



Ministry
of Justice

The Right Honourable
Stuart Andrew MP
Minister of State for
Justice

Peter Dawson
Prison Reform Trust

MoJ ref: ADR97444

16 July 2022

Dear Mr. Dawson

ELIGIBILITY FOR OPEN CONDITIONS

Thank you for your letter of 16 June, regarding the recent changes made to the test for indeterminate sentence prisoners' suitability for open prison conditions.

You have asked a number of questions relating to this change, and I have addressed them below.

Firstly, for clarity, I have set out the new test here as follows:

The Secretary of State (or an official with delegated responsibility) will accept a recommendation from the Parole Board (approve an indeterminate sentence prisoner for open conditions) only where:

- *the prisoner is assessed as low risk of abscond; and*
- *a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; and*
- *a transfer to open conditions would not undermine public confidence in the Criminal Justice System.*

We have no current plans to apply this test to those serving determinate sentences.

I can confirm that the new test for suitability for open conditions for those serving indeterminate sentences came into effect on 6 June. Any cases considered by the Parole Board and Secretary of State prior to this date have been considered using the previous test. The new test will apply only to those prisoners being considered for their suitability for open conditions either ahead of a potential transfer to an open prison, or where there have been adverse developments which have resulted in the prisoner's removal from open conditions and where continued suitability for such conditions is to be considered. Those prisoners who are already in open conditions will not be reassessed using the new test unless an adverse development results in their removal to closed conditions.

In terms of which cases will receive Ministerial scrutiny, this will be applied to cases where the prisoner was convicted of murder, other homicide, rape and serious sexual offences against, or cruelty towards, a child, and to high profile cases which may impact public confidence. Probation Practitioners will consider the first 2 parts of the test only when assessing risk and suitability in individual cases. Ministers will consider all 3 parts of the test, utilising full evidence and taking into consideration the assessment of risk

and suitability provided by Probation Practitioners and other report writers; each case will be considered on its own merits.

Where the Parole Board makes a recommendation, based on the first two parts of the new open test, that an indeterminate sentence prisoner be transferred to open conditions, the Secretary of State will consider the recommendation in line with the new test. It follows that, even where the Secretary of State agrees that a prisoner poses a low risk of abscond and it is essential for them to spend time in open conditions to inform future release decisions and to prepare for possible release – he will still have the discretion to reject the recommendation if he considers that public confidence in the criminal justice system would be undermined by moving the prisoner to an open prison.

Prisoners will continue to receive written confirmation of the reasons for their approval or rejection for suitability for open conditions. Where the prisoner wishes to challenge the decision of the Secretary of State under the new test, they may still apply using the judicial review process.

You asked what evidence was considered in the decision to change the open test and policy. The recent abscond of several high-risk prisoners gave cause for concern, and the Deputy Prime Minister's view was that we must make these changes to better ensure public protection. These prisoners present an unacceptable risk to public protection and have a detrimental impact on public confidence in the Criminal Justice System. This is not something we are prepared to allow to continue, hence the change to the test for suitability for open prison conditions. We are not obliged to consult externally on the development of policy and this change was made considering the advice of officials and legal advisers within the MoJ.

Turning to what HMPPS is doing to support operational staff and prisoners through this change, the Generic Parole Process Policy Framework is currently being updated to include the new test and a range of guidance is being updated and made available to staff. It is part of the development and update process for policy frameworks that an Equalities Analysis is completed. Importantly, we are also communicating with the prisoners affected by this change and those who support them directly and indirectly. Governors are being advised to carefully monitor their affected indeterminate populations as we are aware that this change may be confusing and possibly difficult, particularly in cases where individuals may have been expecting a move to open conditions as part of their sentence plan and where they may no longer be eligible or suitable. Governors and prison safety leads have also been provided with template letters to issue to their affected indeterminate populations explaining the change and to whom they should speak, to ask any questions.

There is no reason to believe that the future safety of those serving indeterminate sentences will be significantly affected. However, we have been very aware that the change in policy will disappoint some individuals who were expecting a transfer to open conditions, and that the news of it could have a negative impact in the short term. This is why we instructed Governors to consider carefully how information about the change was presented to prisoners and provided a template letter to send to those affected. We know that those serving indeterminate sentences often have feelings of uncertainty and hopelessness, and the news of the change may have intensified those feelings and increased the risk of suicide in some individuals, so staff were instructed to assess each individual who was affected, drawing on historical information as well as their current presentation, and to open an ACCT where additional support was judged to be necessary.

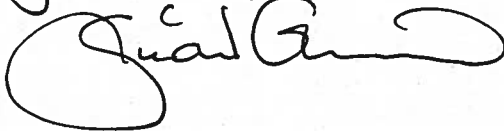
The change to the test for indeterminate sentence prisoners' suitability for open conditions was subject to the Safety Impact Assessment process. The safety risks were carefully considered, alongside mitigations that could be put in place to protect prisoners as a result of the change.

In addition, the guidance document 'A Guide for the Families & Significant Others of Those Serving Indeterminate Sentences', published on Gov.uk, is being amended to reflect this change. This will ensure that the guide, first published in June 2021, continues to support the families and significant others of those serving indeterminate sentences in prison and the community. The guide aims to give families and significant others a better understanding of some of the key processes that affect the indeterminate sentenced population and signposts to where they can find more information about certain processes and topics. It also suggests how they can get involved to support their relative/significant other's progression and gain support or advice where needed.

While fewer indeterminate sentence prisoners will be eligible for transfer to open conditions under this policy, there remains a large number of determinate sentence prisoners in the closed estate who are eligible for transfer. In future years we expect the number of Category D prisoners to increase in line with the overall prison population, and our plans to expand prison capacity therefore include the open estate where we will deliver fit for purpose, modern and uncrowded accommodation increases.

Progression towards a safe and sustainable release for those serving indeterminate sentences remains important to us. In the longer term, further consideration will be given to what more can be done in the closed prison estate to support those prisoners who may no longer be able to access open conditions. For example, Progression Regimes have proven to be a good option for some.

Public protection will remain our priority, however, and this change has been implemented to ensure that it continues to be so.

Yours


STUART ANDREW MP