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The Rt Hon Stuart Andrew MP
Minister of State for Justice
Ministry of Justice
102 Petty France
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21 July 2022

Dear Minister,

Eligibility for Open Conditions

Thank you for your letter of 16 July in response to my letter to your predecessor dated 16 June. It was good of you to respond so soon after taking up your new role.

Your letter clarified some of the issues that I had raised, in particular the fact that the new test for transfer to open conditions does not apply retrospectively. It also made clear that there was no consultation outside the department before the change was implemented and that the evidence considered was restricted to the circumstances of "several" recent absconds. It made clear that detailed reasons must be given for a ministerial decision not to accept a recommendation for transfer to open conditions but that the only avenue of appeal against such a decision will be by way of judicial review.

Your letter also makes clear that the policy change was subject to a safety impact assessment, which concluded that there was no reason to believe that the future safety of those serving indeterminate sentences will be significantly affected. Given what we know about the disproportionate rates of self-harm and suicide amongst prisoners serving the IPP sentence in particular, that seems an optimistic conclusion. I hope it proves to be correct.
I've also now had the opportunity to study the updated policy framework on the generic parole process, published today. That helpfully sets out the time limits within which ministers have guaranteed to operate (or officials acting on their behalf). Given that that framework has now been published, I would be grateful if we could be given a copy of the equalities analysis that your letter indicated would be completed.

However, I'm sorry to say that the letter you were given to sign overlooked many of the questions in my original letter, and the revised policy framework sheds no light on them either. Given that the new criteria have been in operation since 6 June, I'm afraid I see no alternative but to ask again for the detail which is currently being denied to the people whose lives are so

hugely affected by this change. The questions in my previous letter to which answers remain outstanding are these:

- Whether any prisoners have had pre-tariff reviews cancelled or postponed because of the new criteria; (I'm distinguishing this from the decisions on hearings that occurred prior to 6 June because we have had heard from some people that consideration of pre-tariff sifts was postponed following remarks made by the Secretary of State in November last year).
- What guidance about the new criteria has been issued to:
    - Prison staff
    - Probation staff
    - Specialist report writers, including psychologists
    - The Parole Board
    - Civil servants charged with advising ministers on individual cases affected by the change
    - Prisoners
    - Prisoners' families (I note the intention to update the guide for families on Gov.uk, but that has not yet been done despite the new criteria having been in place since 6 June).

I should explain that the updated policy framework contains no guidance about how the new tests should be interpreted or what evidence might be relevant in satisfying them. Both the requirement that a move to open conditions should be "essential" and the public confidence test are novel and the manner in which they are interpreted could vary dramatically. Simply repeating the wording of the new criteria does not seem to me to qualify as guidance.

- Whether prisoners who meet the criteria of low risk of abscond will be denied the opportunity to benefit from open conditions on the grounds that it is considered as beneficial rather than essential to their resettlement;
- Which minister will be charged with undertaking the scrutiny required by the new procedure;
- What criteria will determine which cases are personally considered by that minister; your letter appears to imply that all cases in the so-called "top tier" based on offence, and in addition any "high profile" case, will be considered personally by a minister rather than an official. The policy framework does not contain this undertaking but instead makes clear that any case can be considered under delegated authority. Even if it is intended that every "top tier" case will be considered personally by a minister, the question of how officials will decide what represents a "high profile case which may impact public confidence" remains unresolved. On what basis will officials make this

judgement, bearing in mind that it has very serious ramifications both for the individual concerned and potentially for the victim of the original offence or their loved ones.

- What documentation the minister will receive and consider in order to reach a decision in the cases they decide personally; Your letter uses the phrase “full evidence”, with which I confess I am unfamiliar. The Parole Board panel will have considered the parole dossier, typically running to hundreds of pages and evidence given to a hearing if there has been one. Will you?
- What evidence officials and the minister will take into account in considering the risk to public confidence element of the new criteria;
- What training officials charged with advising the minister in these cases will receive in risk assessment; we have assumed that officials in the public protection casework section will be responsible for advising ministers on these cases, but we are not aware that all of those officials are probation practitioners. It would be helpful to be clear about who is doing what.
- What specialist opinion, if any, will be made available to officials and the responsible minister; Your letter says that probation practitioners will consider the first two parts of the test and that you will have access to that advice. But it is not clear if that refers to the reports given to the Parole Board panel or whether there is to be a further assessment by probation practitioners that takes into account the Parole Board panel’s reasoning post-hearing;
- Whether the ministerial decision-making process will be open to any form of public scrutiny, in line with the government’s approach to the parole process more generally;
- Whether the Secretary of State will provide the Parole Board with a view on suitability for progression to open conditions at the original consideration of the case; I have written separately about the issue of a “single view” and it may be that you will choose to answer this question in the context of that letter.
- What estimate has been made of the consequences of these changes for:
    - the casework capacity within the ministry to provide advice
    - the progression of ISPs and the consequential impact on prison capacity

Given that the new criteria have been in operation since 6 June, it would be helpful to know how they are operating in practice. So I would be grateful if you could indicate:

- How many pre-tariff sifts have been considered under the new criteria, and with what outcome
- How many recommendations from the Parole Board have been considered under the new criteria, and of those:
    - How many have been considered solely by officials in the department, with what outcome and on what grounds;

- How many have been personally considered by which minister, with what outcome and on what grounds;
- How many in each category have involved a prisoner with one or more protected characteristics and what the breakdown in terms of characteristic and outcome has been;
- How many have been decided within the timescales laid out by the policy framework for the generic parole process.

I look forward to your response and the opportunity to clarify these issues for the many people who contact us about them.

Yours sincerely,

Peter Dawson
Director
Prison Reform Trust