

## Introduction

Release on temporary licence (ROTL) is a pivotal part of the process of resettlement and rehabilitation. For many people in prison, particularly those who are serving long sentences, the chance to experience ROTL and open prison conditions are a vital stage in the preparation for their safe release. They enable people to sort out jobs, housing and establish contact with families which help them to reduce their risk of reoffending. Less than 1% of releases on temporary licence fail and, of these, only 6.1% involve an arrestable offence. This is the equivalent of five arrests per 100,000 releases.

The government has conducted a review into ROTL following three tragic incidents involving people on temporary release in the summer of 2013 and a small number of high profile absconds from open prisons in 2014. Interim measures have been put in place and a revised policy is expected to be introduced in February 2015. Since the start of the review, people in prison in contact with the Prison Reform Trust have reported increasing delays in obtaining access to open conditions and permission for temporary release and mounting frustration at being denied opportunities to progress their sentences. The latest Ministry of Justice statistics show that the number of releases on temporary licence has decreased by nearly one quarter since 2013. This briefing highlights the importance of ROTL for reducing reoffending and calls for a review of the government's changes to the scheme to ensure fairness and proportionality.

## Key statistics

- From October 2013 to September 2014 there were 485,634 releases on temporary licence in England and Wales.<sup>1</sup>
- The number of recorded temporary release failures (TRFs) between October 2013 and September 2014 was 294. This represents a failure rate of less than one per cent (0.06%).<sup>2</sup>
- Only 6.1% of temporary release failures involve an arrestable offence. This is the equivalent of five arrests per 100,000 releases.<sup>3</sup>
- Between July and September 2014, there were 108,877 releases on temporary licence from prisons in England and Wales. This is a decrease of nearly one quarter (23%) since July to September 2013; with all types of licence showing decreases.<sup>4</sup>
- The number of individuals given at least one instance of ROTL between July and September 2014 was 4,409. This represents a 29% decrease over the year.<sup>5</sup>
- The number of individuals serving life sentences given at least one instance of ROTL has fallen by 40%.<sup>6</sup>

## What are the main types of temporary release licence?<sup>7</sup>

There are four types of temporary release licence:

- Resettlement Day Release (RDR): to allow prisoners to re-establish links with family and the local community, for example by taking part in community projects, working, attending training and educational courses, or establishing housing.
- Resettlement Overnight Release (ROR): similar to resettlement day release, but with a view to the prisoner spending time overnight at their release address or an approved temporary hostel address.
- Special Purpose Leave (SPL): a short duration temporary release, often at short notice, that allows eligible prisoners to respond to exceptional, personal circumstances and to wider criminal justice needs, for example visiting dying relatives, attending funerals, weddings, medical appointments, court, tribunals or other inquiries.
- Childcare Resettlement Licence (CRL): for certain prisoners who are the sole carer of a child under 16 years, to enable them to maintain contact and prepare them for their parental duties on release.

## How is someone granted ROTL?<sup>8</sup>

There is no automatic right of entitlement for ROTL to be granted. A prisoner will only be released on temporary licence if they are eligible for release and once they have

satisfied a stringent risk assessment carried out by a designated ROTL Board at the prison.

Some prisoners are automatically excluded from being granted ROTL, for example Category A prisoners. Otherwise, determinate sentenced prisoners become eligible for resettlement activities (RDR or ROR) towards the end of the custodial term of their sentence - either 24 months before the release date, or once they have served half the custodial period less half the relevant remand time, whichever gives the later date. For SPL and CRL, eligible determinate sentenced prisoners may apply at any point during their sentence.

Indeterminate sentenced prisoners cannot be considered for any form of ROTL until after they have been approved for transfer to open conditions. Generally, they should not be allowed ROTL until after they have actually transferred but, in exceptional circumstances, they may be considered for ROTL from closed conditions. The eligibility criteria are set out in Prison Service Order (PSO) 6300 which defines the policy on the provision of ROTL.<sup>9</sup> The interim measures announced by the government in March 2014 place further restriction on the use of ROTL which supercede the provisions of PSO 6300 (see below). A new ROTL policy is expected to be introduced in February 2015

Prisoners released on temporary licence must comply with a number of conditions whilst on licence. These may vary according to the circumstance of the prisoner, however all prisoners on ROTL must return by the date and time specified. A breach of any of the licence conditions is classed as a "ROTL failure" and the prisoner may be recalled to prison, and will be liable to prison disciplinary procedures and a return to closed conditions if released from an open prison.

## ROTL and open prisons

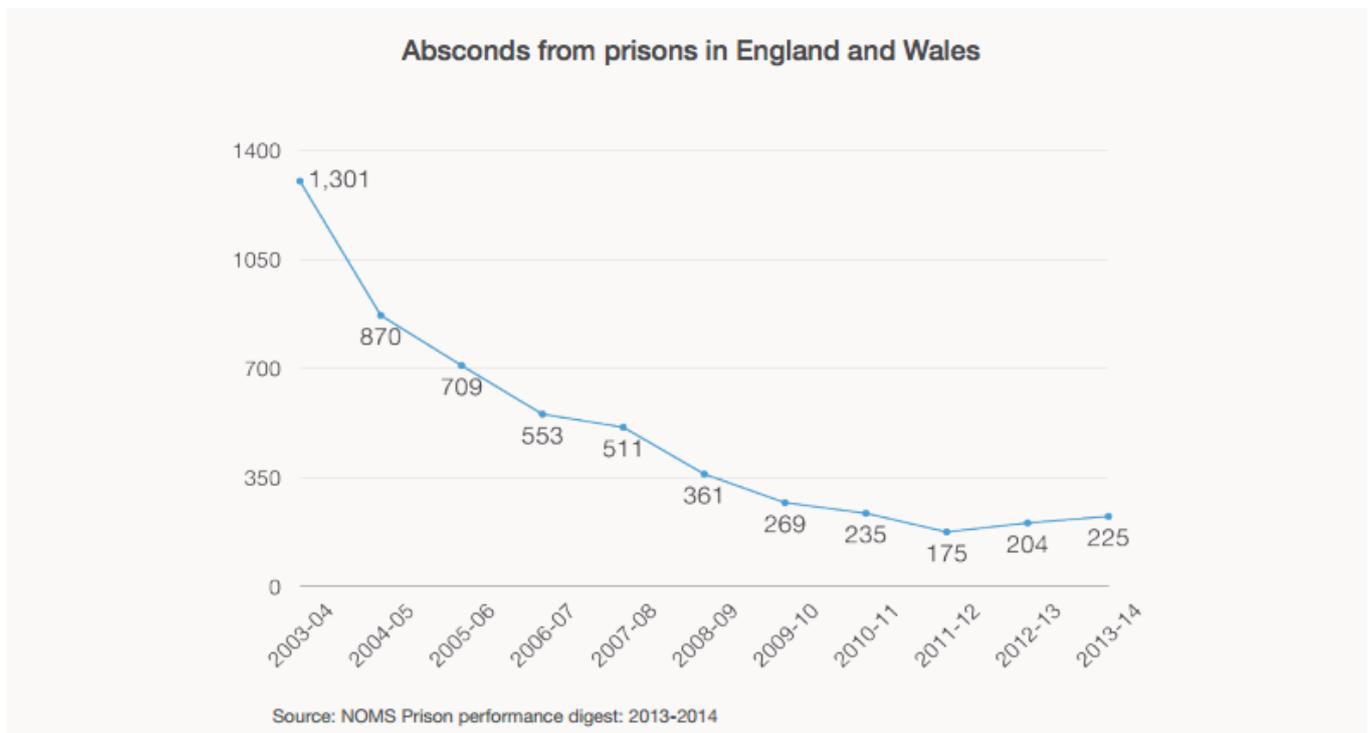
The majority of releases on temporary licence, particularly for those serving indeterminate sentences, are authorised from open conditions. Open prisons, or category D prisons, have lower security than closed prisons. They are intended for prisoners who are assessed as suitable and who can be reasonably trusted with the responsibility of living in open conditions. In England and Wales, there are 11 male open prisons plus a further six that hold category D prisoners. There are two designated female open prisons but all women’s prisons are authorised to grant temporary release on licence. For determinate sentenced prisoners, the decision to transfer to open conditions is made by the prison service. People serving indeterminate sentences require authorisation from the Parole Board to be transferred to open conditions.

Open prisons are particularly important for people serving long determinate or indeterminate sentences who are coming to the end of their sentences. They enable these prisoners to experience conditions

more similar to those that they will face in the community. Time spent in open prisons affords prisoners the opportunity to find work, re-establish family ties, reintegrate into the community and ensure housing needs are met in preparation for their release. For many prisoners who have spent a considerable amount of time in custody, these are essential components for successful reintegration in the community and therefore an important factor in protecting the public.

## How secure is ROTL?

Overall, the prison service can demonstrate an impressive track record of safety and security in its use of ROTL. Rates of absconds from prisons have fallen from 1,301 in 2003-04 to 225 in 2013-14.<sup>10</sup> From October 2013 to September 2014, there were 485,634 releases on temporary licence in England and Wales.<sup>11</sup> Over the same period the number of recorded temporary release failures (TRFs) was 294. This represents a failure rate of less than one per cent (0.06%).<sup>12</sup> Only 6.1% of temporary release failures involve an arrestable offence. This is the equivalent of five arrests per 100,000 releases.<sup>13</sup>



The thorough risk assessment of prisoners and the proper integration of the use of ROTL with sentence planning and resettlement goals can help to minimise the risk of failure. This risk must be balanced against the consequences of not providing prisoners with the benefits of ROTL and open conditions. To release prisoners directly from a closed prison without the resettlement benefits of ROTL or the open estate would undoubtedly lead to higher levels of post-release reoffending. The reoffending rates for those released from open prisons are low when compared to all prisoners released from custody in England and Wales.

## **The importance of ROTL for rehabilitation**

Prison has a poor record for reducing reoffending – 45.2% of adults are reconvicted within one year of release.<sup>14</sup> For those serving sentences of less than 12 months, this increases to 57.5%.<sup>15</sup> ROTL, when used as part of an effective approach to resettlement, can help to ensure people are adequately prepared for release and are equipped with the knowledge and skills to enable them to lead a law-abiding life. Research shows that important motivating factors to stop a person from reoffending are employment, a stable home and healthy relationships.<sup>16</sup> ROTL can help people in prison reduce their risk of reoffending by enabling them to sort out their housing, employment and welfare needs and re-establish links with their families.

## **Preparation for release**

For those who have served long determinate and indeterminate sentences, ROTL and experience of open conditions are essential stages in preparing for life outside prison. With only about 50 people in prison serving a whole life tariff, the vast majority of

prisoners will eventually be released into the community.<sup>17</sup> Some of them will have been in prison for many years. ROTL and open prisons contribute to the safe management and supervision of former offenders in the community by providing people in prison with an opportunity to experience life on the outside in preparation for their release.

*Jason, who went to prison aged 17 and was released just before he turned 30, found that after such a long sentence the ROTL scheme was crucial in enabling him to adjust back into society. He says “If ROTL had been removed for me, I wouldn’t have been able to establish relationships with people, volunteer or plan a future career. I needed a period of adjustment to the outside world that enabled me to become familiar with changed technologies and myself as an adult in an environment that I was unfamiliar with.” Having spent much of his adult life in prison, Jason also found it difficult to adjust to being around women. He said “I had found that the long years of imprisonment had stunted my ability to interact with women in a ‘normal’ way. I had to re-learn these skills. Without such help I would not have had a successful reintegration to society nor steady and healthy relationships.”*

## **Family ties**

ROTL enables prisoners to re-establish family ties, as well as their links to the community. It is of particular benefit to those who have been in prison for a long time and need help to gradually rebuild their links with the outside world. Research shows that providing opportunities for family contact

and promoting family ties can reduce people's risk of reoffending. 40% of prisoners interviewed for the Surveying Prisoner Crime Reduction (SPCR) study stated that support from their family would help them stop reoffending in the future.<sup>18</sup> A 2014 Criminal Justice Joint Inspectorate report confirmed the central importance of family and friends for enabling successful rehabilitation.<sup>19</sup>

Childcare Resettlement Licence (CRL) is vital for those prisoners who are the sole carer of a child under 16 years. It enables them to maintain contact and prepare for their parental duties on release. The SPCR found that six in 10 women in prison had dependent children.<sup>20</sup> 36% of prisoners surveyed for the SPCR said that seeing their children would help them stop reoffending.<sup>21</sup>

*ROTL gave Anthony the opportunity to reconnect with his family. This was particularly important to him as he was able to spend time with his grandfather who had cancer. He said "The day before I was due to be released I was woken up in the middle of the night by a guard because my granddad was in hospital. The Governor granted me emergency release on temporary licence and I was able to go and be with him and hold his hand while he was dying. It was sad, but I'm so thankful for that and I think my life would have taken a different turn if I hadn't been able to say goodbye to him. I would have felt bitter and angry with myself that I hadn't had that time with him."*

## Housing, employment and volunteering

ROTL enables people in prison to sort out housing needs and to gain skills through work or volunteering. 60% of prisoners surveyed by the SPCR said that having a place to live would help them to stop committing crime on release.<sup>22</sup> 68% thought that having a job was important in stopping reoffending.<sup>23</sup> In 2013-14, 11% of prisoners released from custody had no settled accommodation.<sup>24</sup> In the same year just one in four prisoners entered employment on release from prison.<sup>25</sup>

ROTL allows employers to experience working with former offenders and to understand firsthand the contribution they can make in the workplace. People who have offended face significant discrimination in the job market which in turn decreases the chances of successful rehabilitation. In a 2010 survey, only 12% of employers said that they had employed somebody with a criminal record in the past three years, and around one in five employers (19%) said they did exclude or were likely to exclude them from the recruitment process.<sup>26</sup>

A number of companies and charities provide opportunities for volunteering and employment for people on ROTL. The Sue Ryder Charity runs The Prison Volunteer Programme (PVP) which contributes to the rehabilitation of prisoners and provides volunteers to help with fundraising and support of the charity's care services.<sup>27</sup> Timpson actively recruit former offenders to work for them and employ and train people in prison on ROTL. The National Grid offender training and employment programme works with people coming to the end of their sentences and provides training and a job on release for those selected. The Prison Reform Trust has, for a

number of years, provided voluntary opportunities for people on ROTL who have been valuable members of the team.

*Sarah, 31, has been living in her own flat and working for a company full time since she left prison in December 2013. She had completed a book keeping distance learning course, gained ICT qualifications and an Open University course in Business and Accountancy. She began working in her current job before she left prison under the release on temporary licence scheme. After getting up at 6am every day, doing a full day at work, she would remain in the office to complete her degree modules because she couldn't access the internet inside prison. Sarah says: "My work place was so impressed with my work and additional studying that they kept me on after I was released." The ROTL scheme helped Sarah to resettle into society as she was able to save enough money from work to pay a deposit on her own flat after leaving prison.*

## **Education**

ROTL provides opportunities for education for prisoners, many of whom go on to obtain higher educational qualifications. This in turn helps them in the process of finding and gaining employment. Many people in prison have poor or no educational skills. Many have bad experiences at school and have been excluded prior to being caught up in the criminal justice system. In 2012, 47% of prisoners said that they had no qualifications. This compares to 15% of the working age general population in the UK.<sup>28</sup>

*Anthony, 28, from Leeds, is currently self-employed working as a market researcher. He is applying for a job in environmental consultancy, after obtaining a BSc (Hons) in Environmental Science from Nottingham Trent University. He says "When the judge sentenced me I thought my life was over, but really it had just begun. I decided to use my time and with support from the Education department and Prisoners Education Trust (PET) I made the best of a bad situation." When Anthony went to prison he was already in his second year at the University of Leeds. With PET's support he was able to continue studying by undertaking a 60 credit module with the Open University and completing those credits helped him to obtain a place at Nottingham Trent University. When Anthony was moved to an open jail he was able to study in the community and see his family under the ROTL scheme. He said "In the prison library there was nothing on environmental science, so being able to do research outside really helped me with my course."*

## **Financial reparation to victims**

ROTL allows prisoners to work in the community and thereby make financial reparation to victims by contributing a proportion of their wages to Victims Support. The Prisoners' Earnings Act 1996 commenced on 26 September 2011. It enables prison governors to impose a levy of up to and including 40% on wages over £20 per week (after tax, national insurance, any court ordered payments and any child

support payments) of prisoners who are allowed to work outside of prison on temporary licence.<sup>29</sup> In 2013/14, when there were 1,155 active prisoners working out of prison on temporary licence and subject to the levy, the total amount raised was £1,033,711.<sup>30</sup>

*Frank says “I’ve always been a taker, but now I’m a giver – to my family; I have sons and grandchildren – I also give to the wider community through the mentoring I do. It’s allowed me to join in society and to give something genuinely back.”*

## ROTL review

Following three high profile and tragic incidents involving people on ROTL in the summer of 2013, the government initiated a review of the ROTL scheme. The Justice Secretary, Chris Grayling, commissioned an internal review of the policy and practice of the temporary release of prisoners. He also asked Her Majesty’s Chief Inspector of Prisons, Nick Hardwick, to examine the circumstances around the three incidents. The Justice Secretary accepted the recommendations of the Chief Inspector’s report, which is yet to be published due to ongoing legal proceedings. The recommendations were incorporated into a wider reform of the policy and its procedures.

The Justice Secretary announced changes in March 2014.<sup>31</sup> These included:

- For ROTL to be granted, there must be “a very clear benefit to how it will aid rehabilitation and increase the chances of an offender leading a crime-free life on release”.

- A more thorough assessment of the risks before temporary release is authorised and a more consistent and robust response for prisoners who fail to comply with their licence.
- A new scheme of restricted release on temporary licence for those prisoners who have committed serious crimes in the past.
- More robust monitoring arrangements when an offender is on temporary licence in the community.
- The Criminal Justice and Courts Bill increases the maximum sentences for the existing offence of remaining unlawfully at large after temporary release. At present this is triable only in the magistrates’ court, with a maximum sentence of six months. The Bill would make it an “either way” offence with a maximum sentence of two years in the Crown Court.

## The Criminal Justice Joint Inspectorate

In September 2013, Her Majesty’s Inspectorate of Prisons and Her Majesty’s Inspectorate of Probation published *A joint inspection of Life sentence prisoners*.<sup>32</sup> This gave a number of examples of good practice with regard to ROTL, and estimated that time spent on ROTL was meaningful in around three-quarters of cases. However, it did raise some concerns, including about the robustness of the risk assessment:

*In many of the cases examined where ROTL had occurred, we noted the worrying lack of a sufficiently robust underpinning assessment, together with an absence of a comprehensive*

*and coordinated plan for what the prisoner would be doing during the release and how their risks would be managed. In a number of cases, as a consequence, ROTL was not as purposeful as we would have liked it to have been. Prisoners described to us how even the most straightforward elements of planning were sometimes omitted.*

*We saw examples where ROTL decisions had been taken based on out of date OASys assessments, on poorly completed paperwork, with limited attendance at ROTL boards and without the benefit of any input from the offender manager. In one case, the absence of both purpose and funding for the temporary absence from prison led to the prisoner being arrested for begging at the local train station. One prison had recently changed its documentation for the ROTL assessment process, omitting the section dealing with managing risk of harm to others, presumably in an effort to simplify the process. This seemed to us to be an unfortunate omission.*

## **Interim measures**

The new policy on ROTL is yet to be published, but it is expected to come out in February 2015. Ahead of the outcome of the review and coinciding with the high profile abscond of Michael Wheatley from HMP Stanford Hill in May 2014, the following interim measures<sup>33</sup> were put in place by NOMS, pending the formulation of a new policy:

- Any prisoner, irrespective of security category, who is in a closed prison and who on their current sentence has absconded or attempted to abscond from open conditions, and/or failed to return from a period of ROTL, and/or been convicted of a criminal offence which took place while they were on ROTL, and/or escaped or attempted to escape from a prison or escort, will not be eligible for any ROTL, except in exceptional circumstances.
- The interim measures authorise the temporary return of prisoners to closed conditions for reasons other than abscond or serious ROTL failure.
- All ROTL must have a clear, recorded link to an objective identified in the individual prisoner's sentence plan and/or resettlement goals.
- Prisoners must apply for ROTL, and their applications must include the reason for the ROTL.
- The interim measures remind prison governors of the importance of a "focus on an ongoing, dynamic risk assessment of all prisoners' suitability to be in open conditions and to have ROTL, especially for those convicted of serious offences".
- All prisoners who transfer to a prison of a lower category may not take any ROTL until three months after arrival in the new prison (save for exceptional circumstances).
- No prisoner on the basic level of the Incentive and Earned Privileges scheme may be released on temporary licence in the absence of exceptional circumstances.

- The interim measures suspend “escorted absence” for indeterminate sentence prisoners ineligible for open conditions.
- All indeterminate sentenced prisoners and any prisoners who are assessed as high or very high risk of serious harm are ineligible for ROTL from any closed prisons.
- A new “restricted ROTL” regime for all indeterminate sentenced prisoners and any other prisoner who is assessed as high or very high risk of serious harm. The restricted regime requires a more stringent risk assessment and authorisation from the governing or deputy governor.
- All prisoners in open prisons subject to restricted ROTL and those who have a history of absconding will need to have a case file review completed by psychologists.
- More stringent requirements for reporting ROTL failure for prisoners on the restricted ROTL regime.
- After a brief trial in December 2014, electronic location monitoring could commence for prisoners on ROTL from May 2015 if technical difficulties can be addressed.
- Governors must have in place a system of spot checks to ensure that prisoners released on temporary licence are complying with the specified licence conditions in relation to the authorised activity and/or accommodation.

## **Impact of the new measures**

The review provides an opportunity to make improvements to the use of ROTL and address understandable concerns about safety and security. Proposals building on the recommendations of the Criminal Justice Joint Inspectorate to improve the assessment of prisoners and to integrate ROTL with sentence planning are welcome. However, it is important that any final changes to the policy are proportionate and do not impose unnecessary restrictions which could limit opportunities for rehabilitation. Ministry of Justice statistics show a significant reduction in the number of releases on temporary licence being authorised. Since the beginning of 2013, the number of inquiries to the Prison Reform Trust’s advice and information service regarding ROTL has tripled. Prisoners, family members and prison staff have expressed concerns about the fairness and proportionality of the new approach; the consequences of the changes for the open prison estate; the impact of the measures on specific groups including indeterminate sentenced prisoners, people with a previous abscond history, women, people with learning disabilities, elderly and retired prisoners; and electronic monitoring.

## **The open estate**

More stringent arrangements for the assessment of people on ROTL could lead to a decline in the numbers of people being granted authorisation for transfer to open conditions. There is a risk that this could result in an underuse of the open prison estate and increased pressure from ministers to reduce its size and close open prisons in order to make cost savings. This would be counterproductive and limit opportunities for people in prison to experience the resettlement benefits of the open estate.

The latest prison population statistics suggest a growing problem of spare capacity in the open estate at a time when the majority of prisons in England and Wales are overcrowded and the prison population is rising. Sole designated open prison establishments for which population figures are available are currently operating below their normal accommodation levels, with an average occupancy rate (calculated as the percentage of population to in use CNA) of less than 85%.<sup>34</sup>

Already there are indications of pressures from ministers to close open prisons. The only two designated open prisons in the female estate, HMP Askham Grange and HMP East Sutton Park, are currently slated for closure. On 27 January 2015 the Ministry of Justice announced the “temporary” closure of the male open prison Blantyre House in Goudhurst for “refurbishment”.<sup>35</sup> It confirmed that there was enough spare capacity to move the 118 prisoners being held at Blantyre House to other nearby prisons while improvements were made to the building. The Prison Reform Trust understands that the decision to close Blantyre House was made in order to transfer staff to meet significant gaps in staffing in other establishments in the south east.

Since the introduction of the interim measures, concerns have been raised about the capacity of open prisons to implement the changes. The Prison Reform Trust understands that additional resources have recently been made available to open prisons to address these concerns. In the HM Prisons Inspectorate report on the open prison HMP Springhill, published in September 2014, inspectors said that the changes were leading to “important changes in the way prisoners were assessed and managed prior to ROTL”.<sup>36</sup>

However, the report expressed unease about increasing delays, growing frustration among prisoners and a lack of resources to properly implement the interim measures. Inspectors said they were “not assured that the Governor and his staff had the resources to sustain these changes and this required urgent attention”.

More recently, the Inspectorate report on HMP North Sea Camp,<sup>37</sup> published in November 2014, highlighted the impact of staff shortages in the Offender Management Unit on prisoners’ access to ROTL:

*The offender management unit (OMU) was severely short-staffed and, as a result, overwhelmed. Only seven out of 19 offender supervisors were in post. At the time of the inspection, there was only one member of the psychology team in post, although this was set to increase to six. Only two of nine probation staff were in post and there was no head of public protection. This made it extremely difficult to deliver effective offender management and contributed to the OMU being under siege from prisoners wanting support and better communication. The lack of staff hindered progression for some prisoners, including access to ROTL. Very poor communication from the OMU was by far the main complaint from prisoners during the inspection (see section on complaints) and this was contributing directly to their negative perceptions about safety.*

One prisoner in an open prison wrote to the Prison Reform Trust to highlight the impact of the new measures on staff:

*Having previously worked ... in the Offender Development Unit (ODU) I know at first hand how hard they [staff] work. The sheer turnover in the open estate means that the staff are constantly working flat out. They are now clearly struggling to deal with the changes to the ROTL procedures. You can see from the guidance notice what level of literacy is now needed just to complete the RDR form. The ODU staff now have to examine each form individually, again increasing the workload. Despite their workload many members of the ODU have a genuine desire to see prisoners change their lives and progress, the whole ethos of open prisons.*

## **Indeterminate sentenced prisoners**

For people serving an indeterminate sentence, including life sentenced and IPP prisoners, experience of open conditions and release on temporary licence are important factors that are taken into account by the Parole Board in deciding on release. Unlike determinate sentenced prisoners, people serving indeterminate sentences require authorisation from the Parole Board to be transferred to open conditions. Due to a growing backlog of indeterminate cases before the Board, indeterminate sentenced prisoners can wait many years to gain authorisation for a transfer to open conditions. This increases the length of time people remain in closed conditions without the opportunity to experience the benefits of open conditions and to work towards their legitimate release.

One probable impact of the interim measures will be to make it harder for indeterminate sentenced prisoners to obtain access to open conditions and release on temporary licence. The measures introduce a new regime of restricted ROTL for all indeterminate sentenced prisoners and any other prisoner who is assessed as high or very high risk of serious harm. The new regime requires a more stringent risk assessment and authorisation from the governing or deputy governor. All prisoners in open prisons subject to restricted ROTL need to have a case file review completed by psychologists.

While it is important to ensure that prisoners are thoroughly risk assessed, it is also vital that people who are assessed as suitable have the opportunity to experience the rehabilitative benefits of open conditions and ROTL. Although many people serving indeterminate sentences will have committed serious offences, statistics show that this group of prisoners are far less likely to reoffend on release from prison than determinate sentenced prisoners. According to the Criminal Justice Joint Inspectorate, “the vast majority of life sentence prisoners are successfully integrated back into the community, with only 2.2% of those sentenced to a mandatory life sentence and 4.8% of those serving other life sentences reoffending in any way, compared to 46.9% of the overall prison population.”<sup>38</sup>

There is a danger that the new measures could restrict opportunities for rehabilitation for people who have most to gain from the benefits of ROTL and open conditions. The latest Ministry of Justice statistics reveal a significant fall in the number of people serving indeterminate sentences being granted release on temporary licence compared to determinate sentenced

prisoners. Between 2013 and 2014, the number of people serving indeterminate sentences who were granted release on temporary licence decreased by 34%.<sup>39</sup> The decrease is particularly pronounced for people serving life sentences, whose numbers fell by 40% over the same period.<sup>40</sup> This compares to a fall of 28% for people serving determinate sentences.<sup>41</sup>

One prisoner in an open prison described the impact of the changes:

*Many prisoners simply cannot get any RDRs [resettlement day releases]. This is especially difficult for indeterminate sentenced prisoners. The number of prisoners being released on RDRs has plummeted. Last week it was 16, the week previous was 19. Prior to the changes there would be over a hundred going out at weekends. ... this is creating a serious problem for long-term prisoners, especially ISPs. Prisoners are simply not getting out at all to be tested in the community. With other cutbacks there is simply no resettlement taking place ... This is going to impact on Parole Board decisions and ISPs are going to be detained even longer in prison, increasing the financial impact.*

### **Indeterminate sentenced prisoners with a previous abscond history**

The interim measures introduce “a very strong presumption that an ISP who has absconded from open conditions as part of their current sentence will not be eligible to return to open conditions except in exceptional circumstances.”<sup>42</sup> The measures also suspend “escorted absence” for

indeterminate sentence prisoners ineligible for open conditions. This means that the chance to experience open conditions and ROTL will be effectively denied to prisoners in closed conditions with a previous abscond history. Indeterminate sentenced prisoners with a previous abscond history who have already been transferred to open conditions will be permitted to remain in open conditions and apply for ROTL, subject to a psychologist case review.

Under the interim measures, indeterminate sentenced prisoners ineligible for open conditions will be assigned to a new “progression regime” designed to “encourage prisoners to take more personal responsibility to produce the evidence which they need to secure release from custody on completion of tariff, with which they will be supported by relevant interventions and by appropriately trained staff.”<sup>43</sup> The first of these new progression regimes has just been established at HMP Warren Hill.

There is little justification for denying open conditions to people with a previous abscond history on the grounds of safety and security. Evidence published by the Ministry of Justice, after the new policy had been introduced, shows that previous absconding incidents are not predictors of future absconds, once all factors are taken into account.<sup>44</sup> Although absconding is a serious offence, there are many reasons why a prisoner may decide to run away from open conditions. For some, the pressure of being separated from family and loved ones, particularly during bereavement or a similar traumatic event, can be too much to bear. Vulnerable prisoners may make the regrettable decision to abscond to escape bullying or intimidation from other prisoners.

The new policy is likely to create considerable difficulties for this group of prisoners in progressing their sentences and could be open to challenge in the courts. Since the introduction of the interim measures, the Prison Reform Trust has been contacted by prisoners with a previous abscond history who have spent years working to make amends to earn a transfer back to open conditions. As a result of the new measures, they have been denied access to open conditions for an abscond which they may have committed many years ago. One person described the impact of the changes on other prisoners:

*Just this week those who EARNED D Cat have been sent back to closed conditions (based on them in the past having breached open conditions). A knee jerk reaction due to some lifers being reported on for reoffending whilst in open conditions. They have not taken into consideration they have actually gone through the system taking years to get back to open conditions, only to be penalised. This now means when they do get to parole eventually (in some cases this can take years) they will have nothing to prove that they are no longer a risk to public. They will not have been tested. Please look into some desperate case studies, this is effecting (sic) families, mental health, damages links to the community by sending them back into closed conditions. Those from [prison X] were sent to [prison Y] - no access to education or offender behaviour programmes as they have done it all and were rewarded by*

*sending them to D Cat. What is going to motivate these people to remain sane?*

## **Fairness and proportionality**

Prisoners in contact with the Prison Reform Trust have expressed concerns about their entitlement to ROTL under the interim measures. Political and media pressure seem to have caused some establishments to adopt an overly restrictive approach to ROTL at the expense of effective resettlement and rehabilitation. There is a strong sense among many prisoners, particularly women, and their families that they are being unfairly punished for the irresponsible actions of a small number of prisoners. Some prisoners, who had previously been granted ROTL and had been working successfully towards their rehabilitation, have reported having their ROTL entitlement taken away from them, often without reason or explanation. One mother of a prisoner wrote to Inside Time, the prisoners' newspaper, to highlight her concerns:

*My son ... has done 17 months with no trouble and has been good for the 17 months and was given a ROTL and he was doing great for 16 weeks. He was then told to put in for a town visit and he did and gave a date of 10th May but he was told that was not enough notice so they told him he can have it for the 17th or 24th of May. He waited for an answer for 4 weeks then they told him he had to sit a board on Friday 23rd of May on which they told him he is no longer entitled to ROTL and he can't have a town visit because men from other*

*prisons didn't come (sic) back from day release. How can this be right? How can they tar him with the same brush as anyone else who has absconded? He has been a model prisoner which they told him when he started ROTL so how can this be taken away from him because of other people?*<sup>45</sup>

The measures have prevented staff, who are already under significant pressure as a result of budget cuts, from focussing on creating opportunities for the rehabilitation and resettlement for prisoners. Instead, they have been diverted to carrying out disproportionate and unnecessary checks on prisoners on temporary release. One prisoner wrote to the Prison Reform Trust describing the impact of the new measures:

*Two very experienced officers ... who have worked in the resettlement department for a number of years, building up relationships with local businesses, to find community placements for prisoners, have been removed from this role. Their new job is to go out daily to check up on prisoners working at these placements. This prison, despite being five officers below complement, is now paying officers £17 an hour to work on their rest days to follow prisoners and to come and check those prisoners on community placement. These checks take place every week, sometimes twice a week. This is disproportionate action to the actual problem of absconds and clearly done for political reasons.*

## **Women**

The changes to the ROTL scheme are likely to have a disproportionate impact on women prisoners. Women's risk is generally lower than men's but they are subject to the same restrictions as men on ROTL. Previously, women approved for temporary release could use day release to look for work. However, the new measures require that people must normally have a job secured before they are granted ROTL. Finding a job or voluntary work in the community whilst in prison is already challenging given the lack of access to the internet, the high cost of phone calls and the inability to meet potential employers face to face. Women tend to be held much further from their homes and local communities than men. This can make it more difficult to make arrangements for employment as well as to sort out resettlement needs such as housing and social care and, in many instances, to resume responsibility for the care of their children.

The proposed closure of the only two designated open prisons in the women's estate, HMP East Sutton Park and HMP Askham Grange, will result in the loss of local partnerships with employers which have been built up over many years. Their closure could increase the distance women are held from home, making it less likely that employment and training opportunities undertaken through the ROTL scheme can be continued on release.

## **People with learning disabilities or difficulties**

The interim measures require that prisoners must apply for ROTL, and their applications must include the reason for wanting to be granted the licence. It is important that people in prison are enabled to take responsibility for their own rehabilitation. However, this requirement is likely to create particular

problems for the large number of people in prison with a learning disability or difficulty. Between 20-30% of offenders have learning disabilities or difficulties that interfere with their ability to cope with the criminal justice system.<sup>46</sup> Seven per cent of prisoners have an IQ of less than 70 and a further 25% have an IQ of between 70-79. This group is likely to need particular support in understanding the new policy and what is expected of them. Failure to do so would be inequitable and contravene the government's duties under equalities legislation.

The interim measures contain a number of safeguards in relation to people with learning disabilities and difficulties. They require that "establishments must assist prisoners by making available information about how ROTL operates in the particular establishment and in understanding the purpose behind these new restrictions."<sup>47</sup> In addition, "establishments should make special arrangements for prisoners who may find it difficult to understand the requirements and to make the link with the sentence plan. Such prisoners might need particular help until ROTL has been fully integrated with sentence planning, which will happen by the autumn."<sup>48</sup> It will be vital to ensure that these procedures are fully implemented and subject to regular review.

## Older prisoners

Elderly and retired prisoners could be disproportionately affected by the new measures. This is because of the requirement that Resettlement Day or Overnight Release must be for a specific resettlement purpose. Research shows that older prisoners are less likely to have strong family ties and may not be able to take up opportunities to work or volunteer in the community. The interim measures and new policy should be closely monitored for their equality impact on this group of prisoners.

## Electronic monitoring

The extension of ELM to people on ROTL represents a further expansion in the use of electronic monitoring technology in the criminal justice system. The government envisages a significant increase in the use of electronic tagging over the next three to five years, at considerable cost to the taxpayer. This is despite concerns about the effectiveness of the technology and the lack of evidence of the success of tagging on its own at reducing reoffending. Following the recent allegations of overcharging for electronic tagging contracts involving the private companies G4S and Serco, the Public Accounts Committee has expressed concerns about the excessive costs of electronic tagging and the ability of the Ministry of Justice to provide effective oversight of contracts.<sup>49</sup>

The electronic tagging of offenders is already a very profitable business for private companies. In July 2014, the Ministry of Justice awarded a £229m electronic tagging contract to the outsourcing company Capita.<sup>50</sup> At the same time it was announced the award of contracts worth a total of nearly £40m to supply Global Positioning System (GPS) equipment, satellite-mapping and network support.<sup>51</sup> G4S and Serco lost the tagging contracts as a result of overcharging allegations, which led to the two companies repaying nearly £180m to the Ministry of Justice.<sup>52</sup> The two companies are currently being investigated by the Serious Fraud Office (SFO) over their handling of the electronic tagging contract.

There has been an incremental rise in the use of electronic tagging and monitoring technology, either as a condition of a community order or a free standing curfew, over the past 17 years.<sup>53</sup> The government's

electronic monitoring service currently monitors about 25,000 people at any one time.<sup>54</sup> In the financial year 2010/11, around 116,000 people were monitored in total.<sup>55</sup> Recent legislation and provisions will further expand the scope of electronic monitoring. The Offender Rehabilitation Act 2014 extends mandatory supervision to 50,000 short sentenced prisoners, which could include electronic monitoring as a licence requirement. The Criminal Justice and Courts Bill currently before Parliament makes provision for electronic monitoring to be included as a mandatory licence condition. The new ROTL policy will expand ELM to an additional estimated 1,200 people a year.<sup>56</sup>

While electronic monitoring can contribute to reducing reoffending, particularly when combined with effective supervision, there is little evidence that its expansion to people on ROTL is necessary or represents an effective use of taxpayers' money. At the same time as the government is extending electronic monitoring, it has cut the number of probation staff and prison officers. Arguably, the money spent on expanding the use of electronic monitoring would be better used on approaches proven to reduce reoffending such as housing, employment and maintaining family ties.

## **Conclusion and recommendations**

Although it has been less than a year since the interim measures were introduced and the new ROTL policy is yet to be announced, the changes already seem to be having a significant impact on the numbers of ROTL release being authorised. The changes have had a particularly negative effect on the number of people serving indeterminate sentences being granted temporary release. These are precisely the

group of prisoners who are most likely to benefit from the experience of ROTL and open conditions.

It is important that the use of ROTL is underpinned by thorough risk assessment and sentence planning; and the Criminal Justice Joint Inspectorate has made important recommendations for improvements in these areas. However, it will never be possible to entirely eliminate the small risk of failure from the system. This risk must be balanced against the consequences of not providing people in prison with the benefits of measures intended to reduce their risk of reoffending on release. Responsible policymaking requires a proportionate assessment of risk and a careful evaluation of costs and benefits. When tragic incidents do occur, it is essential to learn lessons and address understandable concerns about safety and security. But it is also vital for policymakers to affirm the value of ROTL and open conditions for effective resettlement and rehabilitation.

- 1 ROTL should be integrated with sentencing planning and wider resettlement goals and backed by a rigorous process of assessment and monitoring.
- 2 Any planned changes to the capacity of the open prison estate should be assessed for their impact on the sentence progression and resettlement of prisoners, particularly those serving indeterminate sentences.
- 3 The interim measures and new policy should be monitored for their impact on the sentence progression of indeterminate sentenced prisoners.

- 4 Risk assessment should be informed by evidence and made on a case by case basis. The policy of banning all prisoners with a previous abscond history from re-entering open conditions should be revised given the lack of evidence for its effectiveness and consequences for sentence progression.
- 5 The suspension of “escorted absence” for indeterminate sentence prisoners ineligible for open conditions should be lifted.
- 6 ROTL decisions should be transparent and fair with opportunities for regular review.
- 7 ROTL policy should be fairly and consistently applied across establishments.
- 8 The interim measures and new policy should be monitored for their equality impact, particularly on women, people with learning disabilities and difficulties and older prisoners.
- 9 Mandatory electronic monitoring of people on ROTL should be revised given the lack of evidence for its effectiveness and disproportionate cost.

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