

# PRISONERS' ADVICE SERVICE

.....  
THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

---

**Jude Bunting, a barrister at Tooks Chambers, comments on the difficulty indeterminate sentence prisoners have faced in securing a transfer to open conditions, but how recent cases offer fresh hope for a quicker transfer.**

A transfer to open conditions is a hugely important step for any indeterminate sentence prisoner. The sooner such a prisoner transfers to Category D, the sooner he is likely to be released.

Despite the importance of such a move, in recent years it has become increasingly difficult to transfer to open conditions. Figures recently released suggest that, in December 2011, there were 405 indeterminate sentence prisoners who had passed their tariff expiry date and been approved for a move to open conditions, but who still remained in closed conditions. These prisoners were stuck - unable either to complete any further risk reduction work or to demonstrate their ability to succeed in the community to the Parole Board.

Although the Secretary of State introduced a new prioritisation policy in October 2011, this has so far only affected post-tariff prisoners. As a result, there have been a number of legal challenges to this delay. In two linked claims, *Smith* and *Talbot*, Michael Purdon Solicitors argued that the delays in transferring indeterminate sentence prisoners to open conditions constituted a breach of the Secretary of State's public law duty to provide lifer prisoners with the resources required to demonstrate to the Parole Board (by the time of the expiry of their tariff periods or reasonably soon thereafter) that their continued imprisonment was no longer necessary for the protection of the public.

In these cases, the Secretary of State accepted that there had been an unreasonable delay in transferring Mr Smith and Mr Talbot to Category D prisons, due to there being insufficient places in those prisons to meet the demand from indeterminate sentence prisoners already

approved for transfer to open conditions. The Secretary of State also accepted that the failure to make sufficient places available so as to enable them to be transferred within a reasonable period of time, amounted to a breach of the public law duty to do so.

In other claims, including one brought by the Prisoners' Advice Service, prisoners challenged the failure to make Release on Temporary Licence (ROTL) available when a transfer to open conditions is delayed. After an initial announcement on 16<sup>th</sup> May 2012, the previous ROTL policy has now been relaxed to allow prison governors in the closed estate to assess and, where appropriate, release on temporary licence those indeterminate sentence prisoners whom the Secretary of State has approved transfer to open conditions.

There is one set of prisoners who remain stuck at the back of the queue however: pre-tariff indeterminate sentence prisoners. Until now, the Secretary of State has prioritised post-tariff prisoners for transfer. The legality of this policy will be tested by the Courts in an upcoming claim, *Haney*, which is due to be decided in the coming months.

However, recent weeks have seen a further success in claims by pre-tariff indeterminate sentence prisoners. In the first week of July, the Secretary of State referred the first batch of delayed pre-tariff indeterminate sentence prisoners for transfer to open conditions. This means that they should finally be transferred within the next month.