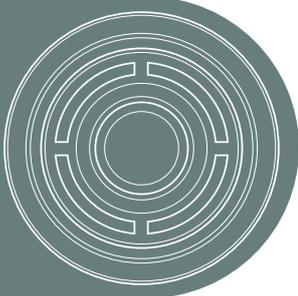


AN INSPECTION OF  
PRE-RELEASE TESTING  
ARRANGEMENTS WITHIN  
THE NORTHERN IRELAND  
PRISON SERVICE

October 2019





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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.

October 2019



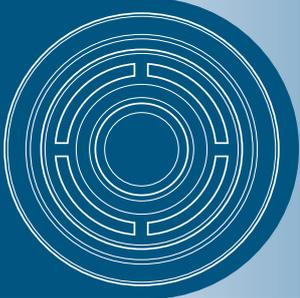
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## List of abbreviations

<b>ATR</b>	Accompanied Temporary Release
<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>CTR</b>	Compassionate Temporary Release
<b>DCS</b>	Determinate Custodial Sentence
<b>DoJ</b>	Department of Justice
<b>ECHR</b>	European Convention on Human Rights
<b>ECS</b>	Extended Custodial Sentence
<b>ICS</b>	Indeterminate Custodial Sentence
<b>NIPS</b>	Northern Ireland Prison Service
<b>OBP(s)</b>	Offending Behaviour Programme(s)
<b>PBNI</b>	Probation Board for Northern Ireland
<b>PPANI</b>	Public Protection Arrangements Northern Ireland
<b>PRISM</b>	Prisoner Record and Information System (IT System within NIPS)
<b>PRT</b>	Pre-Release Testing
<b>PRVIS</b>	Prisoner Release Victim Information Scheme
<b>RoSH</b>	Risk of Serious Harm
<b>SRoSH</b>	Serious Risk of Serious Harm
<b>TED</b>	Tariff Expiry Date
<b>UTR</b>	Unaccompanied Temporary Release
<b>VCSE</b>	Voluntary, Community and Social Enterprise Sector (also known as the Third Sector)
<b>VSNI</b>	Victim Support Northern Ireland



# Chief Inspector's Foreword

In December 2018 Criminal Justice Inspection Northern Ireland (CJI) was invited by the Department of Justice (DoJ) Permanent Secretary to review the Northern Ireland Prison Service's (NIPS's) arrangements for testing prisoners before release. The request followed critical reaction in October 2018 after a prisoner absconded while subject to Pre-Release Testing (PRT); and others were photographed during an escorted activity outing. Although none of these prisoners were charged with reoffending, and no victims encountered them, public confidence in the prison system was challenged.

The NIPS has two key roles: to keep people in a safe, decent and secure environment; and to help reduce their risk of reoffending. Temporary release forms an important part of the risk reduction process and provides important information to help the Parole Commissioners for Northern Ireland in reaching their decisions.

The sentencing system in Northern Ireland means that every prisoner can expect to be released at some stage. Temporary release provides an opportunity to re-establish relationships with their family, and organise work and housing.

More than 4,000 people enter and leave prisons in Northern Ireland each year. Only a minority of them require PRT. However it is important that the minority who have been convicted of the most serious crimes and been incarcerated for a long time, be tested in conditions similar to those they will face in the community.

Testing by definition can never be completely risk-free. Unsupervised access to the community is a significant step since it discards the security of prison and there is much at stake for the public and prisoners. The public have a right to expect that it is administered as safely as possible and that the robustness of the process, competence of staff and resources involved, are commensurate with best practice.



This inspection addresses those issues. It concludes that the NIPS needs to regularise its external activity schemes for prisoners, but was otherwise fulfilling its duty appropriately in all other aspects of PRT.

This inspection was conducted by Tom McGonigle. My sincere thanks to all who supported this work.

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

October 2019

Criminal Justice Inspection  
Northern Ireland  
*a better justice system for all*





# Executive summary

Previous inspections by CJJ have consistently found the NIPS Pre-Release Testing (PRT) process was working well. The NIPS' partners, particularly the Probation Board for Northern Ireland (PBNI) and the Parole Commissioners for Northern Ireland, were strongly supportive of its benefits and found it provided the best means of safely reintegrating prisoners into the community. There was unanimity that prisoners who were not subject to PRT were more difficult to manage and much more likely to need recall to prison. This had obvious ramifications for public safety.

While public interest understandably tended to focus on high profile, life sentence prisoners, research shows they posed less risk of reoffending than other prisoners.

Although 'failures' during PRT may attract criticism, they also demonstrate that the process is working properly, by identifying those who are not yet safe to release.

A 2018 Judicial Review provided informative data: *During the past four years (2014-18), 36 lifers had been released from Burren House, two of whom had been recalled. In the same period, 20 lifers had been released from closed conditions and 12 had been recalled.*<sup>1</sup> The clear message

was that those who were tested in advance of release were much less likely to fail once granted their licence. This finding was confirmed in a CJJ inspection in May 2018.<sup>2</sup>

There was very little reoffending by prisoners who 'failed' during PRT, even when they absconded. Their misconduct usually entailed breaches of alcohol bans, inappropriate relationships or curfew breaches. Such behaviour reflected rash decisions by people who were struggling to adapt after years in secure custody, and who had been unstable before going into prison. Levels of suspension from PRT schemes indicated the NIPS usually took swift action as soon as warning signs emerged.

1 Hegarty N v Department of Justice and the Parole Commissioners for Northern Ireland, 13 February 2018 available at <http://www.bailii.org/nie/cases/NIHC/QB/2018/20.html>

2 *An inspection of Resettlement in the Northern Ireland Prison Service*, CJJ, May 2018, para 3.102: Available at <http://www.cjini.org/TheInspections/Inspection-Reports/2018/April-June/Resettlement>



Staff selection and training were good and there was substantial collaboration between the agencies. Significant resources were deployed by the NIPS and the PBNi in support of the PRT process.

The NIPS pre-release facility - Burren House - was functioning well and providing an important public service at the time of this inspection. Some areas for improvement were noted. In particular, it required closer managerial interest and its role needed wider promotion with the public.

In addition to PRT this inspection also considered the broader range of temporary releases that were available to prisoners in NIPS custody. They included Home Leave, Christmas Home Leave, Resettlement Leave, Compassionate Temporary Release, town visits and external activity schemes. The totality of these schemes constituted a system that provided good opportunities for prisoners to retain family and community ties.

Policy documents were available to demonstrate the background and operating processes for most of the temporary release schemes. Risk assessments were central to decisions and approval rates were generally high.

The schemes had evolved over the years and there were minor differences in their application between prisons. These were generally acceptable given the different populations that each establishment held. However, it would be timely for the NIPS to conduct a fundamental review of all their Home Leave schemes, in order to avoid overlaps and ensure they are being applied with consistency.

The main concern that arose in this inspection was external activity schemes. They did not have an explicit or consistent rationale and were delivered under the wide discretionary powers contained in Rule 27 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995. It was reported that this approach had not yet proven wrong and several prisoners benefitted in terms of health and social opportunities. However examples were provided where prisoners who did not meet local NIPS criteria had been permitted temporary absence from prison. The NIPS accepted mistakes had been made and had taken steps to address this. It also needs to better explain - to its own staff, partner agencies, victims and prisoners - what it is trying to achieve with external activity schemes.

Otherwise the findings of this inspection are consistent with recent findings: PRT was functioning well and is an essential process for public safety. We make two strategic recommendations and four operational recommendations for improvement. Implementation of accepted recommendations will be assessed in future CJI prison inspections.



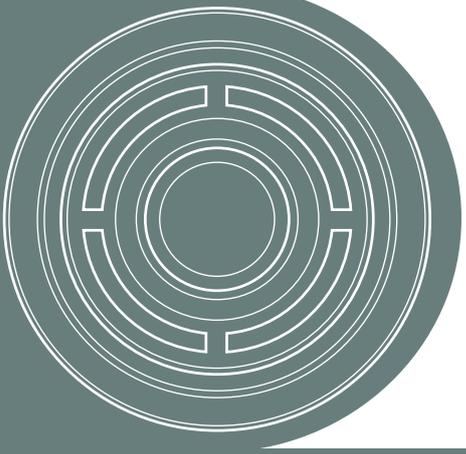
# Recommendations

## Strategic recommendations

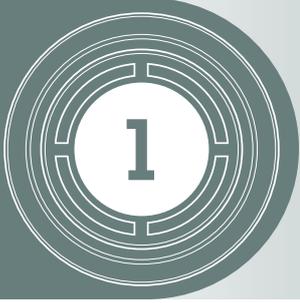
- 1** The Northern Ireland Prison Service (NIPS) should review the totality of its Pre-Release Testing (PRT) and Home Leave Schemes. This review should aim to establish consistency between establishments, taking account of best practice in other jurisdictions. It should also determine whether it is necessary to continue to offer Resettlement Leave; and it should ensure greater accuracy of data that is collated about the various Home Leave schemes and it should ensure the data is analysed e.g. in relation to the disparate success levels between CTR and other applications. (*paragraph 3.34*).
- 2** The NIPS should publish a rationale and operating procedures for External Activity schemes in a policy document. That policy should explain the criteria for prisoners to participate in External Activity schemes and the extent to which governors' discretion may apply. It should also reflect the importance of notifying registered victims when individual prisoners are given approval to participate in External Activity schemes (*paragraph 3.48*).

## Operational recommendations

- 1** The NIPS should explore the feasibility of using electronic monitoring on a trial basis to support PRT and other forms of temporary release from prisons (*paragraph 2.21*).
- 2** The NIPS should work with the Probation Board for Northern Ireland (PBNI) and Victim Support Northern Ireland to develop a plan that actively promotes the Prisoner Release Victim Information Scheme (PRVIS) in order to maximise uptake (*paragraph 4.12*).
- 3** The NIPS should normalise routines for other prisoners as soon as possible when a prisoner breaches their individual PRT conditions. It should also clearly advise prisoners who are becoming involved in PRT about the possible consequences for everyone when one prisoner breaks the rules (*paragraph 4.35*).
- 4** The NIPS should strengthen its Burren House operation by:
  - a) developing an outreach programme that promotes public understanding of the PRT work at Burren House and other facilities (*paragraph 4.24*);
  - b) sharing Burren House audits with the NIPS Director of Rehabilitation and with relevant PBNI managers (*paragraph 4.38*); and
  - c) ensuring more regular managerial oversight by Maghaberry Prison management and NIPS HQ (*paragraph 4.41*).



# Inspection Report



# Introduction

- 1.1 CJJ has previously considered the arrangements for Pre-Release Testing (PRT) in Northern Ireland. The three most recent relevant reports were of Maghaberry Prison (November 2018),<sup>3</sup> Prisoner Resettlement (May 2018)<sup>4</sup> and the Management of Life Sentence Prisoners (February 2016).<sup>5</sup> This review takes account of those inspections - whose findings on the subject were consistently positive - and builds on them with specific reference to the issues that generated this inspection.
- 1.2 In addition to PRT, prisoners can be temporarily released for other reasons including Compassionate Temporary Release (CTR), hospital visits and activity programmes. In order to provide a complete understanding, each form of temporary release was considered in this inspection.

## The Rationale for PRT

- 1.3 Human rights standards are clear that any period of imprisonment must be used to ensure prisoners' rehabilitation and reintegration into society (for example, International Covenant on Civil and Political Rights paragraph 10.3; Standard Minimum Rules for the Treatment of Prisoners paragraph 4.1). The standards emphasise that consideration must be given from the beginning of a prisoner's sentence, to their future after release, to the importance of maintaining family and other relationships, and the prisoner's need for assistance in re-establishing himself in society after release (for example, Standard Minimum Rules for the Treatment of Prisoners paragraphs 106-108).<sup>6</sup>
- 1.4 While legislation provides that the more serious offenders can be detained indefinitely until they are assessed as safe to release, every prisoner in Northern Ireland can expect to be released at some stage. Preparation for release must therefore include efforts to reduce the risks they pose.
- 1.5 PRT is an integral element of preparation for release. There are benefits attached to observing how prisoners behave and cope during short periods in the community.

3 *An unannounced inspection of Maghaberry Prison*, CJJ April 2018. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Maghaberry>

4 *An inspection of Resettlement in the Northern Ireland Prison Service*, CJJ, May 2018. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2018/April-June/Resettlement>

5 *The Management of Life and Indeterminate Sentence Prisoners in Northern Ireland*, CJJ, February 2016. Available online at: <http://www.cjini.org/TheInspections/Action-Plan-Reviews-Inspection-Follow-Up-Review/2016/Lifers-Follow-up-Review>

6 [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

- 1.6 While PRT only involved long-term prisoners, it is important to recognise that the reoffending rate for prisoners released from short sentences has consistently been higher than those released from longer sentences. In Northern Ireland adults serving less than 12 months had a reoffending rate of 45.8%, which was much higher than the comparable figure for those serving prison sentences of 12 months or more - 18.9%.<sup>7</sup> There were also differences in reoffending rates between categories of long-term prisoners: the rate for life sentence prisoners and Indeterminate Custodial Sentence Prisoners (ICS) was 14.2%; the rate for those sentenced to Extended Custodial Sentences (ECS) was 38.2% and for Determinate Custodial Sentence (DCS) prisoners the rate was 22.7%.<sup>8</sup>
- 1.7 The NIPS (and PBNi who worked closely with them in PRT) were committed to constantly reviewing their PRT processes. They undertook joint training and accessed learning from elsewhere for example, Her Majesty's Inspectorate of Probation in England and Wales Serious Case Reviews, which were shared with all relevant staff.
- 1.8 There were certain criteria to be satisfied before a prisoner would be approved for PRT. Mandatory criteria included time spent in continuous custody, outcome of a risk assessment, protection of victims' interests and engagement with a resettlement plan.

## Legislative basis for PRT

- 1.9 Northern Ireland's legislative provision for temporary release was designed in keeping with the spirit of international legislation. It was governed by:
- **The Prison Act (Northern Ireland) 1953 Section 13<sup>9</sup>** permitted the DoJ to make rules for the administration, regulation and management of prisons. These rules provided a power to release sentenced prisoners for a temporary period. Remand prisoners could only be released by a court.
  - **The Prison and Young Offenders Centre Rules (Northern Ireland) 1995;**
  - **Rule 27(1)** provided that *"A prisoner may be temporarily released for any period or periods and subject to any conditions."*
  - **Rule 27(2)** further stipulated that a prisoner may be temporarily released for *"any special purpose or to enable him to have medical treatment, to engage in employment, to receive instruction or training or to assist him in his transition from prison to outside life."*

Rule 27 also placed a duty on the NIPS to ensure that temporary release was not abused.

- **Prison Rule 65** provided that prisoners *"...shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the*

7 Northern Ireland Statistics and Research Group 2014-15 data published in October 2017 as quoted in CJI Inspection of Resettlement in the NIPS, May 2018, available at <http://cjini.org/getattachment/1ded7a6c-034e-4a62-bf02-96ee30584645/report.aspx>

8 Analytical Services Group. Adult and Youth Reoffending in Northern Ireland (2014-15 Cohort). Research and Statistical Bulletin 29/2017. L Duncan and I Damkat. October 2017. Northern Ireland Statistics and Research Group. Available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/r-bulletin-29-2017-adult-and-youth-reoffending-northern-ireland-201415-cohort.pdf>

9 <https://www.legislation.gov.uk/apni/1953/18/section/13>

*governor, best promote the interests of his family and his own social rehabilitation.”*

- 1.10 **Article 8 (1) of the European Convention on Human Rights** (ECHR) (the right to private and family life)<sup>10</sup> was an important issue when considering temporary release under any of the schemes operated under Rule 27.
- 1.11 **The Criminal Justice (Northern Ireland) Order 2008**<sup>11</sup> provided for:
- public protection sentences for violent and/or sexual offenders;
  - the necessity for all public protection sentence prisoners to be referred to the Parole Commissioners for Northern Ireland to assess suitability for release;
  - imposition of licence conditions on people who had been sentenced to a public protection sentence or a determinate sentence of 12 months or more;
  - revocation by the DoJ of the licence of a released prisoner and recall to prison, if recommended by Parole Commissioners for Northern Ireland; and
  - consideration by the Parole Commissioners for Northern Ireland of such recalls and their power to direct release.
- 1.12 A number of sentences for more serious offences were referred to the Parole Commissioners for Northern Ireland for consideration of release and recall. These included ECS, ICS and Life Sentences. Each of these sentences required a mandatory amount of time to be served before a person would become eligible to be considered for release. If the prisoner was to be released before their whole sentence was completed, the Commissioners had to be satisfied that it was no longer necessary for protection of the public from serious harm that they should remain in prison. Serious harm was defined as being *“death or serious personal injury, whether physical or psychological.”*
- 1.13 An integral part of the Parole Commissioners for Northern Ireland’s public protection duty was to have due regard to securing the rehabilitation of offenders. They would recommend when cases should be reviewed and make recommendations as to what should be done in order to minimise the risk of serious harm posed by the prisoner. This process frequently included PRT.
- 1.14 **The Life Sentences (Northern Ireland) Order 2001**<sup>12</sup> provided for review of lifer cases by the Parole Commissioners for Northern Ireland. This was to allow the Commissioners to assess the level of risk a prisoner was considered to present and their suitability to be released on license.
- 1.15 A review by the DoJ of the interfaces between the Parole Commissioners for Northern Ireland and the NIPS was ongoing in 2019. As such it is not examined in this inspection.

10 Available at <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

11 Available at <http://www.legislation.gov.uk/nisi/2008/1216/part/2/chapter/2>

12 Available at <http://www.legislation.gov.uk/nisi/2001/2564/contents>

- 1.16 **The Justice (Northern Ireland) Act 2002**<sup>13</sup> provided that registered victims could be advised of a prisoner's consideration for temporary release so that they could make representations in respect of such an application. They also had to be told of the outcome of the application for temporary release. These provisions placed a duty on the NIPS to contact victims in sufficient time for them to submit representations and to take their views into consideration. This matter is addressed in Chapter 4.
- 1.17 The legislative basis was developed at local level by Pre-Release Home and Resettlement Leave policies. These policies were published on the DoJ website.<sup>14</sup> They set out the arrangements by which sentenced prisoners could apply for temporary release when they were approaching the end of their sentence. While the primary concern was public safety, the policies recognised the benefits of reintegration with family and community and provided opportunities to earn temporary release specifically for this purpose.
- 1.18 The policies explained the link between temporary release, progressive regimes, risk management and resettlement plans; and confirmed that these matters would be used to decide on applications for temporary release.
- 1.19 The main NIPS policies were:
- **Home Leave Circular** (October 2004) which set out the legislative basis and principles, mandatory and desirable criteria, and eligibility quotas which depended on sentence length.
  - **Instruction to Governors 11/12** (PRT for ECS Cases). It said *"A new instruction is currently being developed that will bring all temporary release policies together into one document but it is appropriate at this point to remind all decision makers of the discretion that NIPS has to grant temporary release by virtue of Prison Rule 27."*
  - The new instruction was never actually prepared and by 2019 it was out of date in several respects.
  - **Index of documents for managing life sentenced prisoners** incorporated a Practice Manual and Standards. It contained 11 annexes and a further 26 policies.
  - **Other policies, such as Maghaberry External Family Visits Policy** (July 2017), supported the benefits of PRT.

13 Available at <http://www.legislation.gov.uk/ukpga/2002/26/part/5/crossheading/victims-of-crime>

14 *Pre-Release Home and Resettlement Leave Arrangements for all Sentenced Prisoners*, DoJ. Available at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/pre-release-home-leave.pdf>.

## Data

- 1.20 A relatively small cadre of prisoners were required to undergo PRT. Data provided by the NIPS showed that just under 300 (out of a total of 1,423 on 30 September 2018) were in the categories who would need PRT: there were 155 Lifers, 18 ICS and 115 ECS prisoners detained in NIPS custody.
- 1.21 Other relevant data in relation to the indeterminate sentenced population on 30 September 2018 included:
- seven prisoners were women;
  - most of the men were held at Maghaberry Prison, with 35 at Magilligan Prison;
  - during 2011-2018 an average of 12 new life prisoners were received into custody each year;
  - 32 prisoners (including two women) were held beyond their tariff. The duration of time in custody post-tariff ranged from one month to 28 years;
  - 104 prisoners were on Enhanced regime level, which indicated optimal behaviour in custody;
  - 15 prisoners - all in Maghaberry Prison - were classified as Security Category 'A'; and
  - 104 prisoners were classified as Security Category 'C' or lower.
- 1.22 The security classifications were as outlined below.

**Table 1 NIPS Security Category Classifications**

Security Category	Definition
<b>A</b>	Prisoners whose escape would be highly dangerous to the public or the police or the security of the State, no matter how unlikely that escape might be, and for whom the aim of the NIPS must be to make escape impossible.
<b>B</b>	Prisoners for whom the very highest conditions of security are not necessary, but for whom escape must be made very difficult.
<b>C</b>	Prisoners who cannot be trusted in open conditions, but who do not have the resources or the will to make a determined escape attempt.
<b>D</b>	Prisoners who can be reasonably trusted in open conditions.
<b>U</b>	All remand, awaiting trial or awaiting sentence prisoners will be placed in Category U (unclassified). The only exception is those remand prisoners/identified as Category A.

## Prisoners detained post-tariff

- 1.23 Prisoners sentenced to life imprisonment or ICS had committed the most serious crimes. One element of their sentences was that they should address their offending behaviour while in custody in order to demonstrate that they could be released safely into the community.
- 1.24 The 32 prisoners who continued to be detained post-tariff on 30 September 2018 were often complex cases. Some 16% of life sentence prisoners and 60% of ICS prisoners were post-tariff. The ICS percentage was particularly high and reflected their poor prospects. These were the most challenging prisoners to progress successfully through the PRT process.



# Strategy and governance

## The Pre-Release Testing (PRT) Model

- 2.1 All of the agencies consulted for this inspection – the NIPS, the PBNI, Victim Support Northern Ireland and the Parole Commissioners for Northern Ireland - favoured PRT for serious offenders who were approaching the end of long sentences. They provided tangible examples of how much more difficult it was to manage prisoners after release when they had not been subject to PRT.
- 2.2 Temporary release conditions were individually designed for each prisoner in order to address public safety and match their personal needs. Some required small steps and experienced repeated suspensions from their PRT programme when they failed to comply with conditions.
- 2.3 Another feature of the PRT model was allocation of resources proportionate to the risk of harm and likelihood of reoffending. More work and resources were dedicated to prisoners who were assessed as posing higher risks of harm. There was a broad range of specialist support available from statutory organisations and the Voluntary, Community and Social Enterprise Sector (VCSE also known as the Third Sector). The NIPS, the PBNI and VCSE staff worked hard to support some challenging prisoners, many of whom had multiple, complex needs.
- 2.4 The Prisoner Development Model (PDM) provided the structure for managing prisoners who were sentenced to over 12 months in custody. One of its strengths was an interagency approach. Case conferences were convened regularly to ensure professional perspectives were shared. Life prisoners had annual reviews; and the process became more focussed for them once they reached the three-year pre-tariff stage.

## Developments

- 2.5 Several aspects of the system had been strengthened in recent years. They included:
- the Public Protection Arrangements Northern Ireland (PPANI) had begun risk assessing prisoners who did not yet fall within their ambit, but were eligible to receive Unaccompanied Temporary Release (UTR);
  - the PBNI had begun to prepare Risk Management Plans for prisoners who were assessed as posing a Risk of Serious Harm (RoSH) and Serious Risk of Serious Harm (SRoSH);
  - the PBNI had also agreed to compile home circumstances reports in cases where Home Leave applications were being lodged, including by prisoners who were not known to them; and
  - the PSNI had agreed to conduct curfew checks during periods of Home Leave, even if the prisoner was not currently involved with them.
- 2.6 Examples were provided of cases that had been successfully managed, as well as others which had been problematic because they were not subject to PRT. One such case involved an agency insisting the prisoner should not be released. They were supported by a psychiatrist, but their view was at odds with most of the others. It was suggested that fear of being Judicially Reviewed led to optimism bias, and there was considerable pressure to release. However the cautious view prevailed and the prisoner was held in custody for another 11 months. During that time he underwent further PRT and subsequently progressed to live on licence in Approved Premises.
- 2.7 The NIPS recognised the necessity to demonstrate their decisions were being taken in a proper, timely and lawful manner. Pre-action protocols and Judicial Reviews were frequently initiated by prisoners on the basis of Article 8 of the European Convention on Human Rights (ECHR), which provided a right to respect for “*private and family life*,” subject to certain restrictions that were “*in accordance with law*” and “*necessary in a democratic society*.” The NIPS aimed to take decisions on the basis of what was right and was justified by the evidence rather than on the basis of likely challenge.
- 2.8 The decision-making process was assisted in 2018 when the High Court issued general guidance.<sup>15</sup> Some of the issues that were deemed relevant for NIPS consideration in arriving at decisions about PRT included:
- a need for high-speed litigation in Compassionate Temporary Release (CTR) applications;
  - suggestions that prison governors erred in law by taking account of irrelevant information and factors;

15 McKee’s Application for Leave to Apply for Judicial Review v Northern Ireland Prison Service. [2018] NIQB 60 30 July 2018 available at <https://judiciaryni.uk/sites/judiciary/files/decisions/McKee%27s%20%28Brendan%29%20Application%20v%20Northern%20Ireland%20Prison%20Service.pdf>

- rulings by the European Court of Human Rights and Section 6 of the Human Rights Act 1998 which placed a duty on public authorities not to act incompatibly with certain rights and freedoms drawn from the ECHR;
  - governors were required to demonstrate they gave serious consideration to the mechanisms realistically at their disposal (for example, a handcuffed escort), and if these were rejected, then be able to show the rejection was on rational grounds;
  - proportionality had to be visible in governors' reasoning and conclusions; and
  - a prison governor's discretion must not be fettered. Every case would inevitably be fact sensitive and the decision maker must "*give appropriate weight to*" asserted facts and factors.
- 2.9 The Judicial Review said the hallmarks of the prison governor's decision letter should be care, clarity, logic and adequate particularity.
- 2.10 Examples of balance and sensible exercise of discretion in testing decisions were provided. These included: permission (and refusals) to travel outside the Northern Ireland jurisdiction on temporary release; and prompt recall to secure conditions on a precautionary basis when there was any hint of deviation from conditions even without the prisoner actually reoffending. Several examples were provided of eventual successes with prisoners who had proven unable to comply with PRT conditions at an earlier stage.
- 2.11 The concept of testing implies either a 'Pass' or 'Fail' outcome. Yet this could not be absolute and there was an expectation that the NIPS would continuously revisit the PRT process with prisoners who had previously failed to adhere to their PRT conditions.
- 2.12 While public safety was the priority, the NIPS had to balance proportionality of interference with the prisoner's private and family life rights; and in cases where approval for temporary release would only be given if escorted, then governors also had to consider their duty in respect of prison officers' ECHR Article 2 (Right to Life) rights.
- 2.13 Higher levels of failure were noted among prisoners who were not subject to PRT. Some would be released shortly after sentencing because they had served a lengthy period in custody on remand, without an opportunity to be tested; or if they transferred into Northern Ireland from another jurisdiction, then they might not be subject to the same requirements.
- 2.14 Research data showed that life sentenced prisoners and sex offenders posed the lowest likelihood of reconviction.<sup>16</sup> By contrast ECS and ICS prisoners' characteristics included chaotic lifestyles and a lack of control, and they received public protection sentences, because their risks were assessed as high. Things could be more problematic if they had served lengthy remand periods as this could mean they were unable to complete Offending Behaviour Programmes (OBPs); and testing became more problematic when the prisoner had a definite release date.

16 DoJ Adult and Youth Reoffending in Northern Ireland (2015-16 Cohort); available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/27-2018%20Adult%20and%20Youth%20Reoffending%20in%20Northern%20Ireland%20%282015%20Cohort%29.pdf> p 8 and 17.

- 2.15 A 2018 Judicial Review<sup>17</sup> commented on the *“interesting statistic that since 2010 there has been a total of 1,266 licence recall requests, giving rise to 1,162 licence revocation decisions with resulting loss of liberty...”* The majority of these were in respect of non-life sentence prisoners.
- 2.16 The same Judicial Review made the case for PRT most powerfully stating: *“During the past four years (2014-18), 36 lifers had been released from Burren House, two of whom had been recalled. In the same period, 20 lifers had been released from closed conditions and 12 had been recalled.”*<sup>18</sup> The clear message was that those who were tested in advance of release were much less likely to fail once granted their licence.
- 2.17 Risk assessment and risk management were complex processes, and those with the responsibility to decide upon the release of prisoners had a challenging task. Learning from previous cases and from research was widely shared among the agencies. The research showed that a prisoner’s compliance with requirements might be false or manipulative. Some prisoners expressed too much confidence in their ability to remain offence-free, which could indicate avoidance or failure to recognise the risks they posed.
- 2.18 The evidence could be positive when prisoners had done what was asked of them in closed conditions. The literature on bias and error in risk assessment within criminal justice is well established. It highlights the risk of “Confirmation Bias” (where practitioners select information which confirms and reinforces the decision and course of action that they have already chosen); and “Unreal Optimism” (where practitioners, having worked hard, see change and progress, even though the weight of evidence for this may actually be small; and they consequently invest small changes with a greater significance than is actually deserved, which can result in risk minimisation).<sup>19</sup>
- 2.19 Similarly, it is important to avoid assumptions about the risks posed by an offender. The following are common beguiling assumptions:
- the passage of time since an offence was committed automatically decreases risk;
  - if an offender is pleasant, courteous and punctual, their risk of re-offending or causing serious harm has changed;
  - progress made by an offender automatically means a lower risk of re-offending; and
  - compliance with the requirements of their sentence means they will not offend (false compliance may in fact mean that risks are significantly elevated).
- 2.20 Working effectively in this context and environment requires skill, knowledge and confidence, plus support for development of these skills. This needs to be done by criminal justice employers regularly conducting training needs assessments.

17 Hegarty N v Department of Justice and the Parole Commissioners for Northern Ireland, 13 February 2018 available at <http://www.bailii.org/nie/cases/NIHC/QB/2018/20.html>

18 Ibid

19 *Working with Risk: Skills for Contemporary Social Work*, Kemshall, H., Wilkinson, B. and Baker, K (2013) Polity Press, Cambridge

2.21 Electronic monitoring had been successfully used for licensees and bailees in Northern Ireland since 2010. However it was not available for prisoners during the PRT phase. Several NIPS managers suggested it would provide a useful additional control, particularly if Global Positioning System (GPS) technology was applied. While the current legislative framework for electronic monitoring in Northern Ireland may constrain a trial, particularly in the current political circumstances, the NIPS should advocate for all opportunities to strengthen their PRT arrangements.

### Operational recommendation 1

**The NIPS should explore the feasibility of using electronic monitoring on a trial basis to support PRT and other forms of temporary release from prisons.**



# Delivery

- 3.1 Temporary absence from prison was an essential element of testing. The main forms were Home Leave, Accompanied Temporary Release (ATR), Unaccompanied Temporary Release (UTR), Compassionate Temporary Release (CTR), Christmas Home Leave, Town Visits and Resettlement Leave.
- 3.2 While the NIPS was effective at measuring resettlement processes and reporting on activities, some of the terminology was inconsistent between for example, the outcome of some applications was 'Recommended' or 'Not Recommended.' It was unclear how this equated to 'Approved' or 'Rejected.'
- 3.3 The data did not always tally exactly - as is evident in the tables below. This matter is addressed in a recommendation at paragraph 3.34. All data in the following tables covers the period 1 January - 31 December 2018 and excludes applications that were pending or cancelled.

## Process and Data

- 3.4 Tables 2-4 indicate an active Home Leave programme, given that the average sentenced population in NIPS custody during 2018 was 1,036 prisoners.<sup>20</sup> This level of activity has been commended in previous inspection reports. The 2018 CJI Maghaberry inspection said: *"Home leave, accompanied, unaccompanied and compassionate temporary releases, together with outside work placements also provided an important contribution to resettlement. There was a set process to manage the leave with eligibility criteria, a risk assessment process and a multi-agency Home Leave Board considered individual cases.... Recent inspections have found this process to be operating effectively and used to support the progression of prisoners with decisions rigorously scrutinised without being unnecessarily risk-averse."*<sup>21</sup>

20 NIPS Analysis of Sentenced Prisoner Population 1/7/2017 – 30/9/2018 available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/analysis-of-prison-population-010717-to-300918.pdf>

21 An unannounced inspection of Maghaberry Prison, CJI April 2018. Available online at: <http://www.cjini.org/TheInspections/Inspection-Reports/2018/October-December/Maghaberry>

**Table 2 Maghaberry Prison Home Leave applications by type and outcome (1 January – 31 December 2018)**

	Christmas	Home Leave	Phase 2	Resettlement	Rule 27	Town Visit	Total
<b>Approved</b>	27	166	39	3	123	96	<b>454</b>
<b>Rejected</b>	13	104	1	9	9	3	<b>139</b>
<b>Total</b>	<b>40</b>	<b>270</b>	<b>40</b>	<b>12</b>	<b>132</b>	<b>99</b>	<b>593</b>

**Table 3 Magilligan Prison Home Leave applications by type and outcome (1 January – 31 December 2018)**

	Christmas	Home Leave	Foyleview	Resettlement	Rule 27	Town Visit	Total
<b>Approved</b>	22	166	130	10	50	210	<b>588</b>
<b>Rejected</b>	64	189	15	5	3	16	<b>292</b>
<b>Total</b>	<b>86</b>	<b>355</b>	<b>145</b>	<b>15</b>	<b>53</b>	<b>226</b>	<b>880</b>

**Table 4 Hydebank Wood and Ash House Home Leave applications by type and outcome (1 January – 31 December 2018)**

	Christmas	Home Leave	Special	Resettlement	Rule 27	Town Visit	Total
<b>Approved</b>	6	41	62	1	7	5	<b>122</b>
<b>Rejected</b>	3	25	1	0	0	0	<b>29</b>
<b>Total</b>	<b>9</b>	<b>66</b>	<b>63</b>	<b>1</b>	<b>7</b>	<b>5</b>	<b>151</b>

- 3.5 These statistics indicate high success rates, with slightly different patterns of applications and outcomes in each establishment. The overall approval rate was 76% (Maghaberry = 77%; Magilligan = 69%; Hydebank Wood = 81%).
- 3.6 At the time of counting, 88 of 2,718 (0.03%) applications were 'Withdrawn' or 'Cancelled,' and another 28 were 'Pending'. The only noteworthy feature in this respect was that rates of withdrawn or cancelled applications at Magilligan Prison were considerably higher than at the other two establishments. The reason was unknown, but it possibly reflected differential interpretation of counting rules.

- 3.7 It was suggested that prisoners were very aware of eligibility criteria and recognised the futility of applying if they would not even be considered – for example, if still on remand or serving too short a sentence, or due to misconduct - which skewed outcomes towards a high success rate. Leave applications that had been approved could always be revoked. For example, three Magilligan prisoners who had successfully applied for Christmas Home Leave in 2018 had the privilege withdrawn when they failed drug tests before commencing their leave.
- 3.8 A Home Leave Board and a Lifer Review Panel were observed for this inspection. Each was chaired by a governor and included a manager from the PBNI. Their decisions were evidence-based and there was a cautious approach to risk, with several cases deferred pending further assessment.

## Home Leave

- 3.9 A Home Leave scheme was in place for all sentenced prisoners who met the criteria. Most of these prisoners were not required to be tested before release, but nonetheless could apply to spend short periods of time with their families/communities in advance of release. A fundamental principle was that Home Leave was neither a right nor an entitlement. Rather it was a privilege to be earned.
- 3.10 The model was that prisoners would progress through the system, with Home Leave as an incentive to be earned as they approached their release date. The process required them to complete a written application which was considered by an interagency panel, chaired by a governor. The panel took account of the applicant's criminal history, home circumstances, victim concerns and behaviour in custody, with information from a variety of prison and community sources.
- 3.11 Enquiries were made via the Prisoner Release Victim Information Scheme (PRVIS) to establish whether there was a registered victim. Consideration was given to any risks that might be associated with release and conditions (for example, exclusion zones, abstention from substances, and avoidance of significant dates) were imposed to help manage those risks.

**Table 5 Home Leave applications by custodial category and outcome**  
(1 January – 31 December 2018)

	DCS	ECS	ICS	Lifer	Sentenced	Young Offender	Total
<b>Maghaberry</b>							
<b>Approved</b>	202	16	0	121	112	0	<b>451</b>
<b>Rejected</b>	86	8	0	2	41	2	<b>139</b>
<b>Magilligan</b>							
<b>Approved</b>	540	14	1	1	29	0	<b>585</b>
<b>Rejected</b>	216	14	0	3	59	0	<b>292</b>
<b>Hydebank Wood</b>							
<b>Approved</b>	45	0	0	2	4	67	<b>118</b>
<b>Rejected</b>	3	1	0	0	5	13	<b>22</b>
<b>Total</b>	<b>1,092</b>	<b>53</b>	<b>1</b>	<b>129</b>	<b>250</b>	<b>82</b>	<b>1,607</b>

3.12 Table 5 demonstrates that it was mostly DCS (rather than lifers and other indeterminate sentenced) prisoners who were approved for home leave from prison.

**Table 6 Home Leave/CTR/ATR applications and outcomes by security classification category** (1 January – 31 December 2018)

	Cat A	Cat B	Cat C	Cat D	High	Med	Low	TOTAL
<b>Maghaberry</b>								
<b>Approved</b>	17	17	237	179	-	-	-	<b>450</b>
<b>Rejected</b>	4	12	106	13	-	-	-	<b>135</b>
<b>Magilligan</b>								
<b>Approved</b>	0	27	532	29	-	-	-	<b>588</b>
<b>Rejected</b>	0	20	259	12	-	-	-	<b>291</b>
<b>Hydebank Wood</b>								
<b>Approved</b>	-	-	-	-	5	87	30	<b>122</b>
<b>Rejected</b>	-	-	-	-	0	7	22	<b>29</b>

- 3.13 Table 6 shows that it was predominantly Category 'C' and 'D' prisoners who were granted temporary release. This was consistent with a risk-based approach.
- 3.14 ATRs and UTRs were the conventional forms of temporary release for prisoners who were deemed to require testing. Prisoners on temporary release were usually escorted at first, normally by a prison officer. ATR provided a useful way of testing compliance and supporting prisoners who had not been out of the custodial environment for a long time.

**Table 7 Home Leave outcomes by gender and religion**  
(1 January – 31 December 2018)

Gender/Location	Religion			Total
	Protestant	Catholic	Other	
<i>Maghaberry</i>				
Approved	177	250	24	<b>451</b>
Rejected	30	80	29	<b>139</b>
<i>Magilligan</i>				
Approved	235	293	60	<b>588</b>
Rejected	75	182	37	<b>294</b>
<i>Hydebank Wood</i>				
Approved	18	21	32	<b>71</b>
Rejected	4	13	3	<b>20</b>
<i>Ash House (Women's Prison)</i>				
Approved	4	40	7	<b>51</b>
Rejected	1	6	2	<b>9</b>
<b>Total</b>	<b>544</b>	<b>885</b>	<b>194</b>	<b>1,623</b>

- 3.15 Table 7 shows that 80% of all Protestant Home Leave applications were approved (Maghaberry = 85%; Magilligan = 76%); and 68% of all Catholic applications were approved (Maghaberry = 76%; Magilligan = 62%). This is consistent with the findings of other inspections that showed poorer outcomes for Catholic prisoners in several respects, including Home Leave applications. The NIPS had commissioned a piece of research into the reasons for outcomes for Catholic prisoners and has stated an intention to act on the basis of its' findings.
- 3.16 The numbers of young men in Hydebank Wood and women in Ash House were often too small to be statistically significant. Tables 7 and 8 also outline their specific positions. Most women in Ash House were on remand and therefore only a small number were eligible to apply for Home Leave.

**Table 8 CTR/ATR/UTR outcomes by gender and religion**  
(1 January – 31 December 2018)

	Protestant	Catholic	Other	Total
<b>Maghaberry</b>				
Approved	124	88	30	<b>242</b>
Approved Escorted	147	90	33	<b>270</b>
Rejected	9	12	0	<b>21</b>
<b>Magilligan</b>				
Approved	39	97	20	<b>156</b>
Approved Escorted	74	120	8	<b>202</b>
Rejected	7	50	4	<b>61</b>
<b>Hydebank Wood</b>				
Approved	0	0	0	<b>0</b>
Approved Escorted	4	0	2	<b>6</b>
Rejected	0	5	1	<b>6</b>
<b>Ash House (Women's Prison)</b>				
Approved	1	0	0	<b>1</b>
Approved Escorted	9	9	1	<b>19</b>
Rejected	0	0	0	<b>0</b>
<b>Total</b>	<b>414</b>	<b>471</b>	<b>99</b>	<b>984</b>

- 3.17 Table 8 indicates very high approval rates of adult male prisoners for ATRs and UTRs. A total of 97% of Protestant applications and 94% Catholic applications in Maghaberry Prison were approved. Significantly more Catholic applications were approved in Magilligan Prison, though it also had a much higher rate of rejected Catholic applications – 19%.
- 3.18 The high number of escorted approvals indicates a proportionate balance between allowing prisoners a measure of freedom while still taking steps to ensure public safety. The higher percentage from Hydebank Wood that required an escort reflected the less mature population there and the consequent need for them to be accompanied.

- 3.19 Other forms of risk management included having responsible family or friends collect prisoners and return them to custody, attendance at pre-arranged appointments in the community, registration at a police station, setting exclusion zones, breathalyser and drug tests, or requirements to maintain telephone contact with the prison.
- 3.20 Temporary releases were deliberately designed to be short and structured, enabling the prison to gradually test compliance. They were reviewed on each occasion to establish progress and to prompt a review of the risk assessment if necessary.
- 3.21 Once a prisoner had proven they could be trusted while accompanied, governors might agree a period of UTRs for example, to places where the prisoner's presence could easily be checked, such as at a workplace or college.
- 3.22 Another measure to strengthen management of prisoners during PRT was a requirement to spend Home Leave in Approved Premises. This meant risks could be more closely managed via curfews and direct supervision.
- 3.23 The 2018 CJI inspection of Maghaberry Prison commended its use of Home Leave: *"The number of prisoners released on home leave or to work in the community had increased substantially since the 2015 inspection and these prisoners were managed and reviewed appropriately...."*
- 3.24 NIPS governors and the PBNI reported that the Home Leave schemes worked well. Nobody was aware of any prisoners being charged with fresh offences. Rather transgressions usually consisted of curfew breaches or failures to respond when police called to conduct a check at the prisoner's home. Transgressions, no matter how minor, were followed up before a decision would be taken about any enforcement action.

## Christmas Home Leave

- 3.25 The NIPS explained that the rationale for Christmas Home Leave, and its lengthy duration (up to 10 days) was political. It was introduced in order to help achieve paramilitary ceasefires during the 1990s. The process had been refined in recent years, with increasingly rigorous risk assessments and the 10-day maximum duration only being awarded to a minority of applicants. Some NIPS managers queried the validity of prisoners being allowed to remain at home into the New Year since that is not a family occasion and is a high-risk time for substance abuse. Despite reservations, the NIPS felt bound by political precedent to maintain the scheme.

## Compassionate Temporary Release (CTR)

- 3.26 CTR was intended for death or critical illness only. Applications were invariably submitted at a sensitive time for applicants and required prompt decisions.

- 3.27 Some of these were difficult decisions. For example, the NIPS had to determine whether to allow UTRs to take place outside the jurisdiction; or whether to use handcuffs on for example, hospital visits where a prisoner was to meet relatives. Sometimes such decisions could only be taken in real time rather than during the risk assessment that preceded the temporary release; and it was right that NIPS governors had a degree of discretion in these matters in order to balance risk assessment with a humane response.
- 3.28 The NIPS had become accustomed to responding to pre-action protocols and Judicial Reviews in relation to CTR applications. Training on defensible decision-making, including concepts such as reasonableness and proportionality, had begun in 2015. It was reported to have led to more consistent responses, a significant drop in compensation payments and recognition by courts of the need to allow prison governors a measure of discretion in their decisions.

**Table 9 CTR applications by outcome**

Maghaberry Approved	Maghaberry Rejected	Magilligan Approved	Magilligan Rejected	Hydebank Wood Approved	Hydebank Wood Rejected	Total
32	20	54	61	4	6	<b>177</b>

- 3.29 The most notable point in Table 9 is the lower level of successful CTR applications when compared to high levels of successful Home Leave, ATRs and UTR applications. The reason for this disparity was unclear and would require further exploration by the NIPS.

## Graveside visits

- 3.30 When permission was not granted for a prisoner to attend a funeral, graveside visits were sometimes possible. Examples were provided where a graveside visit provided a compassionate response that met everyone's needs while allowing risks to be properly managed.

## Resettlement Leave

- 3.31 This form of leave was intended for job interviews and visits to education providers. The criteria were ill-defined and NIPS managers found them vague. Very few prisoners actually needed Resettlement Leave since routine Home Leave could serve the same purposes. Table 2 shows that Resettlement Leave was seldom used.

## Town Visits

- 3.32 These opportunities were offered to trusted prisoners. Town visits were intended to provide an easier opportunity for families to rendezvous with their prisoner relative if they had difficulty visiting the prison. For some it was simply a chance to meet in a more normal environment.

- 3.33 Town visits were also useful for men in Maghaberry Prison's Wilson House and women in Ash House. In those settings they provided an opportunity for prisoners to shop for self-catering provisions, accompanied by staff.
- 3.34 The overall picture is of a plethora of temporary release and PRT schemes, some of which were bolted onto previous iterations. There were local variations, some had a clear purpose while the function of others was less apparent. These needed to be streamlined into a clear, outward-facing policy that was up-to-date and explained to the public how the NIPS actually managed temporary absences from prison, and how it balanced public protection with resettlement opportunities.

### Strategic recommendation 1

**The NIPS should review the totality of its PRT and Home Leave schemes. This review should aim to establish consistency between establishments, taking account of best practice in other jurisdictions. It should also determine whether it is necessary to continue to offer Resettlement Leave; and it should ensure greater accuracy of data that is collated about the various Home Leave schemes; and it should ensure the data is analysed e.g. in relation to the disparate success levels between CTR and other applications.**

### External Activity Schemes

- 3.35 The NIPS had provided external activity schemes for prisoners for several years. They were primarily intended to promote physical and mental wellbeing, but also provided a useful incentive for long-term prisoners who could be trusted, as well as a means of assessing them in a normal environment outside prison.
- 3.36 The case for external activity is strong: the UK RECOOP (Resettlement and Care for Older Ex-Offenders and Prisoners) charity promoted resettlement and care for older prisoners, including rambling groups. They found that more than 80% of older prisoners had long-standing illnesses. Over half suffered from a mental disorder and 30% had a diagnosis of depression.<sup>22</sup>
- 3.37 External activity schemes were usually initiated by individual NIPS staff, often PE Instructors. Such proactivity in the interests of rehabilitation is to be welcomed. Examples have included:
- outdoor pursuits such as the Duke of Edinburgh Scheme, Belfast City Marathon and Over-50s walking clubs;
  - swimming at Woodlands Juvenile Justice Centre for women from Ash House; and
  - work placements with gardening and recycling projects and theatres.

22 Further information on the RECOOP's Resettlement Project is available from Prison Reform Trust website available at <http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Olderpeopleinprison/RECOOPsresettlementproject> and the RECOOP website: <https://www.recoop.org.uk/pages/resources/index.php>

- 3.38 External activity schemes did not have an explicit or consistent rationale and were delivered under the wide discretionary powers contained in Rule 27 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995. They had less connection to structured risk assessment processes than other temporary release schemes for prisoners; and there was very little underpinning documentation attached. No policies, procedures, reviews nor data were available. The only written material consisted of e-mail requests from activity organisers to governors and Temporary Absence forms which prisoners signed to confirm they accepted the conditions of release. Nonetheless consideration of victims' issues was always required. External activities were only approved at governor or deputy governor level (under Rule 27); and they were always conducted under staff escort.
- 3.39 The numbers of prisoners involved in external activity were small. While the staff/prisoner ratios (two staff/five prisoners or less) seemed high, the NIPS was satisfied the regime for other prisoners was not adversely impacted by providing staff for the activity schemes.
- 3.40 Most Maghaberry prisoners who participated in external activities had progressed through the custodial system to live in Wilson House. It had lower levels of security and allowed greater levels of independence, and prisoners felt external activity opportunities provided an incentive for moving there. A few who did not meet the criteria were still able to reside in Wilson House because they were deemed model prisoners by the NIPS. The 2018 CJI Maghaberry Prison inspection commented favourably: *"Under certain circumstances, men in Wilson House could have home leave in lieu of visits which was extremely positive."*
- 3.41 Several prisoners who participated in external activity schemes during 2018 had not served long enough in custody to qualify for temporary release, yet they were facilitated because they were considered to be model prisoners. Some NIPS staff felt this was inappropriate. They pointed to internal activities such as therapy dogs, over-50s walking rugby, Park Runs, fundraising, education and employment workshops; and they queried how prisoners who met PRT criteria could not undertake external work, while ineligible prisoners were permitted to do so.
- 3.42 In one case the NIPS Prisoner Record and Information System (PRISM) system - which was designed to incorporate the checks and balances necessary for proper security - was altered so that a prisoner could participate in an external activity scheme. Subsequent legal advice clarified nothing wrong had been done, though the NIPS acknowledged it was a mistake not to have consulted another government agency which had a potential interest in the case.
- 3.43 While Inspectors heard suggestions of favouritism, the NIPS said no prisoner had ever challenged their PRT arrangements by Judicial Review on this basis. The NIPS still needs to better explain - to its own staff, partner agencies, victims and prisoners - what it is trying to achieve with external activity schemes.

- 3.44 The 2003 Victim Charter emphasises the entitlement of registered victims and their relatives to be notified about temporary releases. However notification was not required when participants were escorted by prison officers - as was the case with external activity schemes. In these circumstances, the NIPS needs to address the possibility of unintended consequences when victims become aware of such activities.
- 3.45 Governors had not acted outside of the discretionary powers granted in legislation under Rule 27 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995. The NIPS accepted that a small number of mistakes had been made. The Director General of the NIPS had addressed the matter by challenging decisions and organising training for all decision-makers. He had also taken legal advice and intended to review the criteria for progressing to Wilson House and the criteria for prisoners participating in external activity.
- 3.46 It was pointed out that – at the time of writing - the exercise of governors’ discretion in approving external activity schemes had not proven unwise. No prisoner had absconded or reoffended; and the benefits in motivating long-term prisoners were also highlighted.
- 3.47 It was further explained that the external activity schemes helped Maghaberry Prison earn the highest performance assessment for Resettlement in its 2018 inspection. This is a valid comment and there is no doubt that external activity schemes contributed to prisoner wellbeing, as well as making it easier to manage the population.
- 3.48 Governors must be allowed a degree of discretion to assist the smooth running of their prison. However, finely-balanced judgements are required. Even if participants do not abscond or reoffend, there is potential for the NIPS credibility to be undermined.

## Strategic recommendation 2

**The NIPS should publish a rationale and operating procedures for External Activity schemes in a policy document. That policy should explain the criteria for prisoners to participate in External Activity schemes and the extent to which governors’ discretion may apply. It should also reflect the importance of notifying registered victims when individual prisoners are given approval to participate in External Activity schemes.**



# Outcomes

## Outcomes for Victims – Public Confidence

- 4.1 A Prisoner Release Victim Information Scheme (PRVIS) was established by Northern Ireland Statutory Rule No. 293 in 2003. The scheme was underpinned by Section 7 of the 2015 Northern Ireland Victim Charter.<sup>23</sup> A Victim Information Unit which co-ordinated three schemes including the PRVIS was managed by the PBNI.
- 4.2 The PRVIS was available to any person who had been the direct victim of a criminal offence for which an offender aged 18 or over received a period of imprisonment of over six months duration.
- 4.3 Once a victim registered their interest, certain information would be provided. This included any temporary release that might be granted to a prisoner; the month and year in which they were expected to be released; any conditions pertaining to release; and any breaches of those conditions which resulted in the prisoner's return to custody. Specific dates or exact venues for any possible temporary release would not be shared in the interests of everyone's safety, including that of the prisoner.
- 4.4 Registered victims were not notified about prisoners' hospital visits; and they were told it may not always be possible to provide information before a prisoner's temporary release for example, in relation to urgent applications for CTR. In these circumstances the victim would be told of the temporary release after it had taken place.
- 4.5 The passage of time could make it difficult to notify victims for example, when a registered victim moved address or died during a lengthy period of incarceration. This meant that when a prisoner was ready to be tested, there would be no registered party to receive the notification.
- 4.6 Victims often became more alert when they were told a prisoner was on PRT. Risk assessments aimed to ensure testing did not take place in the vicinity of victims' residences. However testing could never be completely failsafe in this respect and it certainly did not remove victims' fears. The possibility, however remote, of encountering the offender could cause anxiety and further trauma. Such encounters rarely, if ever happened; and of course this fear was more likely to be realised after a prisoner was permanently released on license rather than during short periods of PRT.

<sup>23</sup> *Victim Charter: A Charter for victims of crime*, DoJ, September 2015 available at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/victim-charter.pdf>.

- 4.7 A total of 275 victims were registered with the PRVIS in February 2019. This was a low figure and considerable effort had been invested in increasing participation levels. There had been some success: the registration rate in 2018 was 27% higher than 2017.
- 4.8 There was a problem in that many victims assumed they were registered when they actually were not. This led to a misapprehension that they would automatically be informed about prisoner releases, including temporary releases. However statutory provision did not allow for information to be provided if a victim had not registered with the PRVIS.
- 4.9 There were understandable reasons for low registration rates, with many victims not wanting anything more to do with the prisoner. Having endured a traumatic crime and a trial, they were often disinclined to formally register with a state body, especially at the time of sentencing; and once the prisoner was jailed, his future release was not an immediate consideration. Some victims were also afraid and deterred by the fact that their representations about the prisoner could not be kept confidential.
- 4.10 Nonetheless the agencies involved – primarily the PBNI and the NIPS - felt registration numbers should be much higher. In addition to victims' personal concerns, they also believed the low registration rate was due to the PRVIS having been constituted as an 'Opt In' arrangement. This was designed to avoid the risk of re-traumatising people who wanted to leave a painful episode behind them.
- 4.11 That benefit has been emphasised to CJI Inspectors by victims in another inspection that is currently underway in relation to Victims and Witnesses. Nonetheless the statutory agencies and Victim Support Northern Ireland (VSNI) strongly advocated an 'Opt Out' scheme, for the following reasons as:
- it would ensure all victims would be registered and could therefore be notified in their own best interests at each relevant stage of the prisoner's journey;
  - victims could still decide to 'opt out' if they were fully aware of their options;
  - contact details could be kept up to date;
  - it would be less cumbersome for victims and involve less bureaucracy; and
  - it would lead to a more victim-led criminal justice system, with victims having a better understanding of the criminal justice system and sentencing process.
- 4.12 An 'Opt Out' system would require legislative change. The PBNI, the NIPS and VSNI had lobbied the Northern Ireland Assembly's Committee for Justice to this effect but their efforts came to nought when the Assembly was suspended in February 2017. In the current political vacuum it is imperative in victims' interests that the PRVIS has maximum promotion.

## Operational recommendation 2

**The NIPS should work with the PBNI and Victim Support Northern Ireland to develop a plan that actively promotes the Prisoner Release Victim Information Scheme (PRVIS) in order to maximise uptake.**

## Outcomes for Prisoners - Rehabilitation

### *Burren House*

- 4.13 There were limited options for prisoner progression in Northern Ireland, but men could progress to lower levels of restriction by moving to Burren House in Belfast. It was an annex of the former Belfast [Crumlin Road] Prison which was managed as a satellite of Maghaberry Prison. It had a more relaxed regime and was ideally located near Belfast city centre. The opportunities were excellent, with an ethos that focused on resettlement rather than security.
- 4.14 Burren House had capacity for 22 prisoners, providing step-down, supported accommodation for life and long-sentence prisoners, who were approaching the end of their time in custody. It encouraged responsibility by placing increasing levels of trust in prisoners. Selection criteria were determined by levels of risk, rather than the length of time men had served or their compliance in closed conditions.
- 4.15 In order to progress to Burren House, prisoners had to:
- be Category D status;
  - be serving a total sentence of five years or more;
  - be life sentence prisoners who had to be within 15 months of their Tariff Expiry Date (TED) or post-tariff;
  - have engaged successfully in temporary releases which included overnight stays;
  - have had no Restriction of Association for the protection of others in prison during the last two years;
  - have no record of bullying within the last two years;
  - have no disciplinary awards in the preceding 12 months;
  - have been drug-free for the preceding 12 months, with a record of passing voluntary drugs tests;
  - have enhanced regime for the preceding 12 months; and
  - have no history of failures on Rule 27.
- 4.16 These preconditions were designed to incentivise prisoners to transfer to Burren House and conform to the regime there. Residents were required to sign a contract and abide by Burren House rules.

- 4.17 There were regular, random checks for alcohol, drugs and curfew adherence. Procedures were in place to manage breaches of the conditions or if there was evidence of an increased risk. Sanctions could range from a warning to a return to closed conditions in Maghaberry Prison.
- 4.18 Most life prisoners could expect to spend 12-15 months in Burren House before being considered for full release on licence. A stay there consisted of three phases.
- **Phase 1:** To develop relationships with staff, arrange job interviews and secure employment. Prisoners resided in Burren House full time during this phase;
  - **Phase 2:** Prisoners worked outside Burren House during the day and returned each evening, Monday to Thursday. After work on Fridays, they would be permitted temporary release, if suitable, for the weekend, and return directly to work on the following Monday; and
  - **Phase 3:** Prisoners would reside in the community and work full-time, reporting to Burren House once a fortnight.
- 4.19 Data supplied by the NIPS shows that during the period May 2014 to January 2019, Burren House had 140 admissions. Several of these were readmissions, and 100 of them were life prisoners.
- 4.20 Burren House had a difficult history between 2007 and 2011. Inspections identified concerns about inappropriate staff deployment, inadequate staff training, prisoners not receiving the help they needed, arbitrary suspensions and hostile scrutiny of prisoners by certain staff.
- 4.21 The NIPS closed Burren House in 2011 following further criticism. Very few of the 21 prisoners there at the time were alleged to have been involved in misconduct and many felt aggrieved because they were subjected to collective punishment.
- 4.22 Burren House did not re-open until May 2014. The NIPS published a new standard for its operation and it has subsequently operated well. The 2018 CJI Maghaberry inspection report said: *"Burren House offered a positive option for men to reacclimatise gradually to living and working independently.... Men we spoke to were extremely positive about their experience there."*
- 4.23 In early 2019, the Parole Commissioners for Northern Ireland and the PBNi both strongly supported the PRT work that was being undertaken at Burren House.
- 4.24 Public confidence can only be achieved when the public understands what is involved in the PRT process. While Burren House was content to operate in a low-key manner, this approach did not help when things went wrong. Its role needed to be better understood by politicians, the public and the media. A small amount of outreach work had been undertaken and in 2018 three local councillors accepted an invitation to visit and learn about the work being undertaken there following some negative publicity.

## Operational recommendation 4 (α)

**The NIPS should strengthen its Burren House operation by developing an outreach programme that promotes public understanding of the PRT work at Burren House and other facilities.**

### Breaches of PRT requirements

- 4.25 Very few long-term prisoners get through their sentence without a blip. Pressures including unstable accommodation, drug and alcohol addictions, health problems, family conflict and poor employment prospects faced many prisoners before entering custody; and they re-emerged at the time of PRT. Many prisoners found it difficult to cope with the temptations that accompanied liberty. They struggled to take their own decisions and exercise personal responsibility.
- 4.26 Breaches of PRT requirements took different forms. Very few of those who breached did so by reoffending; and none were known to have deliberately approached victims or their relatives. Instead breaches usually arose due to abusing alcohol or drugs, failing to keep appointments or adhere to curfews. Those who absconded usually did so for short periods before they were apprehended or handed themselves in. While such failures were concerning, they also demonstrated the process was working properly by identifying and proactively managing those who were not yet safe to release.
- 4.27 The data in Table 10 indicates the numbers who 'failed' during PRT between 2011 and 2018. They were consistently lower than the number of prisoners who were successfully licensed. It is also noteworthy that several successful licensees had previously 'failed' while subject to PRT. A considerable amount of effort was needed from everyone concerned in order to manage their risks, but they had eventually succeeded and had progressed to live safely under supervision in the community.

**Table 10 Suspensions and successful licensees from Burren House 2011-18**

Year	Absconders	Burren House suspensions	Successful Licensees
2011	6	10	14
2012	2	10	12
2013	0	12	25
2014	4	9	13
2015	4	12	16
2016-17	3	16	31
2018	2	8	5

- 4.28 The number of prisoners who absconded each year was in single figures. The average period at large was 1.25 months, with a range of one day – nine months. Only one was reported to have actually been reconvicted, having committed a burglary in 2016. Over 50% of suspensions took place during Phase 2.
- 4.29 The average duration of suspensions was four weeks, with a range of three days – three months, depending upon severity of the infringements. Suspension decisions had to be balanced against the NIPS duty to provide prisoners with opportunities to learn from their mistakes. These were difficult judgements with complex individuals, some of whom had serious mental health problems.
- 4.30 The NIPS response to absconders needed to be measured. Following a prisoner absconding in 2018, serious consideration was given to once more closing Burren House. Given that it was three years before Burren House reopened after the last closure, such a step would have been retrograde. However closure was averted when the prisoner was quickly returned, not having been charged with any fresh offences.
- 4.31 It is entirely right to exercise caution until the circumstances of such incidents become clear. This case was reviewed and it generated learning in terms of how the NIPS could have better handled early warning signs that the prisoner was becoming unstable. A need was also identified to explain the role of Burren House to local politicians and media, and this process was initiated.
- 4.32 Most life prisoners said they had received adequate preparation for moving to Burren House, and those who had been suspended because of misconduct knew the reasons for being returned to closed conditions. Several said they had simply been unable to comply with the stringent requirements when faced with the temptations that liberty afforded.
- 4.33 The Scottish Prison Service applied a similar approach. The number of prisoners let out of Scottish jails on home release fell by 75% after an absconder committed a murder in late 2018.<sup>24</sup> New restrictions were introduced which the Scottish Prison Service said were “*reasonable and necessary*.” They recognised that in light of experience, a mature discussion might have led to a different consideration and a view that their reaction was too narrow and conservative. However, at that time this view was superseded by the need to establish confidence in their PRT process.
- 4.34 Individual breaches could have far-reaching consequences for other prisoners. Despite risk assessments indicating otherwise, several prisoners had their PRT suspended after an absconding incident in 2018. The NIPS subsequently recommenced testing for some prisoners; and other forms of absence from prison such as CTR continued. However other prisoners continued to be suspended for longer periods of time.

24 *New rules cut home releases from Scottish prisons by 75%*, 20 November 2018, BBC News available at <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-46275833>.

- 4.35 This was inconsistent and generated questions from staff and prisoners about fairness and collective punishment. It is essential for the NIPS to act promptly and thoroughly to protect the integrity of the PRT scheme, but the response must also be proportionate and evenly-applied.

### Operational recommendation 3

**The NIPS should normalise routines for other prisoners as soon as possible when a prisoner breaches their individual PRT conditions. It should also clearly advise prisoners who are becoming involved in PRT about the possible consequences for everyone when one prisoner breaks the rules.**

- 4.36 The characteristics of prisoners who were suspended from PRT were well-known. A December 2009 NIPS review of seven life prisoners who were suspended from Burren House found they had:
- an average of 22 temporary releases each prior to being suspended;
  - an average of four breaches each. The range was two - eight breaches;
  - reasons for suspension included: threatening behavior; unauthorised use of a motor vehicle or a mobile phone; going absent without permission; forming inappropriate relationships; and substance misuse;
  - five of the seven had transferred into the NIPS custody, mostly from England. This meant they were not subject to the same PRT regime;
  - consumption of alcohol was a significant factor in the suspensions;
  - most had significant criminal histories before they were sentenced to life imprisonment;
  - they had completed an average of three Offending Behaviour Programmes (OBPs) each, but some had not completed all the relevant programmes before transferring to the pre-release scheme, and unavailability of OBPs was identified as a limitation;
  - personal social deficits combined with extended periods of imprisonment made it difficult for some prisoners to maintain community support networks and develop appropriate relationships; and
  - a lack of gender balance in the Burren House workforce (there was only one female prison officer) limited the opportunity for prisoners to demonstrate appropriate, pro-social male/female relationships.

### Burren House audits

- 4.37 In keeping with a previous inspection recommendation, the NIPS had begun to audit the standards by which Burren House operated. The audits also examined wider issues such as frequency of management visits, staff meetings and activity opportunities for prisoners.
- 4.38 Five audits that were undertaken between December 2017 and October 2018 showed good compliance with the standards. The main features for this inspection were:

- significant levels of risk management were in place and staff were supervising prisoners carefully, while supporting them to resettle safely;
- it was clear that the NIPS would not hesitate to suspend prisoners from Burren House. In keeping with a previous inspection recommendation, a policy had been put in place to ensure suspension decisions were proportionate; and
- basic internal processes to ensure good practice - such as staff meetings and prisoner fora - were in place and occurring regularly.

The findings of these audits were provided to Maghaberry management, but not to NIPS HQ or the PBNI, who were key partners for the NIPS in the PRT process. This limited their potential effectiveness.

### Operational recommendation 4(b)

**The NIPS should strengthen its Burren House operation by sharing Burren House audits with the NIPS Director of Rehabilitation and with relevant PBNI managers.**

4.39 The audits provided considerable evidence that comprehensive risk management processes (Table 11) and resettlement opportunities (Table 12) were in place:

**Table 11 Burren House risk management**

Audit period	Curfew Checks	Drug tests	Alcohol tests	Unannounced Home/Hostel Visits	Unannounced Job Visits	Random Room Searches
<b>December 2017 - January 2018</b>	33	32	93	45	62	3
<b>February - April 2018</b>	28	81	122	47	81	6
<b>May - June 2018</b>	19	65	70	21	61	1
<b>July - August 2018</b>	12	52	64	21	71	0
<b>September - October 2018</b>	27	61	77	35	82	0

4.40 In addition, a range of routine procedures were in place to assist the risk assessment process. These included:

- all Phase 1 and 2 prisoners were breathlysed every morning and evening;
- prisoners' bank statements were sent to NIPS staff to check for irregularities;
- prisoners were required to keep diaries which were checked weekly;
- when prisoners owned a car, checks were undertaken to ensure they held a valid driving licence, insurance, MOT certificate and road tax; and
- a dog was regularly used to search for drugs on the premises.

**Table 12 Burren House work placements and Phase 3 accommodation**

	Volunteering	Paid Employment	Hostel	Private Rental	Family
<b>December 2017 - January 2018</b>	9	3	1	0	2
<b>February - April 2018</b>	15	3	4	1	2
<b>May - June 2018</b>	13	3	2	1	3
<b>July - August 2018</b>	14	5	2	1	3
<b>September - October 2018</b>	6	8	2	0	3

4.41 The audits also suggested that insufficient attention was being paid to Burren House at night by NIPS managers. Although there were plentiful daytime visits, "No Duty Governor Night Visits" were noted on four of the five audits. Further reassurance for staff and prisoners could be provided by unannounced managerial visits at night.

### Operational recommendation 4(c)

**The NIPS should strengthen its Burren House operation by ensuring more regular managerial oversight by Maghaberry Prison management and NIPS HQ.**

4.42 Inspectors also heard as part of the inspection fieldwork how other areas of Burren House practice could be further strengthened. They included:

- the balance between resettlement and risk management required constant attention for example, warning signs that were apparent before two prisoners absconded were not immediately addressed as they should have been;

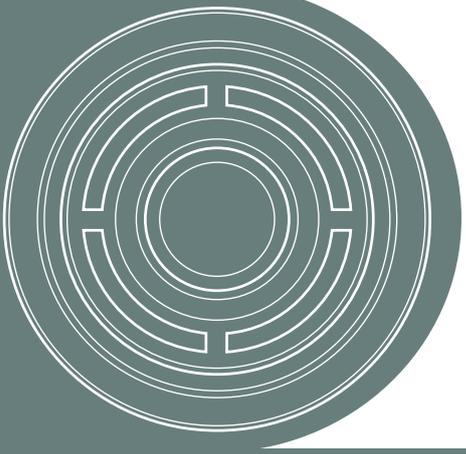
- preparation of prisoners for example, in respect of victims work, OBPs and referrals for counselling as a victim of sexual abuse (where disclosure could destabilise prisoners) needed to be strengthened;
- some boundaries needed to be more firmly maintained for example, prisoners' access to the office made it difficult to hold sensitive conversations or meetings there; and
- continuous refreshing of the staff group would be essential.

## Foyleview

- 4.43 Foyleview was a lower security area within the boundary of Magilligan Prison where prisoners (including 35 lifers) could adjust to semi-independent living, with an opportunity to work in the local community. The fact that Foyleview had more offers of work placements than eligible prisoners to fill them provided a positive indication of Magilligan Prison's credibility with the local community. This was despite the fact that Foyleview had also faced adverse public reaction in the past due to prisoners' engagement in PRT. Rates of suspension from Foyleview were low and no prisoners were known to have reoffended while on PRT programmes there.
- 4.44 The Foyleview buildings were in a poor state of repair, which created a disincentive for prisoners to transfer there from the main prison. As a result, temporary release opportunities made it more attractive.
- 4.45 An average of 15 prisoners were working out from Foyleview each day. They were hosted by long-established, responsible providers including councils, churches and charities. These prisoners were within three years of release and met criteria that included passing drug and alcohol tests and being adjudication-free.
- 4.46 The location of each placement was carefully considered in relation to victim proximity. Foyleview staff visited regularly to monitor the prisoners' conduct and obtain feedback from placement providers.
- 4.47 Two prisoners drove the minibuses which delivered and collected the external workers each day. Previous minibuses were fitted with GPS tracking devices and cameras. These helped safeguard against misconduct and protected the drivers against allegations or abuse by other prisoners. However recent replacement minibuses did not have the same technology. The NIPS should address this issue.

## Hydebank Wood Secure College and Ash House Women's Prison

- 4.48 Hydebank Wood Secure College and Ash House Women's Prison were co-located on the same site in south Belfast. They had very low numbers who were eligible for PRT as most women and young men were there on remand or short sentences. Nonetheless they too had previously faced adverse reaction when high-profile prisoners' were engaged in PRT.
- 4.49 Murray House, a semi-independent unit for women who were approaching the end of their sentences opened in 2016. It provided a positive opportunity, though was seldom able to operate at its capacity of six. The same applied to a small unit for the young men at Hydebank Wood.
- 4.50 There were immediate consequences for young men and women at Hydebank Wood in September 2018 when a Burren House prisoner absconded. Familiarisation walks (to see the GP surgery, bus stop etc.) were cancelled. However, they were reinstated when local staff managed to convince NIPS senior managers about the limited risks posed by the individuals involved and the benefits of their PRT programmes.



# Appendix

# Appendix 1 Terms of reference

## Background and context

On 17 December 2018 Criminal Justice Inspection Northern Ireland (CJI) was invited by the Department of Justice (DoJ) Permanent Secretary to undertake a review of the Northern Ireland Prison Service (NIPS) Pre-Release Testing (PRT) arrangements. While Pre-Release Testing is undertaken by the NIPS under the direction of the Parole Commissioners for Northern Ireland, it is important that the procedures the NIPS employs to deliver the rehabilitation, resettlement and reintegration of offenders ensure public safety and attract public confidence.

## Aim and Objectives

The aim of this inspection is to assess the accompanied and unaccompanied temporary release arrangements which form part of the NIPS Pre-Release Testing process that is required to inform the Parole Commissioners for Northern Ireland in reaching release decisions.

This is not an inspection of the Parole Commissioners for Northern Ireland decision-making processes. However, it will assess the impact of those Parole Commissioners directions to the NIPS in relation to Pre-Release Testing.

The inspection will examine all forms of temporary release from Northern Ireland prisons. These include the compassionate temporary release scheme, home visits scheme, Pre-Release home and resettlement leave, home leave at Christmas or temporary release for medical purposes. Schemes that are designed to assist prisoners maintain family contacts and a healthy lifestyle will also be considered.

The inspection will:

- determine the effectiveness and appropriateness of current temporary release procedures and arrangements;
- assess temporary release risk management procedures;
- consider the appropriateness of the NIPS outcomes for those who fail during the testing process; and
- make recommendations to improve NIPS temporary release arrangements.

It will specifically examine data and processes involving:

- referrals for the various forms of temporary release;
- the NIPS decision-making process, including the contribution of others such as Probation Board for Northern Ireland staff and psychologists, in relation to temporary release applications;
- outcomes of temporary release applications;
- eligibility criteria (for example, remand or sentenced status, length of time in custody, security categorisation) for temporary release; and compliance with same;



- Judicial Review (JR) applications about temporary release, including numbers [and costs] of JRs;
- outcomes of Pre-Release Testing;
- arrangements for notifying victims;
- governance of temporary release; and
- short, medium and long-term outcomes of temporary release.

The report will make recommendations for future improvement based on its findings.

## Methodology

The inspection will be undertaken by Tom McGonigle. It will be conducted against CJIs standard inspection framework – see <http://cjini.org/TheInspections/Our-Approach> for details.

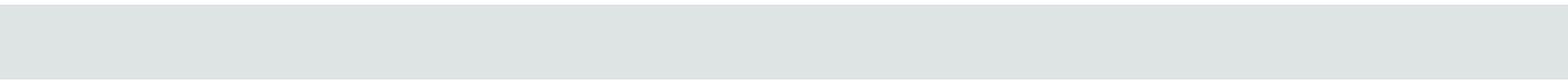
Inspectors will:

- undertake background reading of Accompanied Temporary Release (ATR) and Unaccompanied Temporary Release (UTR) criteria, legislation, policies, procedures, standards, minutes of and other meetings;
- analyse numerical data (referral rates, outcomes by type of temporary release, prisoner status etc.) for the period January 2016 - December 2018;
- meet with NIPS management and staff who are involved in the Pre-Release Testing process;
- meet with Parole Commissioners for Northern Ireland;
- meet with prisoners who have undergone testing and applicants who have been refused temporary release; and
- observe meetings that take decisions about temporary release.

## Timetable

A proposed timetable is as follows:

- 11 January 2019: Preliminary meeting;
- January - April 2019: Inspection fieldwork;
- 24 May 2019: Draft report to the NIPS;
- 7 June 2019: Factual Accuracy feedback from the NIPS; and
- August 2019: Publish report.





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