valued by the defendants (such as personal connection and access to support) while being mindful of the rights to liberty that those awaiting trial have.

Another noted threat to the BSS is the access to suitable accommodation. Based on participant responses, this seems to be an element somewhat outside the control of the BSS that has large implications on its effectiveness going forward. Jones and Crawford (2007) suggested that lack of suitable accommodation is one of the primary challenges associated with defendants meeting their bail conditions. If the concerns raised by participants around a lack of accommodation are not addressed, it seems that the BSS may be continually struggling to keep defendants, and the wider community, safe and outside custodial remand if there is no safe space to place and support defendants. Willis (2017) in his review of bail support literature suggested that the availability of suitable, affordable housing may be the most important factor in the overall success of bail support service initiatives. This appears to
relate to the other difficulties regarding funding being necessary to address the resources
concerns of the BSS, but it may be difficult to attain such funds without first proving the
programme’s effectiveness. This context suggests that unless a co-ordinated effort amongst
NGOs, Ministry of Justice, Department of Corrections and the BSS is conducted, then it may
be difficult to address overall rising pretrial populations, regardless of how successful or
supported the BSS is or becomes.

Limitations

This study offered a first in-depth look at a significant change to how the New
Zealand pretrial system deals with defendants. However, there are some notable limitations to
this study which may reduce the overall scope of the findings at this point. Firstly, the
methodological issue of having the BSS officers present for the interviews was a definite
weakness when it comes to interpreting the accuracy of the defendant interview responses.
Despite efforts taken by myself and the BSS team to reduce the amount of time and contact
officers had with defendants during interviews, due to legal and safety concerns it was
impossible for officers to be completely removed from the interview space at all times. This
may have put some intrinsic pressure on the defendants to answer more positively if they
knew that a BSS officer was within earshot, especially if they had developed a relationship
with said officer already.

Alongside this, the nature of the defendant’s legal status may also be another
limitation when interpreting the results. Despite major efforts to inform defendants that the
interviews had nothing to do with their alleged offending, there may have been another
intrinsic pressure to answer positively in potential fear that negative responses could be
somehow relayed to the court system and have an adverse impact on their sentencing and
trial. Mistrust of the court systems and processes was commonly referred to in the defendant
interviews, suggesting that most defendants had reason to be wary of their responses given on
record, despite the interviewer being from an unaffiliated organization. Similarly, selection of defendants may have also been an issue. As defendants were free to decline or accept the interview in advance, it is possible that those with more negative experiences of the BSS team and process may have declined the interview due to the aforementioned issues around mistrust of where their responses would end up being heard. All of these potential factors may have influenced the overall very positive experience the defendants reported in the interviews regarding the BSS team itself, although due to these methodological issues it cannot be known for certain.

Another potential limitation of the defendant interviews was the occasional lack of depth they shared regarding the pretrial experience. Although this study was focused on defendants’ experiences of the BSS in particular, the relative newness of the programme meant that defendants often did not have a large amount of depth to explore in the interviews beyond their overarching impressions of the service. It is possible that the structure of the interview schedule and the researcher’s approach may have influenced this as well. Defendants appeared to show a lot more depth of responses when discussing their overall experience of bail, which is referred to in the future research directions section below. It is possible that many of the defendants had not had enough contact with the BSS at the time of interviewing to provide any material beyond a surface-level response to their experience, which may have weakened the depth and breadth of responses that were seen in the data.

Another potential limitation of this study was the lack of focus on ethnicity and particularly Māori concerns on the pretrial system. An extremely common finding amongst pretrial research is the disparity in prison populations based on ethnicity across the OECD. The research suggests that ethnic minorities (and particularly indigenous populations) are disproportionately negatively impacted by burgeoning pretrial populations. The data from New Zealand prison statistics suggests that this is the case in this country, with Māori in
particular being disproportionately represented and thus impacted by a problematic pretrial system (New Zealand Department of Corrections, 2020; Lambie & Hyland, 2019). This disparity was considered when designing the interview schedules for this study, and questions were included to try and explore stakeholders’ opinions and views as to how this disparity could be addressed from a BSS and overall pretrial perspective. However, responses were often shorter than other questions and many times the answers revolved around variations of ‘I’m not sure exactly how we can do this’.

There did seem to be a predominant desire amongst stakeholders to address these issues, but most appeared uncertain as to what would actually directly address this. This may be due to a limitation in participant selection, in that no cultural leaders or advisors were directly interviewed for this study. Although this study aimed to start discussing how the needs of Māori and other disproportionately impacted groups could be addressed through ventures such as the BSS, a more direct approach targeting participants with expertise and experience in indigenous issues may be required to adequately address these concerns.

**Situating this study and future research directions**

This study’s findings appear to fit well into the somewhat scarce but important research around pretrial support services. Reviews such as Hucklesby (2011) and Willis (2017) discuss similar results around pretrial services such as communication around implementation and positioning being vital, strong relationships with wider agencies being necessary and access to suitable accommodation being a key factor in bail success. Both reviews also suggest that research on bail support services can have direct implications on the wider criminal justice system, in terms of how these services can both reflect wider systemic issues and also represent an attempt at a potential move towards a more holistic, person-centered approach that better encapsulates the right of presumption of innocence that all people have. This study adds more weight to these previous findings, whilst also attempting
to provide a voice to those currently on bail who often struggle to be heard. This research also presented a first opportunity for a study of this kind to be presented in a New Zealand context, which adds further credibility in that these findings appear to be somewhat consistent regardless of jurisdiction. It nevertheless provides a unique look at New Zealand’s pretrial system from those closest to its center, with it hopefully providing evidence that supports exploration around changes in the system being made, informed from a person-centered lens.

As alluded to above, further research into the direct concerns of Māori and how the BSS or other ventures could potentially address this would be useful. Other countries such as Australia and Canada seem to already have put effort into research around how the pretrial system negatively impacts their own indigenous populations, but further research into how these concerns could be practically addressed seems necessary. Qualitative research is seemingly ideal for this kind of question, and could potentially provide the relevant data regarding ‘how’ to deal with disproportionate outcomes (Hammarberg et al., 2016). Previous quantitative research seems to suggest the ‘what’ and to an extent the ‘why’ this is happening, but qualitative research may be necessary in formulating the next steps in addressing it.

Alongside this, research into how the BSS and other pretrial or criminal justice systems can actively engage better with Māori and incorporate a Māori worldview into both practice and philosophy appears important in having a system that caters to the needs of the people it serves. Based on the responses by defendants in this study, having a personal, human connection was the most consistently named benefit of their experience of the BSS. As such, it seems important that the BSS and other services working with the criminal justice system build and expand on this core principal through engagement of person-centered strengths-based approach’s such as the Good Lives Model (GLM) (Ward, 2002) as well as Māori models of well-being such as Te Whare Tapa Whā (Durie, 1985). Leaming and Willis (2016) proposed that the GLM appears to fit well with Māori models of wellbeing in that it
promotes client agency, identity and connection; with a holistic view of how to improve lives rather than just reduce criminogenic risk. As the BSS works with people awaiting trial and therefore innocent until proven guilty, it seems that the GLM could be a good fit in helping legitimize and structure the approach of the service whilst maintaining a person-centered and holistic approach to wellness that fits Māori worldviews. Further research into training and trialing this approach amongst Bail Support Officers that explores the experiences of defendants based on culture, race or gender identity with this service may be useful in helping the BSS more effectively serve their Māori and minority clients.

Further research could also explore how the BSS developed and changed over time in further pilots and iterations. Although some data was gathered from the Manukau pilot for this study, only one stakeholder was interviewed and therefore it was difficult to make any substantiated claims as to how the programme had developed and changed to address initial concerns. This study provides a snapshot of how the BSS was operating and perceived at an early point in its development. Further research could look at the process of it changing and developing, in order to see if the programme remained aligned with its goals and whether it actually addressed the gaps it was created to solve. This could also be linked in with further discussion of risk assessment tools if these are connected to decisions around bail in future, however direct analysis and scrutiny as to whether these tools exacerbate problems of systemic racism and erosion of presumption of innocence seems pertinent.

Furthermore, potential studies could also look at analysing how the BSS and other changes to the pretrial justice system in New Zealand have impacted the amount of people remanded in custody. As laid out in chapter one, New Zealand’s pretrial population has increased significantly over the past decade. However, the most recent statistics in 2020 suggest that this increase had slowed dramatically, particularly over the past two years (New Zealand Department of Corrections, 2020). It would be interesting to see if future studies
could find a link or correlation between whether the BSS and other ventures into changing
the pretrial system have had an impact on this slowed increase, or if other factors are
potentially having an effect.

Future qualitative research could also potentially explore the experience of being held
in remand or on bail in more detail. Although this study attempted to capture some of that
experience in the defendant interviews, a specifically designed interview schedule that
considers deepening discussion beyond the BSS and looking at the entire process of being a
defendant may give a voice to a subgroup that has seemingly been silenced for a long period
of time. This may help gather a more accurate perspective on the nature of being a defendant
and how the system impacts the human experience of those within it. There seems to be a gap
in the research exploring this particular group of people in such depth, and could help
services, the courts, and the wider community better understand this experience and how this
subgroup has been rapidly expanding over the past decade and beyond.

Conclusions

This study took a somewhat different approach in using qualitative methods to assess
the success of a new initiative within New Zealand’s pretrial justice system. The stakeholders
and defendants involved with this pilot programme offered their perspectives and experiences
in relation to this service, and discussed their opinions of its perceived success, failures,
opportunities, and threats for the future. This study contributed to the wider knowledge of
pretrial support services by providing further weight to international findings around the
importance of communication, implementation and service positioning whilst also expanding
the research on the experiences of those within the New Zealand pretrial sphere.

Stakeholders thought that the programme was successful in developing a greater
attention to the relationship between defendant and the justice system, whilst also providing
defendants with an increased access to services aimed at helping them understand and adhere to their bail conditions. Defendants seemed to agree with these points, further stating that they believed that the service gave them a greater overall understanding of the criminal justice and bail process, which in turn they believed gave them more hope in surviving and somewhat thriving in their bail period.

Stakeholders stated that despite these strengths, the programme also had issues from their perspective. They considered the BSS to have had a confusing launch and implementation, with many stakeholders unsure of what the function and positioning of the BSS team was, leading to some mistrust of its nature. At the time of interviewing, many stakeholders also considered the BSS to have insufficient resources allocated to it to achieve its goals, whilst some others considered the training level of staff to be widely varied and inconsistent.

Opportunities and threats to the programme were also discussed, with stakeholders believing that the future of the service was tied to potential changes and alterations to pretrial legislation and the wider pretrial justice system itself. A lack of sufficient suitable accommodation was also considered to be a threat to the service’s success going forward, as it may hinder their ability to safely place defendants in the community awaiting trial.

Hence, the Bail Support Service represented a significant change towards a more person-centered approach focused on rehabilitation and support rather than a more punitive one represented by custodial remand. It seems across the participants that this study showed that people want the pretrial period to be one of healing and safety for the wider community. Whether or not the BSS achieved this at the time of interviewing is up for debate, but it undeniably seeks to replicate programmes from overseas that have shown some evidence of improving the pretrial system. With New Zealand’s pretrial population continuing to grow in
proportion compared to the wider prison population, it seems pertinent that alternatives to
custodial remand that promote defendant growth and support, whilst maintaining safety for
the community, should be of high priority. The BSS showcases an approach that attempts to
treat defendants with respect and attention, and better reflect the Ministry of Justice’s stated
basic right of ‘innocent until proven guilty’.
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Appendix A: Participant Information Sheet

PARTICIPANT INFORMATION SHEET

PROJECT TITLE: Pre-Justice: An Analysis of New Zealand’s Pretrial Justice System and the Arguments for Change

RESEARCHERS: Scott Peterson and Dr Ian Lambie

What is the research project about?
You are invited to take part in a project about the Pretrial Justice System of New Zealand. In particular, this project is focused on the attitudes and opinions of key stakeholders involved in the recent pretrial services programme undertaken in the Wellington region, and aims to analyse the impact the programme has made and identify practical recommendations for potential further change in New Zealand’s pretrial justice sphere.

Who will be conducting the interviews?
Scott Peterson will be conducting the interview. The team is led by Dr Ian Lambie, an Associate Professor in the Department of Psychology at the University of Auckland and the current Chief Science Advisor for the Ministry of Justice in New Zealand. Scott will be undertaking a majority of the research procedures including transcribing the interviews, analysing the results and writing them up with the supervision of Ian. A summary of the research findings will be provided to you if you wish.

How can you help us?
The research will involve an audiotaped interview asking questions about your role, experiences and opinions of the recent bail support services reform in the Wellington region. The questions will primarily be focused around your opinion on the impact of the Bail Support Services programme and recommendations you might have for the future of the programme and the pretrial justice system in New Zealand in general. The interview can be done wherever works best for you. It is important that you understand that participation in this research project is voluntary. If you do not consent to doing the research you can stop the sessions at any time. Even if you consent to be recorded you can have the recording device turned off at any time without giving a reason. After the sessions you will be given the opportunity to edit transcripts if you feel like they have not captured what you meant to say.

Who will know what I said?
Only the researchers will know exactly what you have said. Only your general career title (i.e Judge, pretrial officer) and will be used in any reports on this study. No other identifying information will be used. The recordings will be stored in a locked cabinet or in encrypted electronic files for six years and then destroyed. Recorded information from transcripts will be stored separately from identifying information such as consent forms.

Can I pull out later if I want to?
You have the right to withdraw the recording up to one month following the interview without reason or any questions asked. This can be done by contacting Scott Peterson. Any of your data collected for the study will be destroyed.
Who should I talk to if I have any questions?
If you have any questions regarding this research project or wish to know more please do not hesitate to contact Scott Peterson email spet072@aucklanduni.ac.nz or Ian Lambie; Tel 09 373 7599 Ext 85012; Email i.lambie@auckland.ac.nz

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: ro-ethics@auckland.ac.nz.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE on 28/09/2018 for 3 years. Reference number: 020896
Appendix B: Consent Form

CONSENT FORM

PROJECT TITLE: Pre-Justice: An Analysis of New Zealand’s Pre-Trial Justice System and the Arguments for Change
RESEARCHERS: Scott Peterson and Dr Ian Lambie.

• I have read the information sheet telling me about this project, which will involve a face-to-face interview which will be audio-taped and transcribed.
• I understand that I will be allowed to edit transcripts of my interview if I choose to.
• I have had the chance to ask questions and have them answered.
• I understand that participation in this research is my choice and that I can stop the session at any time without having to give an explanation why.
• I know that I can withdraw my data up to one month following my interview. This can be done by contacting Scott Peterson, who will destroy my data.
• I understand that the data will be kept confidential and that no material which could identify me will be used in any reports on this study.
• I understand that my data will be kept for six years, after which they will be destroyed.

I wish to receive a summary of the findings, which can be emailed to me at this address:

_______________________________________________________

Name: ________________________________

Signature: ____________________________ Date: ___________

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE on 29/03/2018 for 3 years. Reference number: 020896
Appendix C: Stakeholder Interview Schedule

Participant (Stakeholders) Interview Schedule

What is your role/connection in regards to the Bail Support Services programme?

How long have you been involved in the Bail Support Services programme?

What is your understanding of what the Bail Support Services programme is?

What has been your overall impression so far of the programme?

What would you consider to be its strengths?

How do you think it could be developed further?

What key factors do you think contribute to why people succeed or fail when given bail?

If you believe the programme has been so far successful, what key factors do you think have contributed to its success?

In your opinion, what have been the biggest challenges associated with the implementation of this programme?

If this programme was implemented in other parts of New Zealand, what advice would you give to those in charge of its application?

Are there any variations between regions in New Zealand that you think would be important to consider in regards to this?
Do you believe that New Zealand would benefit from having a pretrial justice system? If so then why? If not then why not?

Do you have any recommendations as to how solutions for Maori can best be managed around this?

Do you think that any legislative changes need to be made? If so what changes?

What would your recommended next steps be towards instigating change?

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE on: 28/09/2018 Reference number: 020896
Appendix D: Defendant Interview Schedule

Participant (Defendants) Interview Schedule

How long have you been on bail for?

How long have you been involved with this service (bail support)?

What do you think the Bail Support Services programme is/does?

What were your first thoughts when approached by bail support officers?

Have those thoughts changed at all over time? (If so, why?)

What things do you think are good about it (programme)?

What things could be better or different (programme)?

Have you been using any of the bail technology options (i.e. bail app)? why/why not?

What was the court process like for you?

What would you want the court process to be like?