

## **BALANCING RISK AND NEED**

Review of the decision to send Brian Martin to open conditions in the light of his subsequent absconding from the Open Estate on 18 May 2009 and issues highlighted as a consequence.

Professor Alec Spencer  
University of Stirling

22 June 2009

Kenny MacAskill, MSP  
Cabinet Secretary for Justice  
St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

Dear Cabinet Secretary,

You asked me to conduct an independent review of the decision to send prisoner Brian Martin to open conditions in the light of his subsequent absconding from the Open Estate.

I have pleasure in submitting my report.

The Martin case has highlighted, and I have therefore reviewed, a number of aspects relating to the transfer of prisoners to Open prison, including processes, decision making, and information sharing between agencies. There are currently over 300 prisoners in the Open Estate. I understand SPS is undertaking its own review of all prisoners who are currently in the Open Estate. This should provide you with separate assurance.

However, I have looked also at some wider issues and make comment on the use of Open prison. The public have a right to expect that its serious criminals do not appear in Open conditions early on in their sentence and, when prisoners do finally move to Open prison, they can be assured, as best as is possible, that proper consideration has been given to the matter of risk and public safety. Open prison plays a crucial part in the prison system by supporting Long Term Prisoners return to society. Without it, the public is likely to be more at risk, not less. There will always be the potential for absconding. The task for the prison service is to ensure that they have the balance right between minimising the risk to the public and meeting the needs of prisoners in their journey to law abiding lives.

I also want to acknowledge the assistance and co-operation I received from SPS. In particular I was impressed by the staff and Governors with whom I talked, who demonstrated passion for the care and rehabilitation of their prisoners and a concern for the safety of the public who they serve.

*yours sincerely*  
*Alec Spencer*

Alec Spencer  
University of Stirling  
22<sup>nd</sup> June 2009

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## **GLOSSARY OF ABBREVIATIONS USED**

ADSW	Association of Directors of Social Work: the professional association representing senior social work managers in local government in Scotland.
CCO	Continuous Cell Occupancy: a scheme in Open prisons whereby when a prisoner is away on Extended Home Leave for 7 days every 4 weeks his bed is used by another prisoner. This facilitates 4 prisoners being accommodated using 3 beds – one occupant being absent on leave at any one time.
COSLA	Convention of Scottish Local Authorities
ECHR	European Convention on Human Rights
ECMDP	Executive Committee for Management of Difficult Prisoners: Committee chaired by Assistant Director of Prisons with prison management representation which decides on management of difficult cases; its remit also includes deciding on whether previous absconders should be transferred to Open Prison.
EEF	External Enquiry Form
EHL	Extended Home Leave: the provision of 7 days home leave every 4 weeks from Open prisons.
HBR	Home Background Report: prepared by local Criminal Justice Social Worker on home circumstances, likely accommodation and risk factors of offender returning home, including impact on community or victims.
HDC	Home Detention Curfew: for eligible Short Term Prisoners who can be at home with electronic tag
ICM	Integrated Case Management
ILU	Independent Living Unit: the equivalent of Open Estate accommodation for women, based at Cornton Vale
LTP	Long Term Prisoner: those prisoners serving 4 years and over sentences, are eligible for parole from 50% stage of determinate sentence and released by 2/3rds stage and life sentence prisoners who must complete the 'punishment part' or minimum sentence before being eligible to be considered for release on parole on life licence
MAPPA	Multi-Agency Public Protection Arrangement: Arrangements by agencies working together to manage high risk offenders in the community
MDPG	The Multi-Disciplinary Progression Group at HMP Shotts
MDPMG	Multi-Disciplinary Progression Management Group: Groups (established April 2008 post Foye) to discuss cases of prisoners for whom transfer to Open conditions is being considered

PQD	Parole Qualification Date: earliest point at which prisoner becomes eligible for release on parole
PPA	Prisoner Progression Assessment: form used when considering 'suitability for progression to Open Prison or Top End where the prisoner requires unsupervised Community Access'
PR2	Prisoner Record System 2: The computer record system used by SPS which contains details about prisoners
SEL	Special Escorted Leave
SPS	Scottish Prison Service
STP	Short Term Prisoner: those prisoners serving less than 4 year sentences, who are released at 50% of sentence length.

## **Chapter 1 INTRODUCTION: SECURITY, OPEN PRISON, PAROLE & PUBLIC SAFETY**

1.1 The Scottish Prison Service (SPS) imprisons proportionately more people than nearly all other western European countries. At the beginning of June 2009 it held approximately 8,500: about 8,125 in prison and a further 375 on Home Detention Curfew (HDC). SPS and its staff have a good record when it comes to security. It is worth examining what we mean by 'security'.

### **SECURITY**

1.2 **SECURITY** is the primary role of the prison service. When this fails public confidence is weakened. However, prisons are designed to be secure. With perimeter walls or fences, technology such as geophones and CCTV cameras, good prison design and use of appropriate materials, new key and locking technologies, intelligence and good staff/prisoner relationships and proper procedures – these days Scottish prisons have an enviable record of containment. Indeed, the last prison escape from within a closed prison occurred in 2005. Generally, security in closed prisons is good – but there are greater risks when prisoners are taken out or allowed outside. They can be outside the wall for a number of reasons: to appear at court, for hospital treatment, to visit a critically ill relative, making a home visit, attending a college course, undertaking work/testing in the community, maintaining and cleaning outside a prison, attending for interviews etc.

1.3 **ESCORTS** are provided by a private company for moving prisoners as instructed by the Scottish Court Service, Scottish Police Forces and the Scottish Prison Service. The contract is managed by SPS on behalf of the three agencies. When a prisoner is taken outside by secure escort, whether to a court, a hospital or, for example, a visit to his home or relative, it is considered an escape if he breaks free from that escort and is no longer under their control. Similarly, if a prisoner is being supervised by a member of staff (such as working on prison grounds outside a prison) and runs away it is considered an escape – though such prisoners should already have been in a low supervision category and vetted for the risk they might present to the public.

1.4 **ABSCONDS** occur when a prisoner leaves the place where he should be or fails to return to prison at the designated time. Thus walking away from an open prison or failing to return back to prison after a work placement or home leave (whether a closed or open prison) constitutes an abscond. In these cases the prisoner has been unsupervised in the community and it is this factor which has the potential for posing the greatest risk to public safety. It therefore follows that the decisions which enable a prisoner to move from secure custody within a prison setting to either open prison or other access to the community is of particular significance.

## SENTENCES

1.5 People can be held in prison for a variety of reasons: on remand to await their case being heard in court, awaiting deportation, in default for non-payment of a fine, having been recalled to custody by the Parole Board or Scottish Ministers for breach of licence conditions or being ordered by a Court to serve the remainder of an existing sentence having been convicted of a further offence, and civil prisoners. However, the majority of prisoners are serving a sentence. A 'sentence' is the length of time imposed by the court. In certain limited circumstances it can have the result that the prisoner spends the whole time in prison, or returns to serve the rest of the sentence in prison<sup>1</sup> but this is rare. More usually a sentence is considered to contain two elements: a part to be served in prison and a part (the remainder) to be served in the community.

1.6 **PAROLE:** In 1990 the Government accepted many of the Kincaig recommendations<sup>2</sup>. It stated:

*"The parole system in Scotland for prisoners serving determinate sentences has operated for over 20 years. Introduced in 1968 under the Criminal Justice Act 1967 ... it reflected the view that lengthy imprisonment did not in itself fully prepare an offender for his re-integration into society but that release under supervision at a point when he had reached an identifiable peak in his training, and when risk to the public was minimised, could help him adapt again to life in the community."*

The Government accepted the principle that:

*"that a parole system has a useful role to play within the existing penal system, recognising as it does the possibility of change in an individual and enabling prisoners to be released selectively on that basis".*

1.7 **CURRENT EARLY RELEASE ARRANGEMENTS:** The current parole and early release provisions are operated by the existing statutory regime contained in the Prisoners and Criminal Proceedings (Scotland) Act 1993 ('the 1993 Act'), as amended. Different sentence lengths have different outcomes but in principle there is a divide between what are considered Short Term Prisoners (STPs) and Long Term Prisoners (LTPs). The 1993 Act has been frequently amended since it came into force on 1st October 1993, most recently by the Management of Offenders etc. (Scotland) Act 2005 ('the 2005 Act') which makes it possible (under Section 15) for certain STPs to access release on licence with curfew conditions 'Home Detention Curfew' (HDC). Prisoners must be serving a short term sentence, and have served one quarter or 4 weeks (whichever is greater) before being eligible for HDC. Currently, prisoners can benefit from between 14 days and 180 days on HDC. On 21 March 2008, HDC was extended to certain prisoners serving long term determinate sentences (4 years or more). The 2005 Act also ended 'unconditional' early release for sex offenders serving sentences of 6 months

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<sup>1</sup> Where a life sentence is given and the Parole Board does not release the prisoner or where the prisoner is released from a determinate sentence and is convicted of a further offence and the court orders the completion of the first offence.

<sup>2</sup> *Parole and Related Issues in Scotland: The Government's response to the report of The Review Committee (The Kincaig Report)*, (July 1990). Scottish Home and Health Department.

or more and less than 4 years. With the exception of these recent changes, early release from prison is governed by sentence length.

**1.8 SHORT TERM PRISONERS (STPs)** are those prisoners who are sentenced to serve less than 4 years. As a consequence of the Kincaig Report of 1989<sup>3</sup> which looked at parole, it was agreed to adjust definitions so that STPs would be those serving sentences of under 4 years and, to bring them into line with prisoners serving longer sentences, they would be able to access release at the 50% stage of their sentence. With the adoption of European Convention on Human Rights (ECHR) principles into our own legislation the practice of taking 'remission' or 'adding days' to sentences for misconduct was dropped, and STPs are entitled to release at 50% of their sentence being served. So for a prisoner sentenced to 6 months imprisonment he would serve 3 months in prison; for a sentence of 1 year, 6 months in prison; and for a 2 year's sentence serve 1 year in prison.

**1.9 LONG TERM PRISONERS (LTPs)** are those prisoners serving determinate sentences of 4 years and over and Life and Lifelong Restriction prisoners.

**1.9.1 DETERMINATE SENTENCE PRISONERS** serve 'fixed' sentences imposed by the court. They are eligible to be considered for parole at the 50% stage of their sentence (the Parole Qualification Date or PQD) and must be released at the two-thirds stage of their sentence. The 'parole window' is thus one-sixth of total sentence. So, for a 6 year sentence, a prisoner becomes eligible for parole at 3 years and must be released at 4 years. For someone serving 10 years they become eligible for parole at 5 years and must be released at 6 years 8 months. Prisoners released on parole are released early on licence. Those not released on parole are subject to the conditions of a non-parole licence. Both groups are serving part of their sentence in the community, are subject to post-release supervision in the community and a breach of any licence condition, further offending or concerns about risk could result in a recall to prison.

**1.9.2 LIFE SENTENCE AND LIFELONG RESTRICTION PRISONERS** serve 'indeterminate' sentences and the sentence remains in place for their life. A judge specifies the minimum period which is to be spent in custody for the purposes of punishment (the punishment part), and it is thereafter for the Parole Board to determine when the prisoner should be released. The presumption is that the prisoner should be released when the 'punishment part' has expired unless it can be shown that he or she still presents an unacceptable risk to the public. Where this is the case, periodic reviews take place until such time as it is found that it is appropriate to release the prisoner. Life sentence and lifelong restriction prisoners are released on licence and breaches of licence conditions, further offending or concerns about risk are likely to result in a recall to prison.

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<sup>3</sup> *Parole and Related Issues in Scotland: Report of the Review Committee*, (Chairman: The Hon. Lord Kincaig), (March 1989), Cm 598. Scottish Home and Health Department. HMSO Edinburgh.

1.10 **EXTENDED SENTENCE PRISONERS (ESPs)** are those prisoners in respect of whom a court decides to impose a period of supervision where otherwise there would be none or a longer period of supervision than otherwise would be applicable. An extended sentence can be imposed on a sex offender, convicted on indictment, sentenced to a custodial term of any length, and on a violent offender who would otherwise be sentenced to a custodial term of four years or more. All prisoners subject to an extended sentence are released on licence. Where the “custodial term” is less than four years the prisoner is released automatically at the half-way stage of the custodial term and is on licence until the end of the extended sentence. Where the “custodial term” is four years or more the prisoner may be released after serving half of this term, if the Parole Board recommends (in effect, directs) early release. If the Board does not recommend early release the prisoner will be released after serving two-thirds of the “custodial term”. In either case the licence, unless previously revoked, does not expire until the end of the full extended sentence imposed by the court. Such prisoners are liable to recall for breach of licence conditions and on return to custody have their cases reviewed by a tribunal of the Parole Board.

1.11 **CONCLUSION:** Kincaid identified two fundamental concepts of the parole system: helping the prisoner to adapt and risk to the public. With the parole system in Scotland well established (now for four decades), the Parole Board sought ways to ensure that they made the best decisions possible. In order to grant parole they needed to be satisfied that the prisoner seeking early release would not present a significant risk to public safety and would use the time in a positive way. Staff have been able to report on the prisoner’s response within prison. Some of the assurances needed could be provided by improved risk assessments, which could give information on the static (historic) risks and the dynamic ones which were amenable to change. While an offender could not change the nature of his previous convictions or employment record, he could show a willingness to change by undertaking programmes which might help him change his attitude and perspective, for example might reduce his propensity to violent reaction, and might help with addictions, literacy or employability. Prison officers and other staff became facilitators in the process. But, however good the work undertaken in prison, it was difficult to know whether the change was ‘for real’ and could be sustained.

1.12 The Parole Board believe that providing opportunities for prisoners to exercise personal choice while in the community is the best way to test whether they will be able to continue and sustain the change process. Open prisons therefore play an important function by providing support in a managed way to assist the prisoner to cope with a crime free life-style. They perform another significant role too. Long Term Prisoners can have been in prison for many years. They become institutionalised, dependent on prison authorities for their existence and decision making. If we think of the speed of change in society especially in technology, it is no surprise that someone who has been in prison for a number of years might feel quite lost in the outside world. Prices have changed, computers, mobile phones, i-pods and chip and

pin – to name but a few. Open prison provides a supported progression back into the community – or at least it should.

1.13 Parole also provides hope and encouragement. Those that try to change may be released early. That release is on licence, with a range of conditions and under the supervision of a Criminal Justice Social Worker in the community, and sometimes with support of other agencies such as the police or addictions services. Should they breach those conditions they can be recalled back to prison. There are always risks and despite the best risk assessments and management plans things can go wrong. But it is far less risky for the public to have a prisoner well motivated to change, supported and managed for a transitional period in Open prison, and then released on parole to supervision, rather than have them ‘thrown out’ of prison when their sentence ends without the support arrangements and the planned approach to re-integration. Research tells us that merely locking someone up is likely to increase their likelihood of re-offending and therefore increases the risk to the public. There is a balance to be struck between minimising risk to the public and the need to support prisoners out of offending. This report reviews how the Scottish Prison Service (SPS) has performed against that balance and what needs to be done.

## Chapter 2 THE FOYE CASE (2008) AND SUBSEQUENT CHANGES TO PROCEDURES

2.1 On 18 August 2007 Robert Foye absconded from Dundee while on licence, for the second time, from Castle Huntly to attend an Alcoholics Anonymous meeting. He was apprehended 7 days later having in the meantime raped a 16 year old schoolgirl. Foye had originally been serving a 9 year sentence from 17 June 2002 for attempted murder, and in September 2005, some 3 years later, he was transferred to Castle Huntly. Within a fortnight he had escaped and was unlawfully at large for 52 days. He received a further 4 months sentence at Perth Sheriff Court for Prison breaking on 12 January 2006. He was thus serving a cumulative sentence of 9 years and 10 months, and his date of release was also extended by the time at large. His revised Parole Qualification Date (PQD) was 7 August 2007 with a revised release date of 7 April 2009. Following his conviction for rape, Foye was given an Order for Lifelong Restriction, a life sentence with a minimum period of 9 years to be served.

2.2 Foye's case raised important issues. How was a prisoner who had escaped from Castle Huntly (smashing through a fire escape door) allowed back there 20 months later? Did he actually meet the criteria for Open prison? Was a further escape or abscond predictable? And if so, was it likely that he would offend, or in the horrendous way that he did?

2.3 The Foye Review<sup>4</sup> was an internal SPS review and it concerned itself primarily with the facts of the case and processes. Within this limited scope it found (at 9.1) that Foye had met all of the essential criteria required for transfer at the time and (9.2.) although an abscond was always a possibility, he was risk assessed and support was to be offered. In terms of language used I am concerned that this first escape from Castle Huntly was consistently referred to as an 'abscond'. Breaking out through a physical barrier is an 'escape'. In relation to the questions posed about re-offending it was noted (9.3) that Foye had been "*assessed as 'high risk of re-offending' so a further offence was always a possibility.*" Finally, because his previous convictions mainly related to car crime and dishonesty and there were no known risks in relation to sexual offences it was not considered as a risk factor (9.3 & 9.4).

2.4 The Foye Review made 7 recommendations (summarised):

1. A multi-disciplinary 'progression meeting' be held ensuring all relevant materials are brought together and discussed in the context of access to *less secure conditions* and focused on risk management.
2. Suitable information, including home circumstances, be available prior to transfer and considered during the 'progression meeting'.
3. Clear protocols to ensure sharing of relevant intelligence information for risk purposes are required.
4. Introduction of standardised report formats on the Prisoner Records 2 system.

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<sup>4</sup> A Review of the Circumstances Surrounding the Transfer of prisoner Robert Foye (prisoner number 26163) to the Open Estate (HMP Castle Huntly) published 18 March 2008.  
<http://www.sps.gov.uk/MultimediaGallery/c67c41c1-efde-4e2f-984e-95ec40cc4eea.pdf>

5. A Case Management Board be held at the Open prison as soon as possible to a) check the risk assessment information provided by the sending establishment and b) develop a comprehensive community risk management plan – with community licence access arrangements.
6. Adverse circumstances or events should trigger standardised abscond risk assessments and critical incident reviews.
7. Staff training on Integrated Case Management and risk assessment mandatory for relevant staff, with emphasis on record keeping.

These recommendations dealt with the processes. They would tighten up and create a better rigour in decision making, but no changes were suggested to the criteria to be used, or any other issues about the use of the Open Estate. It was limited in that it did not consider wider issues about who should be in open prison or at what stage of sentence. SPS subsequently produced an internal Assurance Review<sup>5</sup> on the Foye Review and Operational Matters (which is also a very good background document on the Open prison system at sections 5 - 7). This is also available on the SPS web-site.

2.5 It was the Cabinet Secretary who further instructed that there should be a presumption that if a prisoner has escaped or absconded from Open conditions he should not return. This does not mean that prisoners cannot return to open conditions. Since the presumption against non-return to open prison cannot be a blanket ban, as it would contravene ECHR and be open to legal challenge, there must be a route for decision making in these more difficult cases often involving life sentence prisoners. There was already an existing committee: The Executive Committee for Management of Difficult Prisoners (ECMDP). This is a group run by SPS Headquarters. It is chaired by the Assistant Director of Prisons with membership also drawn from prison management and its function is to consider the management of difficult prisoners and their location. It was considered appropriate that ECMDP should be additionally tasked in deciding cases where there had been previous escape or absconding and there was a subsequent recommendation from the prison to transfer to open conditions.

2.6 The recommendations of the review were implemented to greater or lesser effect. Multi-Disciplinary meetings are held to consider progression to open prison. Although Recommendation 2 stated that suitable information should be available for discussion at the meeting this has not always been the case in relation to Home Background Reports, and as we shall see later, also the Police Intelligence Report in the case of *Martin*. Use of computerised standard report formats has advantages, but, as we shall see, computers only display that which is asked. Recommendation 5 is curious: (a) that the open prison should undertake primary assurance on the risk assessment information provided by closed establishments. First, it is too late once a prisoner has moved to check on whether this is correct. Second, it can only be secondary assurance at this stage. The primary assurance and checking should be undertaken by the sending closed prison. (b) it proposed that the open prison develops a comprehensive community risk management plan,

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<sup>5</sup> Assurance Review of the SPS Open Estate, June 2008.  
<http://www.sps.gov.uk/Multimedialogallery/0ed4bf2d-38d2-454a-ba29-1d6f6ef1ad79.doc>

and that community access would be authorised by the open prison. Again this fails to understand two issues: first that when in an open prison the prisoner is already in the community, and second that the community risk management plan should have been started in the closed prison as part of the process of transfer and assessment of risk. Finally, I cannot comment on whether mandatory training was given to those involved with Integrated Case Management (ICM) and risk assessment as I did not enquire into this area.

2.7 On the positive side, since *Foye*, there has been a greater awareness of issues concerning community risk, and transfer to the Open Estate is given greater consideration. For example at Shotts, of the 211 cases considered by their Mutli-Disciplinary Progression Group (MDPG) since *Foye*, 105 cases were approved but 106 rejected. For a variety of reasons a further 29 prisoners did not transfer, with only 76 ending up in the Open Estate. This improved focus has resulted in a reduction of absconds from the open estate from 2008:

Year	2002 - 03	2003 - 04	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 to date
Number of absconds from Open Estate	<b>45</b>	<b>50</b>	<b>71</b>	<b>63</b>	<b>79</b>	<b>68</b>	<b>16</b>	<b>5</b>

## Chapter 3 DECISION MAKING PROCESS LEADING TO THE TRANSFER OF BRIAN MARTIN TO OPEN PRISON

3.1 **BRIAN MARTIN'S HISTORY:** Brian Martin is now 51 years old. He has an extensive criminal record going back to 1976. His *relevant* offending history is as follows:

Between 25 March and 8 May 1987	sentenced cumulatively to 15 months on 4 separate charges.
<b>31 May 1987</b>	<b>absconded from Noranside open prison.</b>
25 June 1987	apprehended and returned to custody.
4 November 1987	sentenced to 6 years' imprisonment for prison breaking, two charges of assault and robbery, and theft by housebreaking and opening lock-fast premises.
<b>7 April 1989</b>	<b>escaped from a hospital escort at Bridge of Earn Hospital from Perth Prison.</b>
7 June 1989	sentenced to 6 months imprisonment (to run consecutively) for attempting to defeat the ends of justice.
15 July 1992	released.
<u>Current Sentence</u>	
5 May 2006	sentenced to 10 years' imprisonment (backdated to 4 September 2005) for assault to injury and danger of life and 3 charges under the Firearms Act 1968.*
26 May 2006	transferred from his local prison HMP Perth to serve his sentence in HMP Shotts.
18 November 2008	progressed to the 'top end' facility (Kerr House) at HMP Shotts.
3 March 2009	provisional decision taken to transfer Mr Martin to the Open Estate.
2 April 2009	Updated PPA completed enabled transfer of Mr Martin to the Open Estate.
27 April 2009	transferred from HMP Shotts to the Open Estate at HMP Castle Huntly.
18 May 2009	absconded from HMP Castle Huntly open prison at about 1.30 pm.
25 May 2009	gave himself up at Kinross police station at 2.38 pm.
26 May 2009	sentenced to 4 months' imprisonment (to run consecutively) for attempting to defeat the ends of justice.

[\* Because his sentence was backdated to 4 September 2005, the date on which he was taken into custody, the latest date that Martin would have been due for release on non-parole licence was 4 May 2012 (two-thirds of 10 years). His parole qualification date (PQD) – the first point at which suitability for release on licence would have been considered by the Parole Board would have been 3 September 2010 (50% of sentence).]

## Brian Martin's Progress at HMP Shotts

3.2.1 Martin was housed in the National Induction Centre at Shotts for just over 2 years. During this time he underwent his Initial 6 month Assessment/Case Conference (20 November 2006) and subsequent annual review (09 November 2007). He then moved to another Hall in Shotts and was reviewed again on 13 November 2008. These reviews were done under the Integrated Case Management (ICM) system. The ICM brings together details such as personal information on an offender, home background, offending and assessments on risks and needs and a proposed action plan on how to meet some of the identified needs. The offender sees this information. The process was applied in Martin's case.

3.2.2 In Martin's case, the front page of each review highlighted some of his previous convictions and included references to "*Prisonbreaking (Escape from lawful custody)*".

3.2.3 At this point in his sentence, Martin appears to have been doing well, attending required programmes and staff considered him a changed person.

3.2.4 On this basis, the case management meeting on 13 November 2008 agreed to expedite his move to the 'Top End' Hall (Kerr House). Martin moved there on 18 November 2008.

3.2.5 'Top End' facilities, such as Kerr House, provide opportunities for prisoners to have greater responsibility and some testing in the community. From there Martin was able to have Special Escorted Leaves (SELs) and he was escorted by Escort staff for a family visit and shopping trip. These were uneventful. [SELs are provided from Closed Prisons and enable a prisoner to begin the process of testing and re-familiarisation while still under the control of staff. Consideration of risk to the public remains the first priority.]

## Decision to Move Martin to Open Conditions

3.3 When a prisoner is being considered for transfer to Open Prison (or to a Top End facility for unsupervised access to the community e.g. a work placement) a Prisoner Progression Assessment (PPA) must be completed by a group called the Multi-Disciplinary Progression Management Group (MDPMG).

3.4 The Multi-Disciplinary Progression Management Group is a professional and competent group of specialists. They come together to consider how a prisoner should "progress" along his/her sentence and all contribute their relevant expertise to the meeting. In turn they talk about the prisoner – whether he/she has outstanding needs and if these have been met by interventions. Healthcare, psychology, programmes and social work staff contribute to questions on need, risk and public safety, health and addictions. There are also inputs on the prisoner's general performance (such as work and education) and behaviour within prison, response to trust placed in

him/her (by staff and on SELs) and intelligence reports from prison and police authorities.

3.5 What happens is that the Group all contribute what they know of the prisoner 'here and now'. It is about current progress; how well the prisoner has responded to participation in programmes; behaviour in prison and/or responses to escorted leaves, assessments as to risks of re-offending and potential for harm; and any concerns the Group may have. Public safety is a consideration. Members of the group can access the computer records system and look up information – though this will tend to be current assessments or test results. If the group is unanimous in its support of a transfer to Open prison, this will be recorded as the decision.

3.6 **THE PRISONER PROGRESSION ASSESSMENT (PPA)** is a multi-disciplinary assessment which is intended to draw on all the information available and should also make use of the ICM process information as well. In fact the PPA form includes this advice in its heading "*The Integrated Case Management process will be crucial in informing the decision as to whether a prisoner is suitable for progression.*"

3.7 The Shotts Multi-Disciplinary Progression Group (MDPG) that considered Martin's case met on 3 March 2009. It comprised 9 members. It was chaired by the Unit Manager responsible for the Top End facility (Kerr House), the psychology team leader, a Health Care manager, a Senior Social Worker, the ICM co-ordinator, the Kerr House manager, a Security Manager, a Programme Manager (responsible for delivering programmes for offenders) and a Residential Manager.

3.8 Prior to the MDPG meeting, the Residential Manager requested a Home Background Report (HBR) from the local authority social work department in the area where Martin intended to live on release - in this case in Fife. On 25 February 2009, the Residential Manager sent an External Enquiry (EEF) Form to Fife Police requesting any relevant intelligence ahead of considering Martin's transfer to open conditions.

3.9 In compliance with the Scottish Ministers' instruction following the *Foye* case, the SPS introduced a revised PPA form on 27 November 2008 (31A/08). This new version makes clearer the requirement for prisoners with a history of previous absconding to be processed through a different route. The new form additionally says:

"Such cases [absconds] must be referred to ECMDP."

The Executive Committee for Management of Difficult Prisoners (ECMDP) is a Committee chaired by the Assistant Director of Prisons with prison management representation which decides on the management of difficult cases. Its remit also includes deciding on whether previous absconders should be transferred to Open Prison.

3.10 The MDPG at Shotts that considered Martin's case for transfer to the Open Estate did not use the new PPA form. The Group used the "old" PPA

form. This version contains a number of boxes which require to be ticked. On the front page are the 'Standard Criteria'. These include one which states:

Standard Criteria	Yes (please tick)
If history of abscond/escape, the prisoner has spent at least 12 months in closed conditions since his/her last abscond.	N/A

It is possible that this wording could have been slightly ambiguous in that it could have been interpreted to mean it was acceptable to tick the box if 12 months had elapsed since any previous abscond without having to consider the matter further – something which the new form addressed. However, in Martin's case, inserting "N/A" (Not Applicable) was not a valid option.

3.11 Although Shotts MDPG was using an out of date form, nevertheless that form still contained another box which states:

For completion prior to submission to ECMDP – please give reasons to support progression (include details of previous absconds/escapes and changes in circumstances since this time). Please also advise whether the Open Estate support the application for progression to open conditions.

This box was left empty and, since Shotts MDPG failed to identify Martin as an absconder or escaper, they also did not ask for the Open Estate's view of a proposed transfer by a former absconder/escaper.

3.12 The PPA form (in all versions) also makes provision for intelligence information to be included in the consideration of a case. The form that the MDPG at Shotts who considered Martin's case used has on the second page a box which states:

Sources of information considered:	Yes	No	N/A
Police/SPS Intelligence (inc abscond/escape history, outstanding warrants)	✓		

This box is provided as part of the check list to ensure attention is paid to intelligence information and any previous history of escapes and absconds. Intelligence comes primarily from two sources – internal SPS intelligence and intelligence provided by the police. Prison intelligence usually relates to current activities and information. Older intelligence is often considered less relevant. The other source is from the Police who will provide relevant intelligence which can include information on outstanding charges and warrants, information about continuing criminal activities, history of escapes, and where there is concern about danger to individuals or the public.

3.13 Shotts were in possession of intelligence from the police dated 12 August 2008 (which did not refer to 'escaper'). However, as reported above, an External Enquiry Form (EEF) was sent to Fife Police on 25 February 2009 advising that Martin was being considered for Open conditions and would thus have access to the community through work placements and home visits. The enquiry asked for relevant "*information to ensure that all risks are assessed in order to protect the public, prevent/minimise the risk of abscond and the prevention of crime.*" As shown above, the PPA form was ticked to

show that police and prison intelligence had been taken into account at (or prior to) the meeting of 3 March 2009. Those completing the PPA may have been relying on the earlier intelligence. The response to the request of 25 February 2005 had not yet been received.

3.14 Fife Constabulary responded by email on 4 March 2009. Included in a very short response was the following “However there are markers on the Scottish Criminal History System for **Firearms and Escaper.**” (Fife’s use of bold text). I am advised by the Shotts Security Unit that this advice was passed directly to the Residential Manager who had requested the information. However no action followed.

3.15 Therefore when the Shotts MDPG met on 3 March 2009 to consider Martin’s case (and others), it did not have a response from Fife Constabulary to the EEF sent on 25 February or the Home Background Report (HBR) from the home area social worker. Nevertheless, the MDPG took a provisional decision at the meeting on 3 March to transfer Martin to Open conditions. Following receipt of the HBR an updated Prisoner Progression Assessment was produced on 2 April with some conditions added in relation to Martin’s access to the community and reporting to his Supervising Officer. No mention was made in the revised PPA of the police intelligence received on 4 March 2009. Although this intelligence was available to security and residential staff, there is no evidence to suggest that it was brought to the attention of the MDPG or the Chair.

#### **FOR ACTION**

**No mention was made, nor apparently cognisance taken, of the police intelligence. This information was available to security and residential staff and was not brought to the attention of the MDPG or its Chairman at HMP Shotts. It will be for SPS to consider what course of action is required over this matter.**

3.16 In two other major prisons I visited (Glenochil and Perth) which also hold many long term prisoners I was told that they would not proceed to discuss a prisoner until they had received the Police Report, and Perth also waited for the Home Background Report.

**Martin transferred to the Open Estate on 27 April 2009 and absconded on 18 May 2009.**

#### Conclusion

3.17 It appears that 9 members of the Shotts Multi-Disciplinary Progression Group (MDPG) overlooked the fact that Martin had previously absconded. However, the offence of “*Prisonbreaking (Escape from lawful custody)*” was written on the front page of each of his initial and two annual Integrated Case Management (ICM) reviews. Police intelligence (received after the provisional decision to transfer was taken at the 3 March meeting) also indicated Martin as an “Escaper”. This information appears not to have been brought to the

MDPG's attention and was not taken into account when the final decision to transfer Martin to open conditions was taken. Indeed, it is not clear when or whether a final decision was made. The decision on 3 March had been provisional, and after the HBR was received the PPA was amended to reflect the conditions imposed. I was told by the members of the MDPG that they did not reconsider the case.

## **ANALYSIS AND RECOMMENDATIONS**

### The MDPG and the use of Information

3.18 In the Martin case, the MDPG appears to have overlooked or ignored the references/information in the ICM reports to prisonbreaking, escaping or absconding. In addition I understand that there was also reference to this among earlier papers in an extensive Social Work file.

3.19 The courts can sentence to 'prisonbreaking', 'attempting to defeat the ends of justice', or it might not even be the subject of proceedings. It is thus important to have a single point of reference which indicates whether the individual has escaped or absconded in the past. Indeed, on examining the files provided to me by SPS I discovered a second episode of escaping which occurred in 1989. This is reported at 3.1 above.

#### **Recommendation 1**

**I recommend that a 'Flag' is placed on the Prisons Records 2 computer system for 'Absconder/Escaper' and that whenever relevant information is identified or received or an event occurs the 'Flag' is activated.**

3.20 A similar system already exists for a number of other factors – one of these is for a 'sex offender'. Once it is known, for example because of a conviction, the 'flag' is activated. The next time the individual is in prison, even for a non-sexual offence, staff are aware of the background and would make decisions accordingly. The same is required for escapers and absconders.

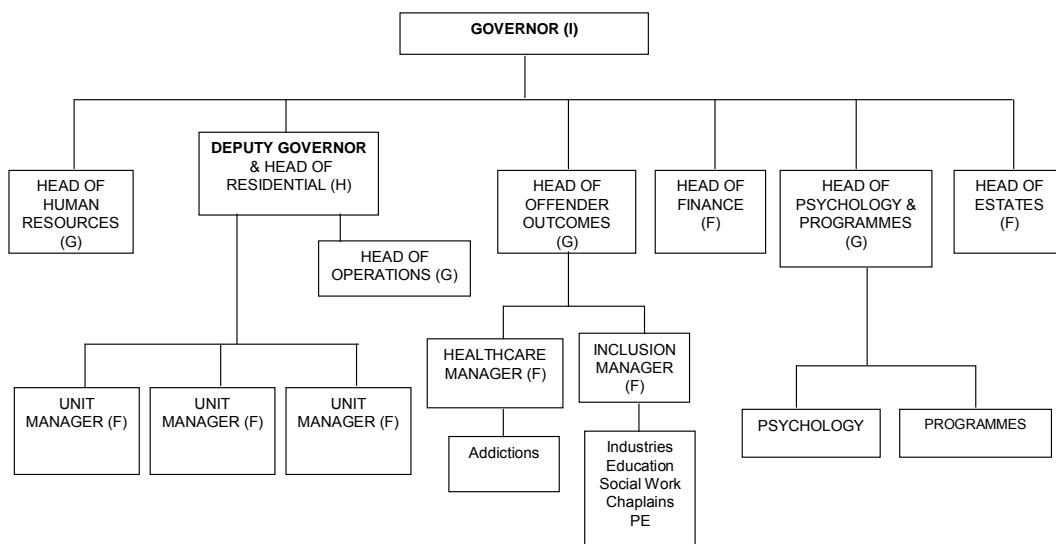
3.21 While the MDPMG is a multi-disciplinary group, my view is that individual members generally only concern themselves with their own specialism and the result is agreement on a series of separate contributions. In my opinion what is missing is that there is no-one who steps back and reviews the case as a whole. In discussing this process with a number of Governors and Managers I have concluded that no-one examines the prisoner's paper file (which often is not present at the case conference) and tries to get a feel for the whole person. The file is not scanned for previous convictions, press cuttings, trial judge's report and any other pieces of information. The information provided at the meeting though thorough is not complete. Further, the information is contained in a number of separate sources, the ICM file, the warrant file, intelligence and on the computer record system.

3.22 In my view it is necessary that someone reviews the whole prisoner file to ensure that a complete picture has been obtained. No-one can ever guarantee that a prisoner will not abscond or that they will not re-offend. But after the risks have been assessed and a positive recommendation made, the file should be reviewed. As someone put it to me “the prisoner might tick all the boxes but it might still not be appropriate to allow him in to the community”.

**Recommendation 2**

**I recommend that before the final decision is made to transfer to Open conditions the prisoner record file(s) are reviewed by the Governor or Deputy Governor.**

3.23 I was also concerned at the level of decision making. Prisons have Risk Management Groups (RMG) which consider the management of life sentence prisoners and other prisoners who are assessed at being at high or very high risk. These are usually chaired by the Deputy Governor. In some prisons, the Multi-Disciplinary Progression Management Group (MDPMG) (the prescribed name for the MDPG) which makes decisions on transfer to Open prison is chaired by the Deputy Governor, in others by a Unit Manager. In one prison the RMG approves the ‘high risk’ cases progressing on to their PRMG (Progression Risk Management Group), while ‘ordinary’ long term prisoners cases go directly to their PRMG. In Shotts, a Unit Manager chaired the meeting and agreed the decision in the Martin case. I understand this Manager has chaired the Group for the last year or so. As can be seen from the chart below, the ‘F’ Band Unit manager is a middle manager and 3 grades/bands below the Governor, 2 below the Deputy Governor.



3.24 The decision to transfer a prisoner to Open conditions is a most important one and can have grave repercussions. That is why a system exists to progress prisoners. The Court imposes a prison sentence in the expectation that a proportion of that sentence will be custodial and that stringent checks are made before security is lessened. Moving a prisoner to the increased freedoms of the Open estate is a significant decision for prison management. I did not feel that all staff fully understood this implication.

3.25 It appeared to me that the pressures to progress prisoners through the system and the processes involved seemed to outweigh the significance. I was told that the decision is a group one. Whatever remorse a group might feel if something goes wrong, it is difficult to hold them accountable. Who has made the decision? Well, all have. In my view the decision to move a prisoner to the Open Estate should only be made by the Governor or Deputy Governor. The Governor is the person appointed as being accountable and should be. This view was also endorsed in the report by the Security Category Working group which established the current Prisoner Supervision System<sup>6</sup>.

### **Recommendation 3**

**I recommend that where the Governor or Deputy Governor does not chair the MDPMG, the agreement for transfer to Open conditions becomes a recommendation which goes to the Governor or Deputy Governor for approval and signing. This is not a decision that can be delegated further down. In relation to Recommendation (2) above it is also my view that the Governor or Deputy Governor when being asked to confirm a transfer to Open conditions additionally reviews the case file to assure themselves that the prisoner is appropriate for transfer to Open conditions and there is nothing known about him or her which would preclude their access to the community.**

### The Use of Intelligence

3.26 The passing of intelligence between agencies depends on protocols, but more importantly on trust and professional respect for each other. From my discussion with staff at Shotts and in other prisons I formed the view that there is not a full understanding of the respective positions and responsibilities of both agencies. The intelligence SPS received was often of a brief, bland or headline nature, which gave little information as to what it was about, how current it might be and so on. Without knowing what lies behind the information, or why detailed intelligence might be withheld, and therefore because the specifics are not known or understood by decision makers in SPS, the information may be sometimes discounted as too vague. On the other hand it is, by its very nature, understandable that police are reluctant to share more detailed intelligence with others. However, when making

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<sup>6</sup> "However, unsupervised access to the community is a more significant step and in our view can only be authorised by the Governor or, in his or her absence, the Deputy Governor. This procedure recognises the profound nature of the decision which, in a sense, discards all the security of prison and the implicit 'incarcerative' element of a custodial sentence." *Prisoner Supervision System: The Report of the Security Category Working Group*, (December 2000). Scottish Prison Service paragraph 6.33 (6.28 in 2002 edition).

important decisions about the possibility of transfer to open conditions as much information as possible is required, and the decision is unlikely to be a sound one if all the information is not available.

3.27 It goes without saying that many of the long term prisoners held by SPS are of continuing interest to the police. In terms of crime prevention and public safety it is necessary to have good working relationships between both services. Neither is served when there is poor or limited information or poor communications. One of the ways to improve this situation is to have a Police Liaison Officer present at MDPMG meetings. When a brief intelligence report is provided, those present could seek clarification as to what was behind it - its strength, currency and relevance. Clarification would reduce doubt and make for better informed decisions. The Presence of a Police Liaison Officer would also encourage better understanding of the relevant tasks of each agency and improve trust and professional respect. I understand that there are Police Liaison Officers attached to 4 prisons (Aberdeen, Peterhead, Edinburgh and Addiewell) and to SPS headquarters<sup>7</sup>. This is a welcome development, although I do not know whether they are full-time posts or if they attend MDPMG meetings.

#### **Recommendation 4**

**I recommend that a Police Liaison Officer attends the MDPMG meeting and provides the police intelligence input to decision making.** Indeed, there may be good arguments to support the creation of full-time Police Liaison Officer posts in, at least, the larger prisons in Scotland.

3.28 There is a subsidiary matter which will be for the police. When the prison contacts the 'home area' police force for intelligence, it is provided by that force. The understanding within SPS is that each of the 8 Scottish Police Forces keeps its own separate intelligence base – and that when a prison applies to the police force of the prisoner's 'home area' they may not have intelligence held by other forces. Additionally information is held by the Scottish Intelligence Database (SID), Violent and Sex Offender Register (ViSOR) and by the Scottish Crime and Drug Enforcement Agency (SCDEA). It is to be hoped that a Police Liaison Officer would be appraised of relevant available intelligence, not just that held locally. In any case, unless there was a single data base, the Liaison Officer would need to contact a number of forces, since prisons tend to hold prisoners from all across Scotland and further afield. Consideration of these issues are likely to contribute to crime prevention and enhanced public safety.

3.29 What is evident from the Martin case is that the decision to transfer *directly* to Open prison could not have been made if the meeting had before it the External Enquiry Form and the Home Background Report. Had they recognised Martin as an absconder/escaper and still recommended transfer to Open conditions his case would have be sent to the ECMDP for consideration

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<sup>7</sup> The same issue of Police Liaison Officer attendance might apply to ECMDP when it meets to consider transfers of previous absconders/escapers to Open conditions.

(2.5, 3.9 and 3.11 above). In the absence of a Police Liaison Officer or the local Criminal Justice Social Worker who could provide clear information to the MDPMG which would be taken into account in decision making, both the EEF and the HBR should be available to the meeting. A MDPMG should not convene without them. Otherwise important external information, crucial to the consideration of risk and management of the prisoner in the community, will be missing and any decision made would be based on incomplete information.

#### **Recommendation 5**

**I therefore recommend that input either in person (by the police and/or the relevant criminal justice social worker) or by tabling of the External Enquiry Form and Home Background Report be made mandatory before a case considering transfer to Open conditions can be discussed.**

**3.30 TRIAL JUDGE'S REPORT:** I have recommended that a review of the prisoner's records should be undertaken before final 'sign off' by the Governor or Deputy Governor. This requires the records to be complete. I was advised that the Trial Judge's Report is not available in all cases. It is important that where the Trial Judge's Report exists it is made available to the prison. Without it, there is no definitive version of the crime, the events leading up to it and the judge's view. The prison authorities might be left with a conviction 'index offence' stating what the offence was (e.g. assault). They might have to rely heavily on the prisoner's own version of the incident. This is not acceptable, and the absence of the Report could mean missing important details or aspects of the case (e.g. its severity or whether the assault was as a result of provocation or not?). ***It is important that SPS's records are as comprehensive as possible and that they include the Trial Judge's Report where available.***

**3.31 A SUGGESTION:** In my visits to 5 prisons I encountered the use of at least 3 different names for the Multi-Disciplinary Progression Management Group (MDPMG). I am not aware any called it as prescribed in Circular 8A/08 on Progression Casework. Shotts called it their Multi-Disciplinary Progression Group, another prison called it Progression Risk Management Group and yet another called it a Multi-Disciplinary Management Group. All of them also had a Risk Management Group. ***I would suggest to SPS some simplification and standardisation.***

## Chapter 4 The Purpose and Use of the Open Estate

“Scotland also needs a well-run open estate because it is not in the public interest to release long-term prisoners from closed institutions without preparing them for release and training them for freedom.”<sup>8</sup>

*McLeish Commission Report*

### THE PURPOSE OF OPEN PRISON

4.1 In Chapter 1, I discuss why the Parole Board requires prisoners to experience open prison. All professionals that I talked to (Governors, prison managers, and social workers) were supportive of the need for an open prison. One or two suggested that the way forward was to make available ‘open conditions’ from a prison nearer to the prisoner’s home by creating small units adjacent to prisons, but all were convinced of its need.

4.2 Open Prison provides the opportunity for transition – that is a period of adjustment from the closed institutional experience of prison to being able to cope in the ‘outside world’ of the community. When a prisoner arrives in Open prison he is already ‘in the community’. For much of the time there are no barriers of any kind between him and the world around. It is therefore important that he is supported by staff (and other agencies) through this transitional phase, and that through rigorous assessments his needs and risks are understood, and there are appropriate management plans in place to manage, guide and support his reintegration into the community. This is no easy task. It requires resources and caring specialist staff who can focus on providing the support needed and also intervening, managing, laying down boundaries and providing control when necessary. It may be a tall order and difficult - but it is very necessary if former serious and dangerous offenders are to return back to society more able and determined to lead law abiding lives.

4.3 To provide such a service requires focus and resources. It can only be provided effectively if those in Open prison (staff and prisoners) are clear as to what the purpose of Open prison is and the prisoner’s reason for being there. There always has been a second and competing use for open prison. That is - it is less restrictive and more economic. Less restrictive in the sense that prison is a traumatic and damaging experience and Open prison conditions are likely to have less negative impact than being incarcerated in a closed institution. It can also be cheaper to house prisoners in accommodation with a reduced security bill. In his report on security, Lord Mountbatten put it this way in 1966:

“Nothing which I say subsequently in my Report is intended to suggest a reversal of the trend towards treatment in open conditions. On the contrary ... many more prisoners now in closed conditions could be transferred to open prisons without danger to the public and with advantage to the

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<sup>8</sup> Scotland’s Choice: Report of the Scottish Prisons Commission, July 2008. (Chair: Rt. Hon. Henry McLeish) at 5.14.

Exchequer, the morale of prison staffs, and the prisoners' prospects of rehabilitation."<sup>9</sup>

4.4 However, while holding prisoners in the least restrictive prison conditions is desirable, and indeed would reflect the European Prison Rules<sup>10</sup>, it has the effect of detracting from providing transitional support for those serving long sentences who need a period of re-adjustment and testing before release. The purpose of Open prison has been further confused by the pressure within SPS on places. The record high numbers being held in prisons has resulted in SPS trying a range of measures to reduce that pressure. Home Detention Curfew (HDC), Extended Home Leave (EHL) for periods of 7 days<sup>11</sup>, and Continuous Cell Occupancy (CCO) where the bed is vacated while a prisoner is on Extended Home Leave (EHL) to enable an additional prisoner to be held in the Open prison have all been introduced to assist with coping with high numbers in crowded local prisons. Finally, the availability of accommodation in Open prison was increased not only by the impact of the EHL and CCO schemes but by the addition of a new accommodation wing. Castle Huntly's design capacity is now 285 and Noranside 140, a total of 425 places. Because of pressures they are allowed to hold up to 519. Nevertheless, it must be recognised that despite continuing pressure from the growing numbers, SPS has in the last year, since *Foye*, taken greater care on who is sent to Open Prison and fewer now go, resulting in under-usage of an increased capacity.

4.5 Since 2004 the 'driver' for filling places in the Open Estate has been the pressure of high numbers in prison, the *Napier* case<sup>12</sup> and prison conditions and not the meeting of specialised needs of a smaller number of serious long term offenders coming to the end of their sentence. Despite warnings, the

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<sup>9</sup> *Report of the Inquiry into Prison Escapes and Security*, by Admiral of the Fleet, The Earl Mountbatten of Burma, [Home Office], (December 1966), Cmnd. 3175, London, HMSO, page 55.

<sup>10</sup> "18.10 Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others" European Prison Rules, (11 January 2006) Council of Europe.

<sup>11</sup> Under the provisions of Rule 140 (1)(a) for 'Short leave'. The Prisons and Young Offenders Institutions (Scotland) Rules 2006, introduced March 2006. (SSI 2006 No.94).

<sup>12</sup> The *Napier* case had a tremendous impact on the pressures within SPS to reduce overcrowding and end 'slopping out'. This is how the *Mail Online* reported it on 26 April 2004.

"A prison inmate has today won a landmark court case over the practice of slopping out, in a move which could cost the taxpayer millions of pounds in future compensation payouts. A judge at the Court of Session in Edinburgh agreed with Robert Napier that the outdated toilet practice breached his human rights. Lord Bonomy said it was a "degrading treatment" and awarded Napier, who used to be an inmate at Glasgow's Barlinnie jail, £2,450 in compensation. Today's judgment sets a legal precedent which could pave the way for more prisoners to claim similar compensation payouts. Napier, 24, launched his legal bid in June last year in a bid to outlaw slopping out in Scotland's largest prison. He claimed conditions in C Hall of the jail, where he was on remand on an abduction charge in May 2001, were unacceptable. ... He called for a judicial review into the slopping out regime, claiming it breached his rights under Article 3 of the European Convention on Human Rights. Now other prisoners are expected to lodge claims, with longer-term inmates likely to demand far larger cash sums. Currently in Scotland, 18% of the prison population, or about 1,200 men, still has to slop out every morning. The practice continues in five Scottish prisons, in areas of Barlinnie, Polmont, Perth and Edinburgh jails, and in the whole of Peterhead prison."

continuing pressure of the increasing tide of prisoner numbers has had its effect. The Foye Report stated:

*“Decisions must always be made on the basis of public safety rather than on expedience but the population management pressures on prison staff create undeniable tensions”<sup>13</sup>.*

In the recent Prison Inspectorate Report on the Open Estate, the Chief Inspector, Dr Andrew McLellan said:

“The conclusion of the McLeish Commission was “The Commission recommends that preparing for release and training for freedom be retained and reinforced as the proper purposes of the open estate – not easing overcrowding.” Despite the criticisms expressed above, this report makes it clear that the SPS has learned lessons about the Open Estate in the past year and has made considerable improvements. This is a decisive moment for the future of the Open Estate. The conclusion of the McLeish Commission, reached after much study by an expert group, should not be lightly set aside. The evil of overcrowding across all Scottish prisons is very likely to reverse the progress and destroy the improvement demonstrated in this report. Since there is nowhere else to put prisoners it may be that a fence has to be put round the Open Estate and it is forced to become an ordinary prison to ease overcrowding. Who suffers most when prisoners are released from prison not prepared for safe, decent lives in the community? It will require courage to maintain open prisons which are not full in a time of unprecedented overcrowding: but it is courage which will serve the public good.”<sup>14</sup>

The McLeish Commission were invited to review the Open Estate and make comment in relation to the Foye case. They, also, in part citing Audit Scotland’s Report<sup>15</sup>, stated:

“Though there is no doubt that the Scottish Prison Service made mistakes in its management of Robert Foye. In many respects his case provides a stark and tragic example of why imprisoning too many people makes the community less safe rather than more safe. In recent years, the open estate has been used to ease overcrowding as well as to prepare long-term prisoners for release. ... the prison service resources were stretched to the limit by over-crowding. To allow this situation to continue is to compel the Scottish prison Service to divert time and energy away from detaining and rehabilitating serious offenders to dealing with the troubled and the damaged.”<sup>16</sup>

4.6 In summary, open prison is necessary for the re-integration of serious offenders. Its purpose has been widened and its effect diluted by using it as a relief for overcrowded prisons. Over recent months as the new *Foye* criteria have taken hold, and with access to HDC extended, numbers in the Open Estate have diminished creating unfilled places. At the beginning of June 2009, there were 306 prisoners in the Open Estate, of whom 52 were STPs. In my view there still remain some inappropriate prisoners held in open conditions, both long term and short term, and they are there too soon. I now want to consider each of these issues in turn.

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<sup>13</sup> Foye Report 3.2 at page 7.

<sup>14</sup> *Report on the Open Estate*, (October 2008) HM Inspectorate of Prisons. Paragraph 1.14.

<sup>15</sup> *Managing increasing prisoner numbers in Scotland*. (2008) Audit Scotland, Edinburgh.

<sup>16</sup> McLeish Commission Report. Paragraphs 5.12 and 5.13.

## LONG TERM PRISONERS

4.7 The Prisoner Supervision System report (2000) stated:

“All LTPs are eligible for Parole. We consider that access to Open Prisons, and the opportunity to prepare for release and be tested in less restrictive conditions, should exist principally to LTPs prior to the Parole Qualification Date (PQD). We are of the view that, in the "best" cases, the first stage of this preparation should normally commence approximately 2 years before a prisoner's PQD [through 'Top End' facilities]. ... Subsequently, they should be normally eligible for progress to Open Prison no earlier than 1 year before their PQD.”<sup>17</sup>

The group considered when was the appropriate time to move a long term prisoner to Open conditions. Unfortunately, there is no research evidence on this matter to assist. Some Governors expressed the view that it might be useful to commission research on when is the most effective time to transfer prisoners to Open conditions, and also to evaluate the benefits of open conditions and access to the community. I would support that view. Little research has been undertaken on the Open Estate. A study undertaken by Reid Howie (2003)<sup>18</sup> examined the range of prisoner needs and what services were available in the Open Estate to meet them. It did not evaluate them. It might prove beneficial if evaluative research could be undertaken on the use of open prison<sup>19</sup>.

### Recommendation 6

**I recommend research be undertaken to determine the efficacy of Open prison, its benefits and the most effective time for transfer of prisoners to open conditions.**

4.8 The view of the group was that although each prisoner has individual needs, 1 year provided sufficient time for supporting the transition back to the community and to allow sufficient testing to enable the Parole Board to reach an informed view. Indeed, there are expectations and momentum created by transfer to open conditions and these can wane the longer the stay in open.

4.9 In 2004 and in 2007, SPS amended their Management Rules to enable Long Term prisoners (LTPs) to access Open prison earlier in their sentence. The SPS Management Rule which prescribed that long term determinate and life sentence prisoners could only be eligible for Open prison 1 year before their Parole Qualification Date (PQD) was extended to 2 years in 2004<sup>20</sup>. The circular stated:

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<sup>17</sup> Prisoner Supervision System (2000) Paragraph 6.23

<sup>18</sup> *The Open Estate* (April 2003). Reid Howie Associates Ltd. SPS Occasional Paper Series No. 3/2003. ISBN 0-95401010-9-X.

<sup>19</sup> The European Prison Rules (2006) state: *Research and evaluation*: 91. “The prison authorities shall support a programme of research and evaluation about the purpose of the prison, its role in a democratic society and the extent to which it is fulfilling its purpose.” The Scottish Government already has some capacity to undertake such work through its arrangements with the Scottish Centre for Crime and Justice Research.

<sup>20</sup> *Change to the Prisoner Supervision System (PSS) Management Rule*, (2 June 2004) Governors and Managers Action, Circular 22A/04, SPS.

*“It has therefore been recognised for some time that we require to review the above PSS Management Rule in order to establish what additional LTP spaces may be available to generate movement and maximise accommodation”.*

In 2007 there was a further extension under the Management Rules which extended the prospect of access to the Open Estate to Long Term Prisoners and Short Term Prisoners<sup>21</sup>.

4.10 Governors have commented that staying in open conditions for too long could have adverse effects with prisoners getting bored and expectations not being realised. A few felt that this could mean ‘setting him up to fail’. In my view, having too many Long Term Prisoners in open makes it harder for staff to concentrate on those who they need to get ready. Some 37 LTPs were in Open conditions with over 1 year still to serve before their PQD<sup>22</sup>. Indeed, 2 STPs also had over a year left to serve before release (unless released early on HDC). In looking through printouts of transfers I came across 4 examples of prisoners being sent even earlier than 2 years. One case was of a prisoner being sent 2 years and 4 months ahead of his PQD. This not only contravened SPS’s own Management Rule, but meant he would be sitting in open prison a long time before active consideration of his case. As it happened he absconded while on home leave, still having over 2 years to run before his PQD. In fact, 3 of the 4 cases were returned to closed conditions.

4.11 I have already explained how sentences work, i.e. a long term prisoner will be released at the two-thirds stage and is eligible for parole from the half-way stage. In my view, Long Term Prisoners are able to access Open conditions too early in their sentence.

#### **Recommendation 7**

**I recommend that Long Term Prisoners should not be eligible to be transferred to Open prison any earlier than 1 year before their Parole Qualification Date.**

4.12 Open prison is not an automatic right – it is there for those who warrant it. Inevitably, implementation of this recommendation will mean a reduction in numbers of LTPs in Open conditions at any one point in time. However, it does not mean that there has to be any lessening of numbers going to, and benefitting from, Open conditions. What it will mean is that there will be fewer prisoners there for shorter periods and staff will be able to focus on their needs and public safety issues. Overall, the same number of LTPs should still be able to go, but their experience should be improved, focused and purposeful. This change should also benefit public confidence and restore, to a greater degree, understanding of sentencing and transparency in delivering its intention.

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<sup>21</sup> *Access to Open Conditions, Changes to the Management Rule, (5 June 2007) Governors and Managers Action, Circular 32A/07, SPS.*

<sup>22</sup> On 2.6.2009 of the 254 Long Term Prisoners in Open conditions, 4 Lifers and 33 Determinate sentenced prisoners had over 1 year to serve before their Parole Qualification Date.

## SHORT TERM PRISONERS

4.13 From what has been said above it is clear that the principal task of Open prison is to help prepare Long Term Prisoners for release. For many years the system has been that Longer Term Prisoners take priority but that Open prisons will take Shorter Term Prisoners if there is room. The range of STPs eligible was widened in 2007 by changes to the Management Rule. If one accepts that Open prison has benefit for those serving long sentences because it helps them get acclimatised to life in the community – this may not be necessary for someone who has been in prison for only a few months. In my view short term prisoners are a distraction from the real purpose of Open conditions. Also, they are likely to be there for an even shorter time because they are able to access Home Detention Curfew (HDC) from Open conditions. So there is a large churn of them, which creates additional work for staff. The reason for larger numbers of STPs having been in open was not so much about meeting their needs, but in the need to create room in crowded local prisons. The answer to that problem lies elsewhere and is certainly linked to finding a solution for the growing numbers of Remand and Short Term Prisoners.

4.14 When a Short Term Prisoner is transferred to Open conditions he or she will be eligible for Extended Home Leave (EHL) and so one week in four they will be away from prison and back home and with their mates. There is no 'tag' while they are on EHL. Then, as soon as they qualify for Home Detention Curfew (HDC) which is after 1 month or of sentence (whichever is greater) and providing it is not longer than 180 days still to run they can be granted release on a curfew licence – an electronic monitoring tag. So STPs come to open prison, go on extended home leave for 1 week in 4 and then qualify for HDC. What is the purpose of all this? Except to place additional demands on staff and make room in local prisons. If Short Term Prisoners can be home 7 days every month and then released on a tag, why not just simply amend the regulations and release them earlier from the local prison instead. There are already delays in getting Home Background Reports for those going to Open conditions – why not restrict this requirement to those LTPs who are preparing for release? HDC is a better option for suitable, low risk, STPs. The Open Estate should be kept for rehabilitating LTPs.

4.15 In my view SPS should give serious consideration to restricting Open prisons for use only by Long Term Prisoners. This is particularly the case now that STPs are also eligible to access HDC. ***HDC is already available from closed prison, and consideration should be given to look at the policy and decide whether it should be extended to a broader range of STPs. Indeed, HDC already provides through electronic monitoring greater control over offenders than when on extended home leave. There could also be consideration of the requirement for work, training, or 'community payback' while on periods of HDC.*** These are not issues within my remit. However, if Open prison is to be allowed to concentrate on its important function for Long Term Prisoners nearing the end of their sentence, then there will have to be a re-think and changes to policy and the

system if SPS is to cope also with the demands of overcrowding in prisons. I accept that these cannot be accomplished overnight.

### **Recommendation 8**

**I recommend that Open prison be restricted for use only by Long Term Prisoners.**

4.16 There are other advantages to restricting the use of Open prison to only LTPs. Long Term Prisoners are located in specialist facilities because they have different needs from STPs. They are unsettled by the arrival and departure of other prisoners (and because changes can cause a range of problems in prisons, including issues of drugs, violence and personal safety). This is what happens in Open prison with a mix of short and long term prisoners. It is natural that wherever a prisoner settles, he would like it to feel a bit like his home, to personalise his environment. It gives him (and the prison) stability, it provides a feeling of 'ownership' and a common bond which helps with settling and becoming part of the community in prison. Both the comings and goings of short termers and the horrendous system of Continuous Cell Occupancy (which means that he packs up his belongings before he goes on home leave and comes back to a different bed on his return) destroy feelings of belonging, loyalty and relationships and can create alienation. That could add to any other reason why a prisoner might not want to return to his Open prison, i.e. abscond. Open prisons need to focus on their long term clientele.

4.17 Resources will always be tight, so limiting Open prison to those who require it<sup>23</sup> makes sense. Open prison staff and resources can be focused on ensuring appropriate management of the prisoner in the community, providing and supporting prisoners through placements, working in partnership with a variety of agencies, meeting the range of outstanding needs, preparation for release and return to family. Open prison staff require to keep a clear focus if they are to be able to report in an informed way to the Parole Board. Far from Open prison being an easy option, it is a challenge for the prisoner as he tries to live a law abiding life in less restrictive conditions. Having a clear focus on LTPs will help with managing and monitoring risk.

4.18 Short Term Prisoners, by the nature of their sentence are not considered dangerous or serious criminals. Yet they are released home on Home Detention Curfew with an electronic tag. The Long Term Prisoner is allowed unsupervised into the community and on home leave. It has been suggested to me, and makes sense, that LTPs should also be tagged – and for the limited number in Open prison, this should be a GPS tag. I have not studied the technology behind this proposal or its cost, but it does seem sensible to have a system which can tell where they are, or if they have

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<sup>23</sup> The Prisoner Supervision System (2000) Report at 6.2. stated "... the Group considered that such establishments should exist for the purpose of preparing the prisoners for release. If this important principle is accepted, then low supervision prisoners would only be accepted into national 'Top Ends' and Open Prisons at the stage at which they needed to be for the purpose of preparing for their release. The overriding objective would be to have prisoners in the right place at the right time to enable the Parole Board to make appropriate decisions about their release potential."

tampered with the equipment. ***I suggest that GPS tagging be considered for Long Term Prisoners in Open conditions.***

4.19 Implementing these changes will create population pressures within the system – but they will also create opportunities for rationalisation and a better focus on public safety. One such area is MAPPA. These are Multi Agency Public Protection Arrangements. Introduced under the Management of Offenders etc. (Scotland) Act 2005<sup>24</sup>, the Act provides a duty between agencies – particularly police, social work and prisons – to co-operate with each other to assess and manage the risk posed by certain offenders in the community. These arrangements apply currently to sexual offenders who have been released or will be released under supervision or licence. Every LTP is released under these requirements. I can see little reason why prisons should wait till shortly before release to begin MAPPA arrangements with partner agencies. Instead of 3 months before release, where applicable these arrangements should be initiated prior to transfer to open prison. It may not apply to many in open conditions since MAPPA arrangements generally apply to those presenting the highest risk, but since all determinate sentenced prisoners must be released at some point, it makes better sense in terms of public safety to consider transfer to open prison as already constituting access to the community. It will also support the process of ongoing monitoring and risk management. ***I suggest that MAPPA arrangements are commenced before relevant offenders are transferred to open conditions.***

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<sup>24</sup> Section 10 “Arrangements for assessing and managing risks posed by certain offenders.” Management of Offenders etc. (Scotland) Act 2005. (2005 asp 14).

## Chapter 5 Other issues

**5.1 THINKING ABOUT COMMUNITY SAFETY FROM A PRISON PERSPECTIVE:** Prison staff do an excellent job in prisons. The management of criminals within a custodial setting is a difficult and mostly thankless task, unseen by the public and largely goes unrecognised. Experience tells them when situations may become fraught, and they are trained to cope with a range of behaviours from major incidents and hostage taking, fights and assaults, to bullying, drug taking and attempted suicide. Theirs is about the management of individuals within the prison institution. They have to work with the prisoners in their charge and Prison Officers in Scotland maintain excellent relationships. In recent years they have also been asked to become caseworkers and facilitators, and have developed skills in delivering programmes, undertaking assessments and working with partner agencies. Their focus is naturally about the control and management of prisoners inside. McLeish in his report correctly summarised the approach:

The 'Prisoner Supervision System' is the process by which different levels of supervision requirement are allocated to each individual prisoner during their time in either closed or open prisons. The supervision levels are High, Medium and Low. After initial allocation of supervision level on admission prisoners are reviewed annually until they attain low supervision status. The process is designed to monitor and support behaviour whilst in prison but is **not** designed to assess risk of harm to the public.<sup>25</sup>

The Prisoner Supervision System (PSS) is designed for the management of prisoners in closed settings. A 'low supervision' status only means that within the prison context they can be managed or trusted with low levels of supervision. It says nothing about the risk to the public in community settings and this is a separate issue about which SPS staff have not had a traditional focus. I heard from a large number of managers that many staff do not (yet) understand about management of risk in the community and the relevance of (external) community and public safety to their daily work in prisons. Although I also heard that this was changing. From my discussions I felt that senior staff were more aware of these issues and sensitivities and there was evidence that a cultural change was underway.

**5.2** Thinking about and being able to assess risks that prisoners might pose outside the prison walls is a skill that staff are developing. As they work in Link Centres with external agencies and sit in on Case Management meetings with Social Workers and Psychologists, as they facilitate programmes and consider risk factors and as they undertake common assessment tool training with colleagues from other agencies – so will their understanding and skills grow. Some of the evidence for this is the already reducing number of absconds and the relatively good success rate on HDC. Yet the old culture still lurks, even in recent paperwork. On the External Enquiry Form (EEF) there is reference to being:

*“assessed for a move to the Open Estate of the SPS. Within the Open estate he/she will, after a period of initial assessment, have access to the community in respect of placements and regular periods of home leave etc.”*

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<sup>25</sup> McLeish Commission Report, Paragraph 5.5 at p. 53.

This form typifies the misunderstanding of SPS over this matter. When Martin walked away from Castle Huntly he was already in the community. Open Prisons may be called prisons – but they are open. Prisoners do not need to wait for placements and home leave to be in the community. When located in an open institution they are already part of that community – they walk between their accommodation and dining facilities, they walk to work and can walk in the grounds. SPS will have to understand that there is no ‘force-field’ restraining a prisoner in open conditions while he bides his time waiting for further assessments, reports or management plans. Once transferred he is out of secure custody. If staff are uncertain about the risk he poses and want to leave it to the judgment and assessment of open prison staff, then he should not go.

5.3 The prison service is a uniformed and hierarchical organisation. Like most such organisations confidence and certainty in decision making are considered strengths. Yet in dealing with people and managing complex cases there can be room for uncertainty and questioning. In some of the prisons, but not all, I got the impression that for a junior or middle manager to consult on difficult cases might be seen as a weakness, as a lack of competence, or as avoiding decision making. Of course, the opposite is the case. It takes strength to admit that there might be difficulties and complexities where a second opinion would be of value. SPS should encourage a ‘culture of consultation’ where its staff and managers can openly consult and share anxieties about difficult cases. I found this less so with senior managers, though some too were concerned that this might reflect poorly on them. In some prisons this is encouraged and there is discussion with the Deputy Governor and Governor. This is to be welcomed. There is also a Head of Residential meeting, where Deputy Governors from different prisons usually meet to discuss operational matters. This would provide a useful forum for discussion of some case histories, using borderline cases to illustrate issues. ***I suggest that SPS should look at ways of encouraging a ‘culture of consultation’ and also use the Head of Residential meeting for developmental purposes.***

5.4 **THINKING ABOUT TRANSFER TO OPEN FROM A PRISONER PERSPECTIVE:** Transfer to Open prison is a big step for a prisoner. There is recognition that he has responded well within the closed and difficult setting of the prison. He has been able to produce a series of drug tests which show him keeping off illegal drugs and he has kept out of serious trouble. He has also participated in a number of interventions designed to meet his needs to reduce criminal behaviour and consequently reduce the risk he poses to the public. There can be a lot riding on managing his stay in Open prison successfully. If he fails he will be returned to a closed prison and likely delay his chance for parole for at least a year. He will lose the opportunity to go home on leave to see his family and the chance to attend work placements or college in the ‘real world’. He will have failed, and this can have serious implications for his self-esteem and the way he views future opportunities. It is therefore important that he receives the best support and preparation before being transferred. This is another reason for not going too soon. The decision to

transfer can be taken in good time, with all reports received, and there should then be a process to prepare him for the change. I heard that this was still something that needed to be done. HMIP also commented on this in their Inspection of the Open Estate: "*There is almost no preparation in closed prisons before prisoners move to the Open Estate*"<sup>26</sup>. If SPS is serious about wanting to ensure reductions in absconds it will want to make sure that prisoners understand what Open prison is about, reduce levels of stress and anxiety and prepare them appropriately.

### **Recommendation 9**

**SPS should produce a 'preparation for Open prison' package which can be delivered to prisoners before their transfer.**

5.5 Cornton Vale (female prison) operates Independent Living Units (ILU) outside its prison which run on similar lines to the Open Estate and can hold up to 24 women. The prisoners in those units benefit from continuity of support while they make the transition from within the prison to the ILU, and they know they will continue to receive support from staff who they have already got to know prior to the move.

5.6 The community based social worker attends prison Integrated Case Management (ICM) case conferences where their contributions are needed. This can be in person or by video link. I am told this is successful because it is also an SPS Key Performance Indicator. Last year (2007-08) the target, which was jointly agreed with COSLA, was for 85%. In fact the actual outturn was 88%<sup>27</sup>. This is an excellent development and will contribute to public safety and help facilitate the offenders return to his home and community. It has been suggested to me that there would be benefit in the community based social worker also attending the (MDPMG) meeting which decides on transfer to Open conditions. I can certainly see the merit in this proposal, although it would mean an extra day taken up with travel to and from the prison for a brief meeting. Some of the MDPMG meetings can consider a number of cases, so the time spent at the meeting itself might be fairly short. On the other hand, it might be possible to try and merge some of these meetings, as a prisoner could be the subject of and ICM case conference, a Risk Management Group and a MDPMG meeting. There is great value in the community Social Worker being able to contribute to the MDPMG, though this is currently achieved through the production of a Home Background Report. **SPS should review the range of meetings to consider progress, risk and assessments and see if it can simplify the process.**

5.7 Community based Criminal Justice Social Workers are already busy people. I gather that last year, approximately 500 Home Background Reports were requested for prisoners transferring to Open prison. This makes huge demands on resources. I have recommended (at 4.15 above) that Open prison should be restricted for use only by LTPs, and that it should be limited to a maximum of 1 year prior to PQD (4.11). Removing STPs from this group

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<sup>26</sup> HMIP Report on the Open Estate, October 2008, at paragraph 1.7

<sup>27</sup> Scottish Prison Service Annual Report and Accounts 2007-08 (July 2008). SG/2008/108.

should reduce the workload and should enable a faster response from Social Work for the smaller number of necessary cases. They already should be familiar with the case because of statutory arrangements. Of course, there will still be other information requirements before a Short Term Prisoner can be released on HDC. The Home Background Report itself can vary and there are differences in content and format in the reports produced by the 32 Local Authorities. I understand that in conjunction with ADSW, SPS is running a pilot project to develop a standardised format. This is timely and to be welcomed.

5.8 In the Foye case, the review report indicated that he met all the necessary criteria as assessed through the prescribed processes. The question that therefore needs to be posed is: were they the right processes and criteria? The Prisoner Supervision System (PSS) is a useful process for determining the level of supervision required within a closed institution. It was not designed to assess the level of danger or risk a prisoner might pose when outside prison. In fact, it specifically discounted this because the previous system, of Category 'A', 'B', 'C' & 'D' led to confusion between the management of the prisoner inside and the risk factors for outside – which are different. The time has come to recognise that two separate assessments are required. First, the 'inside' supervision level. For those who are rated as 'low', there needs to be a second assessment as to their suitability and risk for access to the community. The various systems in SPS do not sit easily together. Some processes are based on length of sentence; PSS is based on internal management; and offender case management which looks and risks and needs operates separately from progression management and in addition to risk management for high risk offenders. Each process uses different forms and reports, and some use different assessment tools. While there is a high level of expertise, it seems that various meetings duplicate work and discussion. It is not that this was wrong, it has evolved over time – but that the state of knowledge in this area, the skills base and assessment tools have been developing. It is time to have a re-think, a rationalisation and simplification. One of the prisons I visited had undertaken some mapping of the processes to ensure better fit and a clearer process. I am aware that SPS is considering this issue and this is to be welcomed. It is likely that there will be some unification through using a single assessment tool, the LS/CMI<sup>28</sup>. Risk assessment is not a simple process and there are two different factors to take into account – the risk of re-offending and the risk of (serious) harm. Although there is always a chance of re-offending, considerations of public safety demand a better understanding about risk of serious harm and how that can be assessed and managed. This is an area where prison staff will need some further training.

5.9 I visited Cornton Vale and discussed the processes for Female prisoners. They follow the procedures as laid down by SPS and their Multi-Disciplinary Progression Management Group is chaired by their Deputy Governor. They raised a question for their own consideration. When a male

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<sup>28</sup> Level of Service Case Management Inventory (LS/CMI) is an assessment tool used extensively by Criminal Justice Social Work. It combines risk assessment and case management into one evidence-based system.

prisoner is transferred, management at the Open Estate review the Prisoner Progress Assessment report prior to accepting the prisoner. This provides a check (though as we saw from the *Martin* case, not a complete one). They suggested that this is something which they do not do, and might think about how they would parallel the process. They saw no problem with restricting the time spent before PQD to 1 year. However, they felt that the Independent Living Units (ILUs), with a capacity of 24 places, served a purpose for some of their Short Term Prisoners (STPs) with significant needs. They see the problems that some women face as being different. Rather than only have access to HDC, they felt that their ILUs could be used as a halfway house in staging the return to the community of women who need extended support, when some of the issues they face also involve them being victims, such as being victims of domestic abuse. These present as issues of safety. I have to say that this (e.g. safety) is not the primary purpose of imprisonment, as they should not need the resources of a prison to deal with some of their domestic, family and safety problems and they should not be sent to Cornton Vale, or retained there without specific criminogenic need. However, I accept that there can be some benefit to the support which the ILUs provide since, as I commented in 5.5. above, they are able to provide a continuity of care and staffing, being located just outside the perimeter of the prison.

5.10 In the past, SPS may not have been so conscious about 'outside risk' as evidenced by historically high numbers of absconds. However, recently, particularly since *Foye*, it has focused much more on risk to the community and the numbers of absconds have been significantly reduced. Except by chance, there never will be a year when absconds are at zero because prison staff are dealing with individual human beings who have emotions, anxieties, frustrations, impulses, and misunderstandings like all of us. And prisoners also have to cope with the additional pressures that exist in prison environments. Nevertheless, SPS must continue to strive to get the balance right. To ensure that proper risk assessments have been made, that public safety is paramount and that when transferred to Open, the long term prisoner will get the support and interventions required to help him in his transition and rehabilitation back to the community.

## **Chapter 6 SUMMARY OF RECOMMENDATIONS and other SUGGESTIONS**

### RECOMMENDATIONS

1. A 'Flag' is placed on the PR2 computer system for 'Absconder/Escaper' and that whenever relevant information is identified or received or an event occurs the 'Flag' is activated. [3.18 – 3.20]
2. Before the final decision is made to transfer to open conditions the prisoner record file(s) are reviewed. [3.21 – 3.22 ]
3. Where the Governor or Deputy Governor does not chair the MDPMG, the agreement for transfer to Open conditions becomes a recommendation which goes to the Governor or Deputy Governor for approval and signing. This is not a decision that can be delegated further down. In relation to Recommendation (2) above it is also my view that the Governor or Deputy Governor when being asked to confirm a transfer to Open conditions additionally reviews the case file to assure themselves that the prisoner is appropriate for transfer to Open conditions and there is nothing known about him or her which would preclude their access to the community. [3.23 – 3.25]
4. A Police Liaison Officer attends the MDPMG meeting and provides the Police intelligence input to decision making. [3.26 – 3.27]
5. Input either in person (by the police and/or the relevant criminal justice social worker) or by tabling of the External Enquiry Form and Home Background Report be made mandatory before a case considering transfer to Open conditions can be discussed. [3.29]
6. Research should be undertaken to determine the efficacy of Open prison, its benefits and the most effective time for transfer of prisoners to open conditions. [4.7]
7. Long Term Prisoners are eligible to access Open conditions too early in their sentence. Long Term Prisoners should not be eligible to be transferred to Open prison any earlier than 1 year before their Parole Qualification Date [4.9 – 4.11]
8. Open prison be restricted for use only by Long Term Prisoners. [4.13 – 4.15]
9. SPS should produce a 'preparation for Open prison' package which can be delivered to prisoners before their transfer.[5.4]

### FOR ACTION

No mention was made, nor apparently cognisance taken, of the police intelligence. This information was available to security and residential staff and was not brought to the attention of the MDPG or its Chairman at HMP Shotts. It will be for SPS to consider what course of action is required over this matter. [3.7 – 3.15]

## SUGGESTIONS

- (a) It is important that SPS's records are as comprehensive as possible and that they include the Trial Judge's Report where available. [3.30]
- (b) SPS should simplify and standardise use of terminology, forms and meetings [3.31] (and similarly) SPS should review the range of meetings to consider progress, risk and assessments and see if it can simplify the process [5.6]
- (c) HDC is already available from closed prison, and consideration should be given to look at the policy and decide whether it should be extended to a broader range of STPs. Indeed, HDC already provides through electronic monitoring greater control over offenders than when on extended home leave. There could also be consideration of the requirement for work, training, or 'community payback' while on periods of HDC. [4.15]
- (d) GPS tagging be considered for Long Term Prisoners in Open conditions [4.18]
- (e) MAPPA arrangements are commenced before relevant offenders are transferred to open conditions. [4.19]
- (f) SPS should look at ways of encouraging a 'culture of consultation' and also use the Head of Residential meeting for developmental purposes. [5.3]