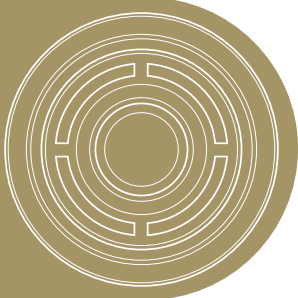




# THE IMPACT OF PRISONER RECALLS ON THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND

June 2016





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Laid before the Northern Ireland Assembly under Section 49(2) of the Justice (Northern Ireland) Act 2002 (as amended by paragraph 7(2) of Schedule 13 to The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) by the Department of Justice.

June 2016





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## List of abbreviations

<b>ACE</b>	Assessment, Case Management and Evaluation
<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>CJO</b>	Criminal Justice (Northern Ireland) Order 2008
<b>CPO(s)</b>	Custody Probation Order(s)
<b>DCS</b>	Determinate Custodial Sentence
<b>DoJ</b>	Department of Justice
<b>ECS</b>	Extended Custodial Sentence
<b>ICS</b>	Indeterminate Custodial Sentence
<b>NICTS</b>	Northern Ireland Courts and Tribunals Service
<b>NIPS</b>	Northern Ireland Prison Service
<b>ORU</b>	Offender Recall Unit (in the DoJ)
<b>PBNI</b>	Probation Board for Northern Ireland
<b>PCNI</b>	Parole Commissioners for Northern Ireland
<b>PSNI</b>	Police Service of Northern Ireland
<b>SLED</b>	Sentence and Licence Expiry Date



# Chief Inspector's Foreword

Delivering effective rehabilitative services to offenders is the key to reducing reoffending. Part of that process is the early release on licence of offenders who have attempted to deal with their offending behaviour while in prison.

Some offenders react positively to the opportunities being presented through early release on licence, and with the support of their families and friends, probation staff and members of their community, they make the transition to become positive contributors to society.

Others who suffer from mental illness, or have limited family support, low levels of self worth, poor education, lack of employability and life skills, experience homelessness, drug and alcohol addiction, or are immature and irresponsible, struggle to keep from reoffending or breach their licence or parole conditions, are subsequently recalled to custody.

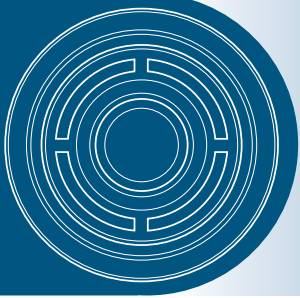
At one level recall to custody is seen as a failure of, or setback in the rehabilitative process. At another level recall is seen as an effective intervention to deal with the increased risk of further offending. Balancing the risk of further offending with the opportunity for offenders to make a fresh start is one of the dilemmas facing our penal system. In response to this we have created a complex process to help manage these risks, keep the public safe and protect the rights of offenders, all of which is reported to be working reasonably well.

The key to improving the reoffending rates and reducing the number of recalls to prison is in the quality of the work undertaken during custody in preparing a prisoner for their release, together with the support available to offenders in the community to assist with their transition from custody. I welcome the RESET programme which is an excellent example of where statutory agencies can work collaboratively with the voluntary sector to reduce reoffending. There is also a need for step-up and step-down facilities as alternatives to returning offenders directly to prison, where we know so little happens in the short to medium-term to reduce their risk of reoffending.

This inspection was conducted by Stephen Dolan and Dr Ian Cameron. My sincere thanks to all who contributed to their work.

**Brendan McGuigan**  
**Chief Inspector of Criminal Justice**  
**in Northern Ireland**

June 2016



# Executive Summary

In March 2005 a consultation was held to review the sentencing framework in Northern Ireland and sought views on issues related to sentencing such as post-release supervision and the management of dangerous offenders. The Sentencing Framework Initiative introduced in the Criminal Justice (Northern Ireland) Order 2008 (CJO) included recourse to recall an offender whose behaviour posed a risk to the community. Although the Sentencing Framework Initiative intended to act as a deterrent to reoffending, encourage rehabilitation and protect the public, the recall element was seen solely as a public protection measure. *'Recall of a prisoner on licence is not a punishment. It is primarily to protect the public against further offences.'*<sup>1</sup>

Three types of sentences were introduced to reflect the severity of the crime – indeterminate custodial sentence (ICS), extended custodial sentence (ECS) and determinate custodial sentence (DCS) that included a licence period during which an offender could be recalled to custody. Offenders will be subject to a recall request if their supervising Probation Officer assesses the risk of harm/serious harm has increased and they can no longer be safely managed in the community.

Up until August 2015 2,505 offenders sentenced under the CJO were released from custody. Of these, 723 were subsequently recalled to custody,

an overall recall rate of 29%. Most recently the rate of recall for ECS offenders reached 80% (although only 106 prisoners were released and the prevailing rate up until 2015 had been just over 72%), and around 27% of DCS offenders were recalled. The overall rate of recall has fallen from 35% in 2010 to 29% over five years, and the rate of recall for DCS offenders has fallen from just over 30% to 27% in the same period. The impact of recall on the criminal justice sector is varied with an increase in the prison population arising from recalls, additional demand on the probation services to manage the recall and supervision process, the extra workload for the Parole Commissioners for Northern Ireland (PCNI) and not least additional demands on the Department of Justice (DoJ) to expedite recall requests, especially those out of normal hours, and meet the requirements of the parole hearings process.

On the face of it a recall rate of 80% for ECS offenders (with 58% of recalls including alleged further offending) indicates a continued propensity for behaviour that leads to recall requests and begs the question why is this so high? On the other hand, it could be said the actual mechanisms of risk assessment and prompt recall to custody work well with one sample indicating that 90% of ECS were recalled on average within 23 weeks of release and higher risk offenders being recalled most frequently. From a purely pragmatic point of view, once an

<sup>1</sup> R v Parole Board ex parte Smith & West [2005] UKHL 1 para 56.

offender is recalled to custody the risk to the public is negated (at least for the period of incarceration - on average 104 days in 2014 to first review hearing).

Figures from the PCNI indicated that 42% of the prisoners recalled to custody were released early from the custodial element of their original sentences. The issue here is not that the risk assessment by the Commissioners was necessarily flawed, but rather that following release from custody the risk factors that influence reoffending simply return. A study of a small cohort of released and subsequently recalled offenders presented some evidence of the range of pressures faced by offenders released into the community such as lack of accommodation, drug/alcohol problems, health and family issues and poor employment prospects. Although there were a range of remedies offered, pressure on resources, difficulty in entering employment, accessing medical care and getting suitable residential accommodation were seen as barriers to offenders' efforts in resisting recall to prison. Whatever the intended rehabilitative effect of imprisonment, there is only so much pre-release preparation that can be delivered and the choice to engage with probation in a meaningful manner remains the cornerstone in reducing recall to custody.

The implementation of the recall process demanded significant input from the Probation Board for Northern Ireland (PBNI), the Northern Ireland Prison Service (NIPS), the PCNI and the DoJ Offender Recall Unit (ORU). Over the last five years developments to the process include improved out-of-hours access to the PCNI, more efficient use of probation staff (reduced out-of-hours working and occasional attendance at recall hearings) and a reduction in PCNI

panel membership to two Commissioners. The PCNI recommended recall in over 90% of requests from the PBNI demonstrating the confidence Commissioners have in the professional judgement of Probation Officers. Since October 2014, DoJ ORU officials attend recall hearings to present the facts and this has decreased the number of witnesses being called and reduced legal costs, with the recall hearings tending towards an inquisitorial rather than an adversarial approach as a result.

Perhaps the biggest impact arising from recalled offenders falls on the NIPS which has seen a rise in the prisoner population. A total of 723 offenders have been recalled to prison since 2008 with a consequent demand on prison resources. Over five years, the rate of recall appeared to be levelling out and (given the reducing rate of DCS recalls) hopefully falling. One caveat to this trend is the very recent fall in the number of offenders being re-released by the PCNI. Up to 2015 around 12% of recalled offenders were re-released at the single Commissioner review point and some 53% of those who requested, and were granted an oral hearing, were re-released following oral hearing. During 2015, this dropped to only 2% for both the single Commissioner review stage and oral hearings up to August 2015, with prisoners serving on average 336 days in custody following the Parole Commissioners' decision compared to 220 days in 2014. This is a recent phenomenon and Inspectors could not identify any definitive reasons for this, although the Commissioners might wish to reflect upon it.

The difficulties experienced in England and Wales due to high volumes of short-term ICS offenders



committed to custody and subsequently going over tariff did not arise in Northern Ireland as ICS were used sparingly. The recent launch of the RESET initiative by the PBNI, aimed at providing support to a group of released prisoners to integrate the efforts of the voluntary and community sector with the statutory agencies, is welcomed and should also contribute to a reduced recall rate.

Future developments include an action plan being implemented to deliver improvements to the recall process along with a DoJ strategy for an integrated approach to interventions and a whole sentence approach to offender management. Areas for consideration include the use of hostels to assist in reducing offenders risk rather than resorting to a recall to prison. The cost of committal to prison establishments would suggest that these approaches to reduce recall to prison would be cost effective and Criminal Justice Inspection Northern Ireland (CJI) recommend the delivery of the action plan and associated strategies.





# Inspection Report



# Governance

## Sentencing Framework Review

- 1.1 In March 2005 the Northern Ireland Office held a consultation to review the sentencing framework in Northern Ireland and sought views on a number of specific issues relating to sentences and sentencing, including post-release supervision, electronic monitoring and the management of dangerous offenders. Responses to the consultation paper indicated strong support for the introduction of indeterminate and extended custodial sentences in Northern Ireland. It was believed that this would address the existing anomaly that dangerous individuals could be automatically released, unsupervised, half-way through a determinate sentence, irrespective of whether or not they posed a significant risk of harm to the public.
- 1.2 The introduction of compulsory post-release supervision for certain categories of offenders was also endorsed to enhance public protection and assist in the rehabilitation of offenders. Ministers concluded that sentences should be revised and enhanced, and that legislation should be brought forward to provide for the introduction of indeterminate and extended sentences for dangerous sexual and violent offenders, allowing individuals posing a risk of serious harm to be detained indefinitely or to the end of their extended sentence. The supervision of offenders on licence in order to permit prompt recall if risks were raised was an improvement over the previous Custody Probation Orders (CPOs) which necessitated a return to court by way of summons or warrant in the event of non-compliance.
- 1.3 The new categories of sentence have been in operation for over five years and 723 offenders have been recalled to August 2015 from a released population of just over 2,500 offenders. Within that 106 ECS prisoners have been released with the remainder being DCS prisoners. It is an opportune time to review the effectiveness of the recall procedures, the impact upon the various agencies within the criminal justice system and the impact upon offenders and their families.

## Sentencing and release on licence

- 1.4 The CJO introduced three new types of sentences:
  - DCS;
  - ECS; and
  - ICS.

- 1.5 Each of these sentences includes a set of standard licence conditions that are imposed upon the prisoner's release. Additionally, the ECS and ICS categories are public protection sentences and include an assessment of the risk of serious harm to the public posed by the offender. Depending on the type of sentence, a prisoner may be released once a portion of the custodial element of the sentence is completed.
- **DCS** – the prisoner is automatically released upon completion of the custodial element of their sentence (although they may be released earlier in certain circumstances).
  - **ECS** – the prisoner may be released upon completion of half the custodial element of the sentence by the PCNI and only if they deem the level of risk to be such that the prisoner can be safely supervised in the community.
  - **ICS** – the prisoner may be released at the tariff expiry date by the PCNI only if they deem the level of risk to be such that the prisoner can be safely supervised in the community (in theory an ICS could become a whole life sentence).
- 1.6 The licence period is the length of time that the offender is supervised by a Probation Officer and is set by the sentencing court. In the case of ECS prisoners released early, their licence period is extended to take into account the early release period. The supervision of offenders by a Probation Officer on release from custody aims (*inter alia*) to rehabilitate the offender to:
- reduce the risk of harm/serious harm to the public by the offender; and
  - reduce the likelihood of further reoffending.

## Revoking an offender's licence

- 1.7 The starting point for any recall request is an assessment by a supervising Probation Officer that the risk posed by an offender can no longer be safely supervised in the community and that their licence should be revoked. The evidence of the increased risk leading to the recall request can range from change in behaviour such as visiting certain areas or associating with certain people, to actions that are a clear breach of licence conditions; including taking alcohol or drugs to the commission of a further offence. In any of these instances, the offender is open to a recall request by a supervising officer of the PBNI. The recall request is sent to the PCNI who make a recommendation to the ORU of the DoJ who (on behalf of the Minister of Justice) may revoke a prisoner's licence and recall a prisoner to prison:
- if recommended to do so by the PCNI; or
  - without such a recommendation if it appears to the DoJ that it is expedient in the public interest to recall a prisoner before such a recommendation is practicable.
- 1.8 Following recall to custody a prisoner will receive paperwork from the ORU giving the reasons for recall. They will also receive a notice of referral from the PCNI after their case is referred to the PCNI by the ORU. The PCNI – sitting as a single Commissioner - will review the recall request and either confirm the recall and direct that the prisoner should not be released or direct his/her immediate release. They may also direct that the matter is referred to a panel for consideration. The PCNI will only recommend release if they are satisfied that:
- where the prisoner is serving an ICS or an ECS, it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined; and

- in any other case, it is no longer necessary for the protection of the public that the prisoner should be confined.
- 1.9 The prisoner has two weeks to appoint a representative and inform the PCNI. The prisoner will then be issued with a 'dossier' of all the salient facts pertaining to their case by the ORU. Within four weeks of receiving the dossiers, the prisoner must present any documentation and representations to the PCNI. They will then make their determination either confirming the prisoner's return to custody, release or referral to a panel and convey the result with reasons to the prisoner.

### Processing a DCS recall

- 1.10 Within five days of a DCS offender being recalled to custody a referral will be made to the PCNI and a single Commissioner will be appointed to review the case and may recommend release. DCS offenders who are not released may request an oral hearing.
- 1.11 The standard process under Article 28 (2) (a) for recalling a DCS prisoner is documented on the PCNI website. The key factor in a DCS recall is the assessment that the offender can no longer be safely supervised in the community because of post-release conduct and poses a risk of harm to the public. Following referral by the ORU to the PCNI, a Commissioner will be appointed to consider the prisoner's case.
- 1.12 The Commissioner will either:
- **direct the release of the prisoner** (if they believe the risk posed by the prisoner upon release will be minimal), or
  - **decide that the prisoner should not be released; or**
  - **refer the matter to a panel.**
- 1.13 In each instance the decision of the Commissioner is the final decision, although in the latter instance the Commissioner may decide that the case should be referred again. The Commissioner may also recommend a date for release on licence or a date for the next review of the case.

### Processing an ECS/ICS recall

- 1.14 ECS and ICS are classified as public protection sentences and offenders are regarded as posing a risk of serious harm to the public at the time of sentencing. The process for recall is the same as DCS and any recommendation to recall an offender is considered by a single Commissioner. In the case of ECS offenders, the single Commissioner may:
- **provisionally direct release** - a panel of three Commissioners will consider the provisional direction and any licence conditions recommended for the prisoner's safe release. An oral hearing will be held unless the parties agree that the case be considered on the written evidence;
  - **provisionally direct not to release** - in which case the prisoner may request to have their case considered by a panel of Commissioners. An oral hearing will be held unless the parties agree that the case be considered on the written evidence;

- **direct that the prisoner's case be considered by a panel** - an oral hearing will be held unless the parties agree that the case be considered on the written evidence; or
- on occasion, **the PCNI may make recommendations for interventions/programmes to assist with prisoner rehabilitation**, although no central record is maintained of the frequency of request or the level of compliance.

## DCS requests for oral hearings

1.15 Following recall of a DCS offender to custody, a single Commissioner will consider the case and will direct release if they believe the risk of harm is minimal (since 2010 on average 12% were released at this stage). DCS offenders who are not released may request an oral hearing and around 30% do so, although this figure has steadily risen since 2010.

1.16 On the face of it, the DCS prisoner has two weeks to inform the PCNI of their request for an oral hearing and demonstrate that:

- there is a dispute of fact crucial to the determination of his/her case that can only be decided after an oral hearing;
- the assessment of risk requires that oral evidence from him/her and/or witness(es) is made; or
- fairness dictates that his/her case be considered by a panel.

1.17 In practice a recent Supreme Court adjudication in the case of *Osborn, Booth and Reilly*<sup>2</sup> clarified the grounds for granting oral hearings with a specific emphasis on the principle of fairness. The key points of the judgement stated that:

*'In order to comply with common law standards of procedural fairness, the Board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake...'*

The judgement further clarified the rights of the prisoner to make representation without having to prove there were material facts that would influence the original decision to recall:

*'The Board should also bear in mind that the purpose of holding an oral hearing is not only to assist it in its decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for him, where he has something useful to contribute.'*

The judgement also reinforced the findings in the *Brooke* decision that monetary considerations or questions of simple expediency should not influence the independent decision-making of the Parole Board:

*'The Board should guard against any temptation to refuse oral hearings as a means of saving time, trouble and expense.'*

<sup>2</sup> *Osborn (Appellant) v The Parole Board (Respondent), Booth (Appellant) v The Parole Board (Respondent) In the matter of in application of James Clyde Reilly for Judicial Review (Northern Ireland)*. [2013] UKSC 61. *On appeal from: [2010] EWCA Civ 1409; [2011] NICA 6.*

- 1.18 Considering that the release rate following an oral hearing was over 50% (up until 2014) and that the grounds for refusing a request are strictly limited, the number of hearings will inevitably increase. Accepting the inevitable increase in oral hearings, any attempts to introduce efficiencies might be better focused on streamlining the current processes as opposed to varying volumes. In response to this the PCNI reduced the panel from three to two Commissioners for DCS oral hearings in July 2014. With between 50 - 60 oral hearings per annum, this proposal should yield annual savings in the region of £22,000. A process of peer review and/or review of decisions by the Chief Commissioner will ensure that the quality of decisions is maintained.
- 1.19 Since the introduction of the sentencing and recall arrangements the impact on the various bodies has been mitigated through early communication between the PBNI and the ORU, and between the ORU and the Police Service of Northern Ireland (PSNI). This has streamlined the processing of recall requests and in a number of instances provided to Inspectors, led to the speedy recall of dangerous offenders. In recent years the PCNI mostly consider cases within 24 hours of referral including out-of-hours referrals. The ORU mostly considers requests for recalls and issues referrals within 12 hours of requests being received. Since October 2014 the ORU officials attend the recall hearings and present the facts of the case on behalf of the DoJ eliminating the cost of the departmental solicitors. In similar vein, the number of witnesses to recall hearings has been reduced leading to more informal hearings.
- 1.20 Victims can receive information about the outcome of the hearings by registering for the victims' scheme. At June 2015 there were 235 victims registered on the PBNI Victims' Information Scheme.

## Threshold for recall

- 1.21 In a Northern Ireland Court of Appeal judgement **R-v-Leon Owens [2011] NICA 48** the court recognised that the leading case on the interpretation of the provisions in the CJO is **R v Lang and others [2005] EWCA Crime 2864**. In short this case and the subsequent Court of Appeal case stated that:

*'The risk of serious harm occasioned by the commission of further specified offences must be significant. This was a higher threshold than a mere possibility of occurrence and could be taken to mean noteworthy, of considerable amount or importance...'*

And goes on to say...

*'Repetitive violent or sexual offending at a relatively low level without serious harm did not of itself give rise to a significant risk of serious harm in the future.'*

- 1.22 The risk thresholds apply at the time of sentencing and are used to distinguish between a DCS and an ECS, although they have become combined in the minds of some observers as applying to the threshold for recall. As explained to Inspectors, there was a concern that a DCS offender could be recalled if they posed a risk of harm to the public, whereas an ECS offender must pose a risk of serious harm to meet the threshold for recall. From one perspective it appears anomalous that two offenders – one a DCS offender

and one an ECS offender - could appear to be treated differently for allegedly committing the same offence. However, this approach centres only on the alleged offence and fails to take into account the risk-based approach to recall.

- 1.23 The risk threshold for recall is determined by the sentencing court with licence conditions set as protective factors to manage risk. Recall is based solely on a determination that the level of risk posed by the offender has increased and can no longer be safely managed in the community. In practice, 81% of ECS offenders were being recalled to custody reflecting the priority given to these types of offenders by supervising Probation Officers. Whereas 26% of DCS offenders are recalled to custody which is in line with their convictions for lesser crimes illustrating that the public are appropriately protected on the basis of risk.



# Delivery

## Offenders under licence and recalls

- 2.1 At April 2015, there were 1,425 DCS offenders (686 in custody, 739 in the community) on the PBNI caseload: about a third (33%) of the total PBNI caseload.
- 2.2 A total of 2,505 prisoners were released on licence with certain conditions imposed upon them since the implementation of the new sentencing arrangements in 2010. Prior to release many of the DCS prisoners in custody will be managed by a Discipline Prisoner Development Programme Co-ordinator with the PBNI assuming lead responsibility for the final year in custody. After release and during the period on licence the offender is supervised by a community-based Probation Officer. An offender may be recalled to prison during the licence period if it is deemed they cannot be safely supervised in the community. Of the 2,505 prisoners released on licence, 723 were recalled giving an overall recall rate of 29% (August 2015).
- 2.3 The 723 recalls arose from 806 requests for the revocation of licenses made to the PCNI meaning 90% of requests were upheld by the ORU. The PCNI will refuse a request if their assessment of the evidence is such that they conclude there is no increased risk of harm/serious harm, or that the risk can be safely supervised in the community.
- 2.4 Within that overall recall rate almost 27% of DCS and 81% of ECS offenders were recalled.

**Table 1: Recall of offenders on licence 2010-15**

TYPE	Released on licence	Recalled at 31 August 2015	Recall rate 31 August 2015 (%)
DCS	2,399	637	26.6%
ECS	106	86	81.1%
TOTAL	2,505	723	28.9%



- 2.5 The decision to request a recall to custody arises when an offender's behaviour is such that supervision in the community is deemed no longer safe. The PBNI approach to recall tends towards one of last resort and supervising officers will usually exhaust a number of options including warning letters, additional home visits, varying of licence conditions and transfers to hostels before making a recall request. In some cases as a final warning the ORU may issue a letter to an offender indicating that their behaviour is causing concern and that revocation of their licence is the next step in the process. Whilst there is value in the issue of the ORU final warning letter, it carries a risk that the ORU becomes involved in the offender management issues and this could cause a conflict of interest when called upon to revoke an offender's licence. This element of the recall process is under review by the ORU.
- 2.6 The outcome of this graduated response was that offenders were only recalled when they clearly posed a risk of harm or serious harm. Inevitably where an offender commits another offence or absconds from approved premises, the PBNI have no choice but to request an immediate recall. Although the number of recalls rose as more prisoners were released on licence, the proportion of recalled prisoners fell year-on-year from around 33% to around 27% of released prisoners reducing the impact of recalls on the prison authorities.

**Table 2: Number of recalls per year 2010-15**

Year	Total requests	Not recalled	Recalls	DCS	ECS	Oral hearings
<b>2010</b>	24	2	22	22	0	0
<b>2011</b>	97	18	79	74	5	6
<b>2012</b>	159	27	132	119	13	10
<b>2013</b>	213	17	196	176	20	47
<b>2014</b>	192	8	184	159	25	68
<b>10/09/15</b>	122	6	116	93	23	57
<b>TOTAL</b>	<b>807</b>	<b>78</b>	<b>729</b>	<b>643</b>	<b>86</b>	<b>188</b>

- 2.7 As the figures show, the numbers of recalls increased rapidly as the number of DCS offenders sentenced and released under supervision in the community increased. As Table 2 illustrates the overall recall rate is under 30% and appears to have peaked as the number of recall requests issued in 2014 compared to 2013 fell by almost 10% and this downward trend has continued into 2015. This might signal the impact of a more graduated approach by the PBNI issuing warnings or using escalation techniques such as increased home visits, varying licence conditions or transfer to hostels before triggering a recall request. Whatever the underlying reason it is a welcome reduction.

## Recalls, oral hearings and judicial reviews

2.8 Once a prisoner is returned to custody the ORU will refer to the PCNI for a review of the risk posed by the offender. Where the PCNI decide to re-release an offender, is it due to a change in circumstances that is brought to their attention indicating the offender can now be safely supervised in the community. The trend in recalled offenders remaining in custody is upwards from an annual rate of 77% in 2010 (only 22 offenders) to 87% in 2014 (112 offenders) with an average 85% from 2010 to 2014. The most recent figures to August 2015 show a significant increase in the number of offenders being retained in custody; only two prisoners were released at the single Commissioner review stage out of 115 referrals.

**Table 3: Outcome of review of recall requests by single Commissioner (% released)**

Decision by	2010	2011	2012	2013	2014	2015	All
Single Commissioner	18.2%	14.9%	15.7%	11.6%	11.9%	1.8%	12.2%
Days to decision	120	143	122	103	104	94	114

2.9 The recall decision may be subject to further review by way of an oral hearing. In the case of recalled ECS offenders, their case will be reviewed at an oral hearing unless the parties agree to a paper hearing (DCS offenders can request an oral hearing). Following the hearing (oral or paper) offenders may be released, and in 2014, 54% of completed hearings recommended release with the five year average at 43%. The time spent in custody between recall and the hearing is around six months, and removing the offenders from the risk environment may improve their suitability for release, but this must be evidenced to assist the Commissioners in their decision-making. Most importantly the Commissioners will also hear directly from the offender and DoJ witnesses whose input assists their decision-making.

2.10 The most up-to-date figures for oral hearings show only 18% of prisoners being released which is a striking decrease from the 54% in 2014. There may be merit in the PCNI canvassing the individual Commissioners to identify - if possible - any thematic or systematic issues behind this decrease.

**Table 4: Outcome of review of recall requests by oral hearing (decision to release)**

Decision by	2010	2011	2012	2013	2014	2015	All
Oral hearing	0.0%	36.0%	53.8%	35.0%	53.8%	18.2%	43.4%
Days to decision		208	240	206	176	126	196

2.11 Setting aside the impact on the individual prisoner who is not being released, there is an increase in the length of time spent in custody after the single Commissioner stage with a knock-on impact on the prison authorities.

**Table 5: Average number of days to be served in custody following PCNI decision**

Following final decision by	2010	2011	2012	2013	2014	2015	All
Single Commissioner	282	254	274	203	218	312	241
Oral hearing	205	169	304	435	369	319	365

*Not all DCS cases go to an oral hearing.*

2.12 In the event that a request for an oral hearing is refused, prisoners may apply to the Chief Commissioner to reconsider the merits of their case. Where the Chief Commissioner refuses an oral hearing, this will be the final decision of the Commissioner. The prisoner may apply for a judicial review. In 2014-15 of 48 requests for an oral hearing, only one was refused reflecting the recent court ruling in *Osborn, Booth and Reilly*.<sup>3</sup>

### Operational recommendation 1

**The PCNI should canvass Commissioners to ascertain if there are specific reasons for very low levels of re-releases at both the single Commissioner and oral hearing stages of the parole process.**

### Sentence review courts

2.13 Prior to the introduction of the CJO, with the exception of Life Licensees, offenders subject to post-release statutory supervision (Custody Probation Orders and Article 26 Licenses), the courts were responsible for returning an offender to prison. The implementation of the CJO established the PCNI as an independent body to make recommendations on recall requests. In the early stages of development both prison officials and probation staff reported that parole hearings tended towards a court-like hearing and on occasions could be quite adversarial. More recently the decision by DoJ officials to present the facts rather than legal counsel and fewer witnesses appearing at recall hearings, have contributed to a less legalistic process and more inquisitorial recall hearings.

<sup>3</sup> *Osborn (Appellant) v The Parole Board (Respondent), Booth (Appellant) v The Parole Board (Respondent) In the matter of in application of James Clyde Reilly for Judicial Review (Northern Ireland)*. [2013] UKSC 61.

- 2.14 A consultation by the Ministry of Justice in England and Wales identified the introduction of a sentence review court as an option for the future of the Parole Board. It posed the following questions:
- Is the current process for dealing with prisoners' recall and re-release appropriate?
  - Should there be a court hearing before a prisoner is recalled?
  - Should a court supervise all decisions to detain people beyond the 'usual' release date?
- 2.15 Although the consultation process stalled without reaching a conclusion some researchers stated that a sentence review court for recalls should be introduced.<sup>4</sup> In Northern Ireland there is no mechanism for executive recall without an independent review by the PCNI which fulfils the role of a sentence review court. The particular issues in England and Wales with regard to remand versus recall of offenders and the very large number of recalled prisoners over tariff are not prevalent in Northern Ireland. The fact that offenders are recalled specifically on the basis of increased risk irrespective of any alleged offending, eliminates the option of offenders being returned on remand only for alleged offences and giving them the privileges of an unconvicted prisoner.
- 2.16 A possible benefit of a sentence review court is the potential to increase utilisation<sup>5</sup> in the Northern Ireland Courts and Tribunals Service (NICTS) estate that could accommodate the recall hearings with minor marginal cost, especially if video-link hearings could be used. This benefit could be simply realised under the current regime by holding PCNI hearings in NICTS buildings such as the Laganside Courts complex.
- 2.17 Also some probation staff expressed a view that the prospect of offenders being returned to court had a deterrent effect. Equally other probation staff said that recalled offenders were very often veterans of the court process and it held little deterrence value for them. There was some indication that offenders were less likely to blame probation staff for their recall under the court review system rather than the parole system.
- 2.18 The benefits of sentence review courts appear to lie in the England and Wales jurisdiction, and the prospect of wholesale changes to the role of the PCNI in recalls to custody would outweigh any possible benefits. Inevitably there would also be challenges raised not least in light of the range of court judgments that have underpinned the evolution of the current arrangements and executive recall would be particularly unwelcome in the Northern Ireland jurisdiction.
- 2.19 Irrespective of these structural considerations there are issues that should be addressed within the current parole and recall arrangements that would assist the process. Providing relevant information that focuses on the suitability of the prisoner for release is required by the Commissioners to make their decisions. The most recent rise in the number of recalled offenders being retained in custody highlights the need for this information. The issue of the ORU providing best available information is the subject of discussion between the DoJ and PCNI.

4 Recalling conditionally released prisoners in England and Wales, Padfield; European Journal of Probation University of Bucharest [www.ejprob.ro](http://www.ejprob.ro); Vol. 4, No1, 2012, pp 34 – 45; ISSN: 2006 – 2203.

5 Northern Ireland Courts and Tribunals Service: adequacy of the courts estate: a follow-up review of inspection recommendations, CJI, July 2015, [www.cjini.org](http://www.cjini.org).

- 2.20 Previously, CJI reported<sup>6</sup> on parole hearings and the need to introduce some flexibility in the timetabling of hearings for recalled prisoners nearing their Sentence and Licence Expiry Date (SLED). It is noted that the grouping of hearings was recently introduced by the Parole Commissioners and with the inevitable increase in the number of oral hearings, the pressure on criminal justice agencies to attend and provide information to the PCNI will rise.

## Recall workshop and action plan

- 2.21 The volume of cases heard by the PCNI has increased in recent times and recalls are running around 200 per annum. The numbers of oral hearings will probably increase following the ruling in Osborn, Booth and Reilly. At a recent workshop the following areas were discussed the criminal justice agencies involved in the recall process identified a number of potential areas for review that form the basis of an action plan to be delivered in 2015 (see Appendix 2).

### ***Offenders close to expiry date***

- 2.22 The view was expressed by some that offenders approaching their sentence expiry date (within 18 weeks) were not going to benefit from any prison-based programmes, would not see any reduction in their risk scores and recall simply temporarily removed them from the community. The workshop discussed the possibility of raising the risk threshold at which offenders are recalled, especially near their expiry dates. However the PBNI raised concerns about accepting a higher level of risk threshold for these offenders and preferred to use additional escalation measures and external controls to reduce the risk posed by offenders such as hostel accommodation or electronic monitoring when considering recalls. The PBNI's primary consideration, when considering recall, remains the risk threshold irrespective of the length of time a licensee has left on licence.
- 2.23 The use of fixed term recalls and automatic release after 28 days in England and Wales was raised. Whilst this might provide a cooling off period for offenders close to sentence expiry dates there was no evidence that the risk issues leading to recall were addressed in 28 days. The consensus was that fixed term recalls were not appropriate for Northern Ireland as rationale behind the legislation was to have all recalls reviewed by an independent parole body.

### ***Preparation of dossiers***

- 2.24 The key aim of the ORU dossier is to provide best available information to the PCNI to inform the Commissioners' assessment of risk and whether it can be safely managed. The workshop discussions surfaced two issues around dossiers.

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<sup>6</sup> Parole Commissioners: a governance inspection of the Parole Commissioners for Northern Ireland, CJI September 2011, [www.cjini.org](http://www.cjini.org); and Corporate governance of the Parole Commissioners: a follow-up review of inspection recommendations, CJI, September 2014, [www.cjini.org](http://www.cjini.org).

**Extent of the dossier**

- 2.25 At the review of the revocation request, the Commissioners look at: was the original request to recall justified and is there a need for the prisoner to remain in custody? To service this process the ORU provide the best available information at that date, but there is an argument to be made that the value of commissioning new reports is open to question on cost grounds. The PCNI stated that the provision of up-to-date psychology reports would be of great benefit when trying to assess the risk posed by recalled offenders. Whilst accepting that an update of psychology reports would be welcome, they only apply to around 5% of recalled prisoners. The Recall Review Group is looking at focusing the dossier to assist the Commissioners in their assessment of a prisoner's suitability for re-release.

**Updates of proceedings**

- 2.26 In 2013 there were 196 recall cases. Of these 58% were due to offenders being arrested for alleged further offences. The PCNI often request updates on the proceedings from the DoJ and it would be helpful if the request for updates could also be directed to the prisoners' legal representatives who may have the information more readily to hand.

**Rules governing DCS recalls**

- 2.27 There are no PCNI rules for DCS and they apply the ECS/ICS rules as far as is practicable. The DoJ is considering the scope to revise the rules and include DCS recalls.

**Quality assurance and errors in/with PCNI reports**

- 2.28 A minor element in the scheme of things, but data was presented showing an occasional error in recall reports including a wrongly named offender and a report labelling an offender as posing a risk of harm in one paragraph and posing a risk of serious harm later on. Whilst, accepting there are instances where a formally governed process of amendment and re-issue is appropriate, there are also occasions where a less bureaucratic mechanism could be deployed and it is worth considering a quality assurance role for the Parole Commissioners' secretariat to intercept some of the more obvious and less serious errors, such as typographical or minor factual inaccuracies before issue to the ORU.

**Extent of legal representation and volume of hearings**

- 2.29 The view was expressed at the workshop that the extent of legal representation at oral parole hearings in Northern Ireland far exceeded the experience of practitioners used to the workings of the Parole Board in England and Wales. This did not apply so much to recall hearings as to other oral parole hearings. The reduced use of counsel by the DoJ at recall hearings has also significantly reduced the expense of the hearings, reduced the potential for them to become adversarial and reduced delay.
- 2.30 Over the past five years the volume of oral hearings has risen. The Supreme Court ruling on *Osborn, Booth and Reilly*, in October 2013, led to an increase in the number of oral hearings in England and Wales from 4,500 to 16,000 per year. The number of oral hearings in Northern Ireland is also on the rise from two in 2010 to 56 in 2014. The impact of this is increased workload for ORU staff in preparing for hearings.

### **Scheduling of cases**

2.31 The possibility of grouping a number of cases to run over a couple of days with further potential to hold hearings on set days of the week each month was raised during discussions. This was the practice in Scotland and officials believed it aided scheduling. The PCNI rules allow amendments to the scheduling if agreed by all parties and the PCNI have introduced grouping of cases. Recall hearings are usually held in Maghaberry prison two days per week and this may increase as the volume of hearings rises. The rules allow for hearings to be held outside prison establishments and this could provide some flexibility if the anticipated increase in oral hearings materialises.

## **Operational recommendation 2**

**The implementation of the action plan agreed at the NIPS and PCNI sponsored workshop on recall should be completed during 2016.**

2.32 Table 6 shows a recent selection of recall cases where the SLED is within roughly 18 weeks of the recall date. The 18 week threshold is the normal time to complete the parole hearings process. In cases where the referral date and the SLED are close, there is an accelerated process to complete the decision process before the SLED and in some cases the decisions were given within 15 days of referral. In some other cases, falling within the 18 week timeframe the decision process took up to 105 days leaving only five or six days between the decision and the SLED. The risk was that any offender re-released following these hearings would still benefit from even very short periods of supervision in the community.

**Table 6: Time between decision and SLED and hearing date**

Referral date (2014)	Commissioner decision (2014)	Days between decision and referral	Days between decision and SLED	SLED (2014)	Weeks between recall and SLED
25 June	10 July	15	4	14 July	3
10 July	25 July	15	10	4 August	4
31 March	16 April	16	13	29 April	4
6 May	28 May	22	14	11 June	5
18 March	18 April	31	6	24 April	5
17 September	20 October	33	34	3 November	7
5 September	10 October	35	41	20 November	6
8 August	26 September	49	3	29 September	7
22 September	13 November	52	7	20 November	8
7 February	15 April	67	87	11 July	13
4 September	21 November	78	77	6 February	13
7 May	1 August	86	6	7 August	13
7 May	4 August	89	12	18 August	15
19 June	24 September	97	5	29 September	14
23 January	8 May	105	6	14 May	16

## ICS

2.33 ICS are reserved for the most serious crimes that fall short of a life sentence. Such offenders are subject to recall in line with the rules governing ECS cases. The number of ICS offenders in Northern Ireland is much lower than in England and Wales. As of June 2015 there were only 32 ICS offenders in custody with the first offender released into the community in June 2015. This contrasted with the experience in England and Wales where of the 5,000 ICS prisoners in custody at March 2014, only 796 were released during 2013-14 (16%) of whom 254 (32%) were recalled, indicating that not only is release difficult to achieve, but avoiding the recall to prison is also very difficult. Over 70% of the ICS prisoners in England and Wales had exceeded their tariff date and all of the prisoners sentenced to ICS with tariffs of less than two years were over tariff. This may well indicate safety for the public, but called into question the use of short term ICS sentences in England and Wales. This was avoided in Northern Ireland where a minimum tariff of two years was set.

### Issues common to recalled offenders

2.34 Having looked at the working of the recall process it is worth reflecting on the reasons for recall and efforts being made to reduce the number of offenders being recalled to custody. A number of limited studies have been conducted in Northern Ireland in the last four years. Some of the salient features of recalled prisoners are highlighted in the following extracts.

#### **Risk scores**

2.35 In May 2013 the PBNi carried out an audit of a small number of recall applications against risk assessment and found that (for this sample) the highest number of applications was made on offenders assessed as high likelihood of reoffending. Of 52 recall applications, the recall rate was 97% for offenders assessed as high likelihood of reoffending. Although this was a small sample it does, at least, confirm that the higher risk assessment of reoffending behaviour is an indicator of potential recall. To fully assess this the Assessment, Case Management and Evaluation (ACE) profile of all released prisoners would need to be made.

**Table 7: ACE category closest to recall application**

ACE closest to application	Offender not recalled		Offender recalled		All applications	
	No.	%	No.	%	No.	%
Medium likelihood of reoffending	6	27%	1	3%	7	13%
High likelihood of reoffending	16	73%	29	97%	45	87%
<b>Total</b>	22	100%	30	100%	52	100%



2.36 Data obtained from the DoJ's ORU also provided evidence that an individual's ACE score was an indicator of the time they may spend in the community prior to recall. Once again, this data relates to a small sample but indicates that reoffending behaviour is an indicator of potential for recall and that the higher risk offenders are recalled most quickly. An offender's assessed likelihood of reoffending and risk of serious harm status will determine the level of supervision. Higher risk offenders may be placed in approved accommodation, subject to weekly supervision for longer and are more likely to be involved with the Public Protection Arrangements Northern Ireland.

**Table 8: Average time on licence prior to recall**

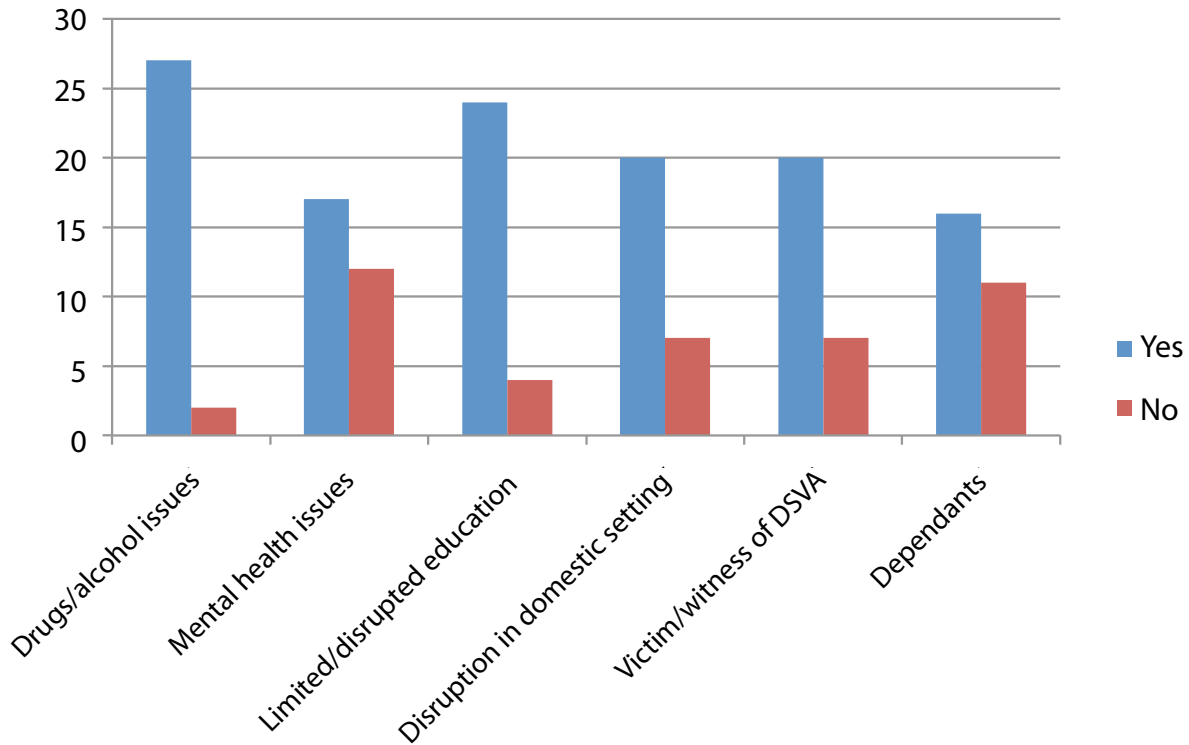
ACE score	Average weeks on licence prior to recall
High	17.10
Medium	27.95
Low	35.00

Another study by the DoJ of a small cohort of 29 recalled offenders found the following:

- three medium risk cases were recalled on average after 38 weeks in the community; and
- 26 high risk cases were recalled after an average of 23 weeks in the community.

2.37 The DoJ study also looked at a range of other factors that might influence recall to prison. Drugs/alcohol abuse, accommodation and mental health issues were all identified as contributory factors and in many cases, multiple factors were present.

- In 28 cases (97%) issues with drug or alcohol misuse were recorded;
- 17 (59%) were assessed as suffering from a mental health condition, or self-reported as suffering from mental health issues;
- 25 (86%) had limited educational attainment or had experienced periods of disruption in their education due to behaviour or truanting;
- 21 (72%) cases showed evidence of disruption in their domestic setting as a result of family separation, bereavement or periods in the care system;
- eight (28%) cases recorded that the individual had been a victim of, or witness to, domestic and sexual violence and abuse; and
- 16 (55%) had dependents, however it was noted that the levels of contact varied in many cases.

**Figure 1: Issues of recalled offenders**

2.38 The review by the DoJ also identified issues that might have contributed to the offenders' recall including:

- the sample highlighted high levels of alcohol and drug misuse relating to the index offence or previous offending;
- there was limited evidence (within release plans) to suggest contact with drug/alcohol support services in the community;
- a large number of cases evidenced difficulties in maintaining accommodation either through disruptive behaviour, offences at the hostel or failure to abide by curfews;
- individuals released to hostel accommodation were on average subject to recall quicker than those released to residential accommodation;
- licensee's were ill-equipped to access education, training and employment opportunities. Many had no qualifications or work experience and did not engage with support services;
- limited evidence in the release plans to suggest support allocated for vulnerable individuals, for example, those with mental health issues, medical conditions; and
- several dossiers highlighted the need for individuals to participate in and complete programmes/interventions, however long waiting times and over-subscription impeded engagement.

- 2.39 The other key points arising from this study were summarised by the PBNI and PCNI, and identified issues around accommodation and family support:
- Offenders released to hostels/approved accommodation were at high risk of recall; and
  - the offenders who were chaotic, addicted and socially excluded, found it difficult to comply with their licence conditions and were more likely to be returned to custody. The absence of through-care and support in the community left them disadvantaged by the recall system<sup>7</sup>.
- 2.40 Collectively the findings of these studies confirm well documented factors in offending behaviour around drug/alcohol abuse, settled lifestyle and access to employment and accommodation. Of particular importance is the indication that the combination of drugs/alcohol with other problems in accommodation and maintaining familial relationships is of greater significance than any single factor. This presents a problem for management of risk as the evidence is that a cocktail of issues contribute to reoffending and therefore require an integrated or multi-disciplinary approach to supervision and risk management.
- 2.41 The concept of an integrated approach to offender management is not new. In the United States the Boston Re-entry Initiative is an inter-agency public safety initiative that helps high risk adult offenders to re-enter their communities. The United Kingdom Ministry of Justice published a policy paper 'Breaking the Cycle'<sup>8</sup> introducing a partnership approach based on the principles of Integrated Offender Management offering a range of partners including police, probation, prisons, local authorities and voluntary partners working to tackle the offenders who cause most harm in their communities.
- 2.42 In similar fashion the Northern Ireland DoJ Reducing Offending Unit has developed a strategy using a desistance approach for the criminal justice system. The strategy outlines the DoJ intention to provide a focused approach to desistance across the wider criminal justice system, with a work programme built on a maturity model. The approach recommends that there should be direct intervention in prison, where programmes should be delivered and that discharge into community life should be a managed transition to reduce the impact on newly released or in this case re-released prisoners.
- 2.43 This approach is welcomed and the ongoing review of the delivery of the Prison Review Team recommendations is following the implementation of the strategy. The recurring theme is that reducing reoffending and indirectly recall to prison, is an integrated approach that offers support following release.

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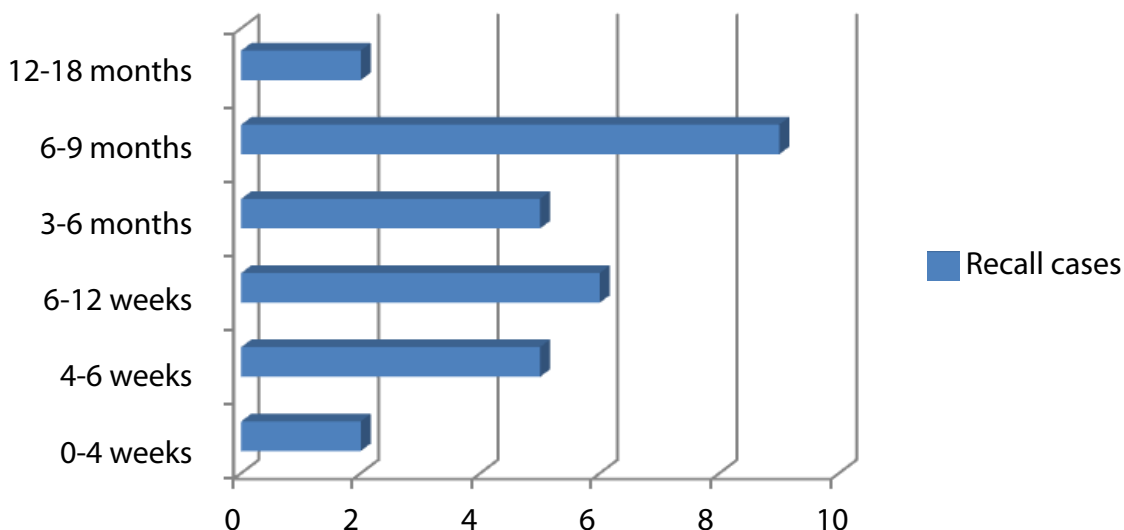
7 Irish Probation Journal; volume 12, October 2015: pps 47-65.

8 'Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders', Ministry of Justice, December 2010.

## Reducing the level of recall

2.44 The timescale for the recall of prisoners showed that within nine months over 90% of the offenders in the (albeit small) sample had been recalled to prison. Whatever the particular circumstances of individual offenders, overall, the events post-release seem to be overcoming attempts to reduce reoffending behaviour. Offenders who had chaotic lifestyles, addiction problems, isolation from family and community were less likely to comply with their licence conditions and consequently were more frequently recalled to custody.

**Figure 2: Time in community prior to recall**



2.45 The transition from custody to community can in itself be a disruptive factor in prisoner resettlement. There are some things that could be done to improve the transition. One of these is the handover from prison authorities to probation authorities. Already there are prison-based Probation Officers who contribute to the sentence planning for prisoners and the community-based programmes that released offenders will complete – although recent budgetary pressure is having an impact on the delivery of prison-based probation services. The provision of Burren House as a preparatory facility for longer term prisoners at the pre-release stage is a welcome development. This unit provides places for 22 prisoners and acts as a ‘step-down’ from prison with prisoners working out in the community prior to their release.

- 2.46 Another positive development is the launch by the PBNI of their prison gate mentoring scheme RESET (Appendix 3) which aims to provide intensive resettlement and rehabilitation support for a group of newly released offenders. The programme will commence four weeks before release with each prisoner being assigned to and meeting with a mentor who will support them in the transition from prison to community. Their mentor will spend the first day upon release with them and also provide continued support. Recognising that gaining employment is an issue the NIPS is sponsoring Employment/Placement Officers in partnership with NIACRO to assist offenders following release into the community.
- 2.44 The delivery of domestic violence interventions/programmes to offenders subject to community supervision was discussed between the PBNI and the NIPS. The issues around resettlement are realised in the high levels of recall and the short time between release and recall. Accommodation is an issue and the difficulty in providing residential accommodation is of particular concern. Offenders stated that the main barriers to accommodation were meeting the requirements of the housing authorities and overcoming objections to certain offenders returning to communities.
- 2.48 Overall, there is a major issue in tackling the matrix of issues influencing recall. The transition from prison to community is problematic and various proposals from the DoJ, the NIPS and the PBNI are welcome. The work to deliver an integrated response from the various criminal justice agencies in delivering improved co-ordination through the desistance strategy and common interventions framework is progressing and subject to review on a number of fronts.



# Outcomes of the recall process

- 3.1 The main rationale for the licence and recall system was to protect the public. It is against this criterion that the success or otherwise of the recall protocol must be measured.
- 3.2 The level of recall overall up to 2015 was 29% with around 27% of DCS prisoners and 72% of ECS prisoners recalled. Offenders are recalled to prison when it is deemed that they cannot be safely managed in the community. The sequence of events is:
  - recall request by the PBNI;
  - assessment, and if applicable, recommendation to recall by the PCNI;
  - assessment of evidence and if applicable, decision to recall by the DoJ; and
  - review by PCNI following return to custody.

This process provides independent checks and balances and separation between the executive and the parole authorities. The recall process is usually completed within 24 hours of referral to the PCNI and 25% of recall requests occur whilst the offender is already remanded in custody.

- 3.3 Against the measure of public protection, the speedy recall of 72% of ECS prisoners that are deemed dangerous by the courts is proof of a positive outcome. On a more negative note within this recall total some 58% of recalled offenders were charged with further offences and of higher risk offenders, recall occurred within about 25 weeks of release. It seems that in many cases once an offender is returned to the community the risk factors that led to the original offending behaviour return and the offender chooses to reoffend.
- 3.4 A DoJ review recommended that a number of actions should be taken across the criminal justice system to prioritise desistance. Significantly, it stated that the discharge process should be linked to the Department's desistance strategy to provide a smooth transition to community life.
- 3.5 Some other outcomes arising from the introduction of the licensing and recall regime are drawn from discussions with various representatives from the criminal justice system agencies and some offenders.

### ***PBNI staff***

- Probation Officers stated that they can become distanced from offenders because they are increasingly seen as antagonists in the recall process.
- Previously, the courts were seen as the punitive element and to some extent this has transferred to probation staff.
- The view is held by some probation staff that CPOs had a greater deterrence effect than DCS because the cause and effect of the CPO recall and appearance in court had an immediate impact on the offender.
- Offenders no longer consent to the probation terms and conditions unlike CPOs. This has led to problems with the less compliant offenders and contributed to increased recalls.
- Probation staff believe they are being placed in the position of prosecution witness in parole hearings because of adversarial process and legal representation of licensees. This mostly applies to pre-release hearings for lifers rather than recall hearings which are much more straightforward and not regularly attended by probation staff.

### ***Offenders***

- Many claimed confusion as to why they are recalled. Although this may be disingenuous as they appeared to be conversant with the recall process.
- They viewed the licence conditions as being stringent and setting them up to fail. Against this, the high level of alleged reoffending and rate of recall indicates that offenders also choose to indulge in offending behaviour.
- The rates of recall indicate that the deterrence effect was probably over estimated.
- Those offenders being held in prison after charges were dropped felt it was very unfair and they did not understand that the risk assessment rather than simply the alleged offences, were the reason for recall. As most of the offenders have legal representation, there is no reason why this cannot be explained to them by their legal representatives.
- The lengthy dossiers presented to them including historical data that they believed no longer reflect their present circumstances was raised as an issue. Work by the ORU has reduced the extent of the dossiers with only relevant information being presented for recalled prisoners.

### ***Hostels***

- Some hostels have risk reducing guidance that, for example, permit use of alcohol; although conditions of parole often have a zero tolerance of alcohol. This can create tensions for hostel managers, probation supervisors and offenders.
- The introduction of a step-up; step-down hostel as an alternative to recall to custody was seen as very desirable.

### ***PCNI***

- The governance of recall and re-release has passed from the prison authorities and the courts to the PCNI. The process has improved since the CJI inspection in 2011 both in terms of cost per referral and the timeliness of completed hearings.

- The probable increase in oral hearings will place additional pressure on resources.
- The risk assessment approach to recall is a more comprehensive test of compliance than the simple breach of conditions that prevailed under CPOs. Also there was never a guarantee that the courts would approve the recall whereas the clear test under DCS/ECS means over 90% of PBNI requests for recall were actioned by the PCNI.
- Officials from the ORU attend the recall hearings and present the facts. This has reduced the need for legal representation on behalf of the DoJ. Reduced costs and reduced tendency to adversarial conditions.
- In England and Wales offenders can be subject to a fixed term (28 day) recall by a Probation Officer and the Ministry of Justice without recourse to the Parole Board. This is an administrative process also known as executive recall which may be simple but it does not incorporate the risk-based assessment used in Northern Ireland or include the independence review of the PCNI.

### **NIPS**

- Northern Ireland sentences have 30% additional requirements whereas in England and Wales it is only 15% increasing the chances of non-compliance.
- The inclusion of zero tolerance of alcohol for the entire licence period (in some instances up to five years) was a challenge and the PBNI and the NIPS have agreed to include this in only a very few instances.
- The use of step-up; step-down hostel arrangements could offer alternatives to recall by managing risk.
- A proposal to engage prisoners in the setting of licence conditions prior to release or re-release might gain improved co-operation but would present practical difficulties. Proposed licence conditions are shared with prisoners in advance of the licensing panel meeting.
- The NIPS prisoner working out unit acting as a halfway house reduces pressures on hostels.
- The England and Wales Parole Board has the option of release to open prison conditions rather than release to the community. These facilities are not available in Northern Ireland with Foyleview House at Magilligan and the working out unit being the nearest thing to open conditions.
- The use of Conditional Early Release (similar to the Home Detention Curfew in England and Wales) whereby a prisoner is released 135 days before the half way point of their sentence with monitoring) was seen as a positive development. This has been introduced to Northern Ireland from 1 June 2015 but those offenders with chaotic lifestyles and most prone to recall are least likely to be affected. The recall process for those who are granted Conditional Early Release is separate to that outlined earlier.

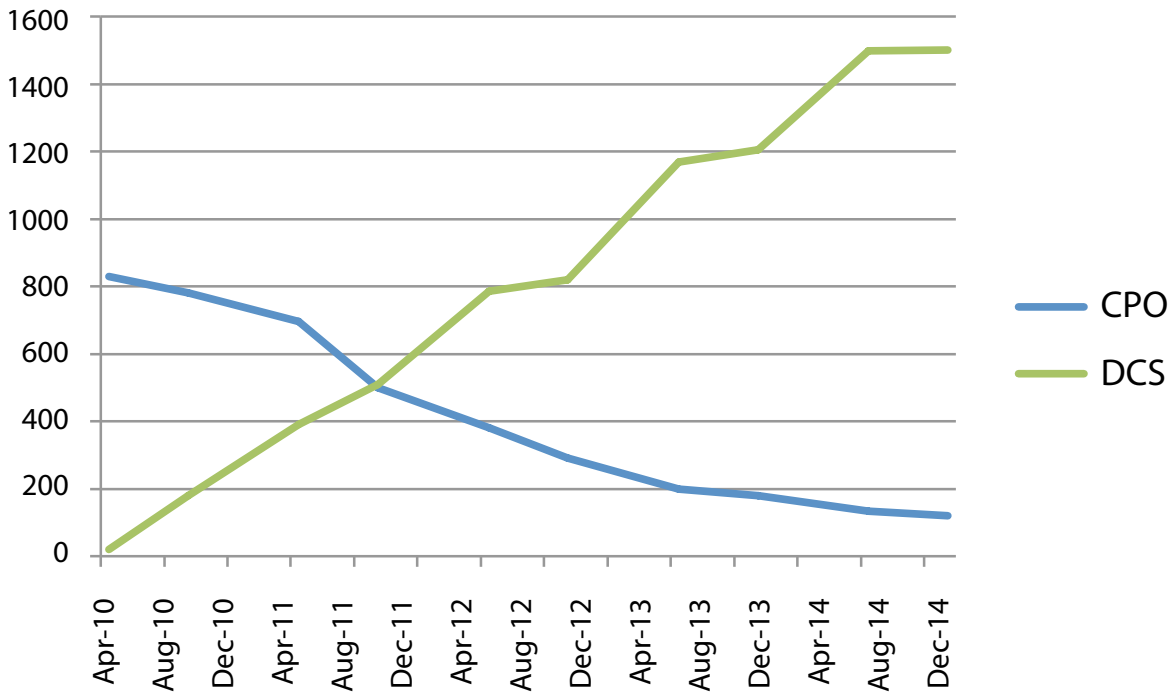
3.6 Many of the points raised centre on a need to review processes, and the action plan discussed earlier will provide the pathway to resolve these issues. There are two more fundamental areas raised by the discussions. Firstly, the comparative success of the DCS/ECS sentences with respect to CPOs. Secondly, the absence of any interventions with recalled offenders in prison and the potential to recall them to a secure hostel where supporting interventions could be delivered.



## CPOs versus DCS

- 3.7 Prior to the introduction of the CJO, CPOs were imposed by the courts with the consent of the defendant. In simple terms the offender was sentenced to a period in custody (minimum 12 months) and a period of post-release supervision by the PBNI (one to three years).
- 3.8 If the offender did not comply with the conditions of his/her CPO they could be breached, summoned to court and the sentencing judge could remand them into custody, re-sentence them and/or impose additional conditions in the Order.
- 3.9 The chart shows longer term trends in the volume of CPOs versus DCS. In terms of recalls to custody, they are the two main orders that influence the volume of recalls – although as the chart shows, the number of CPOs has fallen dramatically since 2010 and will eventually peter out.

**Figure 3: DCS versus CPOs**



- 3.10 A major difference between the CPO and DCS is the requirement of the offender to agree to supervision under a CPO – this is not required for DCS, although offenders under licence do agree to the conditions and are asked to acknowledge that they understand them. The action of consent in the minds of Probation Officers makes for more amenable relationships between the Probation Officer and the offender. Breach could be triggered via either a summons or arrest warrant to court and also meant the PBNI had an arrest warrant on which to act. The upshot of this is the PBNI becoming more like a ‘corrections agency’ which does not necessarily go against the flow of public opinion in Northern Ireland but repositions the PBNI. The important balancing factor is that the PBNI retains the requirement to be social work trained which allows staff to elide the correctional and rehabilitative aspects of the work.
- 3.11 One particular aspect of the CPO quoted to Inspectors was the ability of the court to adjourn leaving the ‘clang of the prison gate’ hanging over the offender as a deterrent. This in effect acted as a short sharp shock without the cost of the committal process. On the other hand, most offenders placed on CPOs had previous experience of custody and the deterrent impact should not be overstated. The advantage was a clear link between the reason for breach and the role of the court in returning the offender to custody – a practice that was easily understood by the offender.
- 3.12 The CPO breach process was very clear cut in the eyes of the offender – a breach of the licence was enough to trigger a recall. Under the DCS regime increased risk of harm is the primary criterion for recall and in case studies, offenders have claimed they do not understand the process or accept the rationale of the Probation Officer. It is difficult to assess the validity of these statements as prisoners may be disingenuous when expressing their confusion over the reasons for their recall – especially as alleged reoffending is a contributory factor in over 50% of recent recalls. Some confusion is possible when the alleged further charges that contributed to recall were subsequently dropped. A simple guide to the recall process is available to prisoners and their legal representatives are fully aware of the process so offenders in the main understand the process.
- 3.13 Speaking to Probation Officers, Inspectors formed the view that the move of the recall process towards the Parole Commissioners’ bailiwick has changed the perceptions of the recalled offender and their relationship with the PBNI. There was some evidence that offenders saw probation staff as being responsible for their recall whereas under the CPO regime, it fell to the judge in the review court. On the other hand, the offender knows that the Probation Officer is primarily responsible for the breach or the recall request.
- 3.14 Recalled offenders will probably be in custody for 18 weeks while the parole hearings process plays out. This length of custody disrupts the accommodation and other arrangements put in place at the time of release on licence, and also reduces the probation supervision link to the offender. The reduction in prison-based probation resources will not improve this situation.
- 3.15 Assessing the effectiveness of the new sentence and licensing regime is complicated by the difficulty in isolating the impact on offending and public safety from other initiatives and the

work of other agencies. The most recent survey of public safety recorded levels as high as 91% of respondents feeling safe, but this was in the context of local policing.<sup>10</sup> Alleged reoffending was a contributory factor in 44% of recalls over the last five years (58% in the last year) which appears high but there is no readily available figure for the number of CPO offenders breached for other offences. Also offenders committing other offences would simply have been remanded into custody and this cannot be separately identified. In short, comparing the effectiveness of CPOs and DCS/ECS is difficult.

- 3.16 The short turnaround for recall hearings is evidence that the recall processes were responsive, and considering the high percentage of recalls, comprehensive. There was a high standard of independent risk assessment and review and offenders were adequately supervised. The recall action plan, amongst other things, is looking at the timing and extent of recall hearings with hope for improvements. Whilst the apparent simplicity of breach under the CPO regime had merit in the eyes of some observers the timeliness of decisions was an issue, the courts had other disposals available meaning some offenders were not under supervision post-release and they took up court time.

### Short term recalls

- 3.17 DCS are not public protection sentences and the time in recall is too short to permit any detailed offender behaviour programmes. There is however scope to deliver some bespoke interventions on a one-to-one basis to address specific risk factors.
- 3.18 In England and Wales DCS offenders are automatically recalled to prison for a fixed term (28 days) if they pose an increased risk, and then released as the immediate risk factors are deemed to have dissipated. Although there are some merits to the simplicity of this approach it eliminates any risk assessment before release and also removes the role of the Parole Commissioners balancing the decisions of the executive. There is no evidence that the short-term recall has any positive rehabilitative effect other than removing the immediate risk factors and public protection is limited to the short period in custody.
- 3.19 One train of thought is for probation to recommend the transfer of offenders to a secure hostel rather than request a recall to prison to provide immediate respite from the risk factors that were preventing supervision in the community. There would be the opportunity to provide interventions to offenders, either through continuing any community-based programmes in which they were engaged or arranging new programmes. The proposal has merit not least because the committal procedures to prison are time consuming and costly and recalled prisoners do not receive any specific interventions when returned to custody. Funding such a hostel will be a challenge in the current financial environment but there are potential cost savings from reduced prison resources and possibly the re-use of existing infrastructure identified through the ongoing strategic review of estates.

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10 'Public perceptions of the Police, PCSPs and the Northern Ireland Policing Board', report based on the Northern Ireland Policing Board module of the January 2013 Omnibus Survey.



# Appendices



## Appendix 1: Numbers of offenders under supervision

Type of supervision orders		April 2014	May 2014	June 2014	June 2013	% change June 2013 to 2014
<b>Orders</b>	CPO	134	130	127	198	-36%
	DCS	1,498	1,498	1,508	1,240	+22%
	Juvenile Justice Custody Order (JJCO)	49	50	53	16	-
<b>Licences</b>	Life sentence / licence	257	258	257	251	+2%
	Sex offender licence	124	122	121	125	-3%
<b>Public protection sentences</b>	ECS	186	196	192	165	+19%
	ICS	31	31	31	23	-



## Appendix 2: Recall Seminar Action Plan

Issue	Action	Detail	Owner/timescale
Research	<p>Widen current research to include recalls</p> <p>Clarify conflict between DCS/ECS recall test and communicate the distinction</p> <p>Boston re-entry programme</p>	<p>Further research needed into the success factors for those that are not recalled, particularly in regard to ECS cases. There may also be learning points from the management of life sentence prisoners who it was suggested have low recall rates. It was noted that recalls for ECS prisoners are in the pattern of a bell curve with significant numbers of recalls occurring both in the first weeks after release but also after the prisoner had been on licence for some time. Insufficient preparation and planning for release, accommodation, reduction in supervision later in the licence period, decline in family relationships and difficulty in obtaining employment were all cited as possible reasons for this.</p>	<p>DoJ Research Committee</p> <p>DoJ</p> <p>PBNI</p>
Practice and procedures	<p>Examine opportunities to speed up the process – change the rules (secondary legislation)</p> <p>What do Youth Justice Agency do (family support)</p> <p>Look at Youth Engagement Clinics</p> <p>Sentence planning – could family be involved from earlier stage</p>		<p>ORU</p> <p>NIPS</p>
Mentoring	<p>Audit of current voluntary mentoring, gaps and opportunities</p> <p>Develop a mentoring event (invite companies with CSR history)</p> <p>Develop a role for ex-offenders</p>		DoJ/NIPS

Issue	Action	Detail	Owner/timescale
Communication /develop guidance	PBNI practice guidance to consider step up/EM for cases within 18 weeks of SED (DCS)	A project to standardise and streamline the release process. Should involve NIPS, PBNI, PCNI and prisoners. Possibilities for a step up facility should be investigated.	PBNI
	Improve levels of communication of licence conditions to individuals pre-release (PDU/ case sentence managers)		DoJ
	Produce a guide for prisoners and their representatives to explain and clarify the recalls process.		NIPS
Cross-organisation	Regular meetings of key organisations		DoJ
	Twice yearly forum of wider group		



# Appendix 3: Probation Board for Northern Ireland RESET mentoring scheme

## AIMS

Intensive resettlement + Rehabilitation support  
Reducing victims of crime + Community safety

## MENTORS

Voluntary + Community sector  
PBNI staff

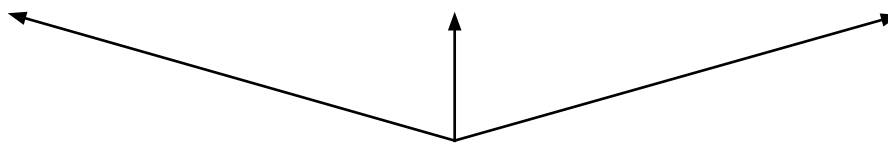
### Mentor scheme will target:

Male offenders- under 30.

Adults released from custody had a one year proven reoffending rate of 48% (Duncan, 2014)

### Re-offended because:

- Breached licence conditions
- Reoffended while on community sentence



### Four weeks prior to release

PBNI Mentors work with offenders prior to release.

### First week of release

### 12 weeks after release (MAX):

#### Where applicable:

Mentors will bridge offenders access to:

- Housing
- Addiction services
- Employment opportunities

### Practical Support

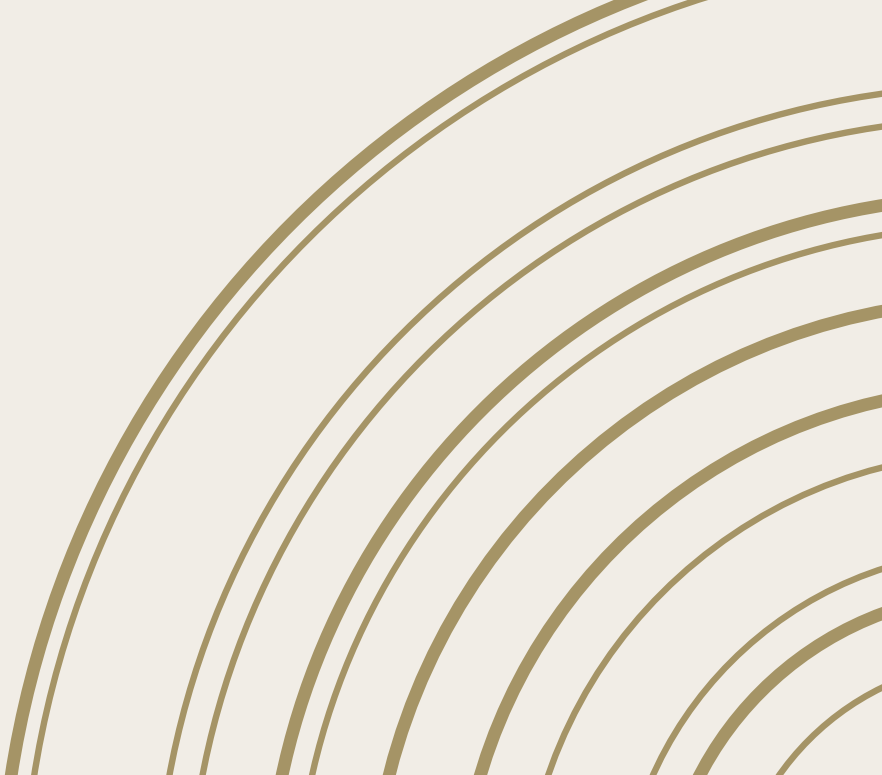
Mentors meet offenders at prison gate immediately after release.

Mentors stay with offenders on the first day out.

Mentors will see them on a daily basis for the first week.







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