



Ministry
of Justice



Home Office



Department
of Health &
Social Care

Independent Advisory Panel on Deaths in Custody

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<https://www.iapondeathsincustody.org/>

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Rt Hon Robert Buckland QC MP
Lord Chancellor and
Secretary of State for Justice

23 September 2020

Dear Lord Chancellor,

Emergency early release: an important safety valve

I am writing on behalf of the Independent Advisory Panel on Deaths in Custody (IAP) to advise you and your officials to streamline, revise and re-introduce the End of Custody Temporary Release scheme so that it provides the important safety valve the prison service will need as prison numbers rise and the risk of loss of life increases due to a second wave of Covid-19.

The IAP welcomed your announcement on 4th April of End of Custody Temporary Release (ECTR). You explained clearly that this scheme would help to create the headroom needed in overcrowded establishments to follow medical scientific advice. You anticipated at that time that over 4,000 serving prisoners nearing the end of their custodial term would be considered for release under this scheme. As of 24 May, despite the high number apparently eligible, just 79 people had been released and it was becoming increasingly clear that the scheme was not working as planned. Questions were already being asked about whether it would be better to widen the scheme by reducing the number of checks and applying it to more people nearer the end of their sentence. By the time you announced your decision on 19 August to pause it, with little more than 275 temporary early releases achieved since its inception, the scheme had faltered and all but failed

It is our view that the prison service is a disciplined service and had ECTR been a do-able option it would have been delivered in a timely manner. Instead it appears

that the scheme had become mired in bureaucracy and fettered by risk aversion to the point that it was all but impossible to administer.

When you decided to pause the early release scheme, you also decided to keep it under constant review. It is important now to determine what has worked and learn from good practice such as the increased and productive effort to find safe housing for people on release. It is vital to strip out any unnecessary, time-consuming processes that could have caused it to fail. It is difficult to understand, for example, the use of electronic monitoring for people who in a matter of weeks would be released anyway without this additional security measure. However, if tagging is thought essential, then this could be done at home as it is for the tried and tested home detention curfew (HDC) rather than fitting tags in custody with the extra complexity involved.

The number and nature of the new measures introduced under ECTR, including the system for police checks, should be reviewed and assessed as to whether strictly necessary, proportionate to risk and deliverable within a sensible timescale. Clearly there is a balance to be struck. Prison leaders and governors are well placed to advise on how best to make this scheme work efficiently and safely.

The IAP appreciates that during the initial outbreak additional headroom for 'cohorting' prisoners was achieved by court closures with a consequent reduction in numbers receiving custodial penalties; the introduction of new temporary cells in some establishments; restricting movement of prisoners and increasing testing of staff for the virus. By quarantining new arrivals, isolating people with symptoms and shielding vulnerable prisoners, prison service managers and staff have worked steadfastly to prevent coronavirus deaths in custody. Extreme lockdown measures have afforded protection though we are now learning more about their adverse impact on mental health and well-being. The IAP is concerned about reported increases in self-harm in some establishments. Strong leadership, good keyworker schemes, regular communication, more active regimes, family contact and availability of professional mental health support and Samaritan Listeners are all known to help here.

Pressure is mounting again on prison capacity. Resumption of the courts and work to expedite considerable backlogs; expansion of police numbers under new recruitment and the recently announced extension of time on remand will all have an impact on prison numbers. The gravitational pull of some sentencing reforms announced in your White Paper will begin to influence sentencing decisions even before legislation takes effect. Given these drivers to increased overcrowding, the IAP would very much like to see the full range of detailed risk assessments, modelling and projections made by your department and the mitigating steps you plan to take to preserve safety and protect lives.

As Covid-19 sweeps back, the Prime Minister has made it clear that we must all play our part in keeping safe. A costly planned prison building programme notwithstanding, the IAP believes that you will need a workable ECTR scheme to keep people safe in the coming months. This means revising and recalibrating the scheme as a matter of priority so that it works properly.

As you know the IAP has worked closely with Ministers and officials in the Ministry of Justice and HMPPS during this exceptionally challenging period. We will, of course, continue to offer whatever independent support and advice we can to keep people safe. Our advice is intended to help you meet your obligations to protect lives. We are glad that, when you paused the early release scheme, you decided to keep it under constant review. It is an important safety valve that needs to be fit for purpose and ready to use sooner rather than later.

As ever,

A handwritten signature in purple ink, appearing to read 'Juliet Lyon', with a stylized flourish at the end.

**Juliet Lyon CBE,
Chair of the Independent Advisory Panel on Deaths in Custody**