



Her Majesty's
Inspectorate of
Probation

A thematic review of probation recall culture and practice

A review by HM Inspectorate of Probation
November 2020

Acknowledgements

This review was led by HM Inspector David Miners, supported by a team of inspectors and operations, research, communications and corporate staff. The manager responsible for this independent review was Helen Davies. We would like to thank all those who participated in any way in this review. Without their help and cooperation, the review would not have been possible. Please note that throughout the report the names in the practice examples have been changed to protect the individual's identity.

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This publication is available for download at:

www.justiceinspectorates.gov.uk/hmiprobation

Published by:

Her Majesty's Inspectorate of Probation
1st Floor Civil Justice Centre
1 Bridge Street West
Manchester
M3 3FX

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Foreword

The power to recall a person to prison is a significant one. It is one of the most important decisions probation officers make and over 27,000 of these decisions were made in 2019/2020. The immediate consequences for the recalled prisoner are self-evident, but the decision also has consequences for victims, potential victims and the public at large. In part one of this independent review, published in June 2020, we reviewed the case of Joseph McCann and expressed serious concerns about decision-making in relation to recall during the period 2017 to early 2019. We have not found a repeat of those concerns in part two, our review that looks at current recall culture and practice in the period since then. Probation staff are clear that public protection is the primary concern in recall decisions, and this was reflected in the cases we reviewed.

Recall decisions are often complex and frequently rely on the analysis of detailed information and behaviour. It is important, therefore, that they are supported by a methodical, consistent and fair process. The National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) currently have different processes for recalling individuals, and these are applied inconsistently. It is important that recall decision-making is prioritised and operational staff are given the necessary time and management support to make effective decisions. Probation staff have concerns about the professional and personal consequences if they fail to instigate a recall and a high-profile incident subsequently occurs. A professional culture needs to be at the heart of recall decisions. This requires a consistent process and operational staff having the confidence that they will be supported if they make considered, defensible decisions.

We have found that the current system for licence warnings, which are designed to prevent the need for a recall, varies both between and within organisations and its effectiveness has not been evaluated. Nearly all of the cases we reviewed where a warning had been issued still resulted in recall, raising questions about the impact of this approach. Furthermore, license warnings are not subject to additional scrutiny outside of the normal management oversight of cases. This requires urgent attention. It potentially results in inconsistent licence enforcement and is also unfair from the perspective of procedural justice. Alternatives to recall are often used alongside licence warnings, but the effectiveness of this strategy has not been reviewed since it was implemented in 2017. We are satisfied that when alternatives to recall are considered they are balanced against the requirements of public protection, but there is inconsistency in both their accessibility and use.

Decisions on recall and licence warnings often rely on the judgement of individual practitioners, but these decisions and practice judgements are not routinely monitored for bias and unconscious bias. Disproportional outcomes, particularly for black, Asian and minority ethnic service users, have been identified in other parts of the criminal justice system, but they are not routinely monitored in relation to recall decisions. This needs to be addressed to ensure that recall decisions are routinely scrutinised and any learning can inform improvements in probation practice.

Decisions on recall and licence warnings are complex. Across the nine organisations we inspected, there were examples of responsible officers taking recall decisions to protect victims, potential victims and the public. There were also examples of probation staff coordinating comprehensive support packages for individuals in an attempt to break entrenched patterns of criminal behaviour. This professionalism should be built on with the aim of developing a confident, professional organisational culture. To this end, our recommendations are designed to strengthen the process and support probation staff in their decision-making.



Justin Russell
HM Chief Inspector of Probation

Contextual facts¹

79,078	The total adult prison population on 30 June 2020
9,211	The number of adults in prison due to recall on 30 June 2020
12%	Percentage of the prison population in custody due to recall
61,605	Total number of releases from prisons between April 2019 and March 2020 (adult)
70,136	Average number of post-release cases under probation supervision between April 2019 and March 2020
27,025	Total number of licence recalls between April 2019 and March 2020 (adult)
50% NPS 50% CRC	Percentage of recalls by probation provider between April 2019 and March 2020
38% standard 37% fixed term 8% Home Detention Curfew 17% emergency (of which 4% were for indeterminate sentences)	Percentage of recalls by recall type between April 2019 and March 2020
34% less than 12 months 62% 12 months or more 4% indeterminate sentences	Percentage of recalls by sentence length between April 2019 and March 2020
92% male 8% female	Percentage of recalls by gender between April 2019 and March 2020

¹ Ministry of Justice. (2020). *Offender management statistics quarterly: January to March 2020*.

Executive summary

Context of the review

On 05 March 2020, the Secretary of State for the Ministry of Justice announced that an independent review of the case of Joseph McCann would be undertaken by Her Majesty's Inspectorate of Probation. The review would be in two parts. Part one was to focus on the supervision of Joseph McCann by the National Probation Service (NPS) and part two would review the current probation culture and practice in respect of recall. Part one was published on 30 June 2020. This report constitutes part two of the review.

Part two was completed against the background of COVID-19. Nine probation providers were involved in the review and 39 meetings with managers and operational staff took place remotely via video or telephone conference during July and August 2020. We inspected a sample of 50 release licence cases that had been recalled or had warnings issued between October 2019 and February 2020. Where available, we also interviewed the allocated responsible officer. The case sample predated the probation exceptional delivery model (EDM) introduced at the end of March as a result of the COVID-19 crisis. The EDM ensures that public protection continues to be the priority for probation providers. The learning and recommendations from this inspection apply to probation practice both before and after the introduction of the EDM.

Recall decision-making and threshold

We found that public protection and the protection of victims are central to probation service decision-making on recall. Operational staff are clear that this is the primary focus of recall practice. Alternatives to recall are routinely considered where appropriate, but this does not compromise the focus of decision-making on public protection.

In 2019/2020, 34 per cent of recalls included a failure of the service user to keep in touch with their supervising officer as the reason. Responsible officers make impressive efforts to engage non-compliant service users and often put comprehensive support packages in place. These cases are resource-intensive and frequently result in a recurring cycle of release and recall.

Licence enforcement and recall requires a consistent process that must allow for individualised decision-making. It is rarely a simple decision and probation practice must allow for the key information to be assessed and reviewed. Responsible officers require the necessary time and management support to obtain and analyse information and make good decisions. Office practice and procedures should enable such a process to ensure that recall and warning decisions are defensible and not overly cautious. We found that this varied between offices and organisations.

Probation organisations have communicated the Recall, Review and Re-Release of Recalled Prisoners Policy Framework (RPF)² to their staff, but staff and managers' knowledge of the specific processes and criteria is inconsistent. Operational staff were, however, clear that decisions on recall must focus on increases in the risk of serious harm linked to previous patterns of behaviour. Communication of the revised framework has been stronger in the NPS than in the CRCs, but communication within individual divisions has not been part of a coordinated national strategy. This lack of coordination has reduced the impact of a key national policy.

Licence warning and alternatives to custody

A breach of licence conditions does not automatically result in the instigation of recall. Where probation providers assess that individuals can still be managed safely in the community, they can

² HM Prison and Probation Service. (2019). *Recall, Review and Re-release of Recalled Prisoners Policy Framework*.

issue a licence warning. Licence warnings can be accompanied by amended licence conditions. These may include increased levels of contact; cooperating with activities such as drug testing; or additional restrictions in relation to residence or curfew.

Current licence warning practice is inconsistent both between and within organisations. There are inconsistencies in the threshold, recording and delivery of warnings. This makes it difficult to identify cases where the service user has been warned and not recalled and to operate effective quality assurance processes. In most cases where warnings have been issued, recall to prison is still the eventual outcome. This underlines the need to review practice and issue a revised licence warning process.

Practitioners now take a balanced approach when deciding between recall and alternatives to recall, and this approach is considered good practice across organisations. However, access to and use of alternatives to recall, such as approved premises (APs) and electronic monitoring, are inconsistent. Probation organisations have not analysed the effectiveness of the overall strategy on alternatives, or whether it averts or simply delays an eventual recall. The role of APs as an alternative to recall requires clarification. NPS responsible officers, in contrast to AP managers and staff, regard APs as an important alternative to recall.

Quality assurance

Rates of recall vary both between and within organisations. This variation cannot be accounted for solely by the circumstances of the individual case. In the NPS, divisions receive information on performance on a quarterly basis. This includes the number of recalls and the reasons for them, along with the number of licence variations. There are no performance targets in relation to recall numbers, but the reports highlight local delivery units where recall rates significantly deviate from the national average. NPS divisions use this information to monitor variations. The CRCs generate information on recalls as part of their enforcement monitoring. Again, there is no performance target for the number of recalls, and organisations do not monitor any actions taken as an alternative to recall. CRCs do, however, monitor the rates of recall. For example, one CRC identified a low rate of recalls and amended its practice as a result.

The routine quality assurance of recall decisions is reliant on each senior manager's endorsement of the practitioner's decision as part of the decision-making process. Licence warning decisions are not the subject of any targeted monitoring or review. Some probation providers use the national Alternative to Recalls and Recall Report Part A quality assurance tool,³ but this focuses on recall cases only rather than looking also at cases where recall was decided against. NPS London and NPS North East have undertaken their own quality assurance and dip-sampling initiatives to monitor recall cases for disproportionality. However, probation providers do not routinely review recall decisions to check for bias and unconscious bias.

Organisational culture

Recall culture and practice are directly influenced by national policy and high-profile serious case reviews. In recent years there was a widespread belief among operational staff that recalls should be minimised. More recently there have been fears that responsible officers will be unfairly held responsible for any adverse consequences resulting from a failure to instigate recall. Both perceptions undermine professional decision-making, which must be at the core of the process. The current correct balance between alternatives to custody and public protection is understood by operational staff. To ensure operational staff do not become too cautious in their approach, there needs to be a consistent decision-making process both for recalls and decisions not to recall. The development of a professional culture depends on operational staff feeling confident that

³ HM Prison and Probation Service. (2019). *The Alternatives to Recall and Recall Report Part A Quality Assurance tool. Version 2. NPS Quality and Effectiveness.*

defensible, professional decisions will be supported if a serious incident does occur involving a person under supervision.

There are significant differences in recall practice and culture between the CRCs and NPS divisions. These include differences in the level of management endorsement; staff expectations; the understanding of the RPF; and differences in types of recall. These differences were recognised by Her Majesty's Prison and Probation Service (HMPPS) Wales in the training activities its staff undertook in the three months after reunification in December 2019. The NPS divisions and CRCs in England should learn from this example. Given the importance of recall decision-making, the NPS and CRCs should prioritise communicating the RPF to staff and embedding a consistent recall process when they are re-joined.

Public Protection Casework Section (PPCS) and the post-recall process

The relationship between the central HMPPS PPCS and probation providers operates efficiently. Emergency and out-of-hours recalls are processed promptly, and the PPCS's advice on the recall threshold is viewed positively by both senior and operational managers.

Following a standard recall, both responsible officers and the PPCS can review cases and decide to re-release a recalled prisoner under the executive release scheme. The operation of executive release is inconsistent. Responsible officers are uncertain about the operation of the process and the number of releases varies between providers. Consideration for release should not depend on which organisation a person is supervised by. The administration and use of the process should be reviewed.

The PPCS must refer all standard recall cases to the Parole Board within 28 days of a prisoner's return to prison. This includes consideration of the Part B risk management report that responsible officers submit to the PPCS within 10 days of a prisoner's return to custody. This timescale allows time for prisoners to make representations to the Parole Board on the contents of the document. Part B risk management reports include a recommendation as to whether the prisoner should be re-released. The current process for completion is not working efficiently. To complete the report within the timescale, responsible officers must have quick access to prisoners immediately after their return to prison. Access, however, is inconsistent and responsible officers are frequently left without the necessary information to make an informed recommendation on re-release.

Recommendations

Her Majesty's Prison and Probation Service should:

1. introduce a revised process for issuing licence warnings that includes guidance on thresholds, practice advice, and the recording of management decisions
2. review the use, accessibility and effectiveness of alternatives to recall. This should include the role of approved premises
3. analyse information on recalls to identify any significant variations in practice both between and within organisations. This should include the recall rates for women and black, Asian and minority ethnic service users
4. ensure that bias and unconscious bias in recall decisions are reviewed as part of the recall quality assurance process
5. review the responsibilities and the actions of the Part B risk assessment process, including the 10-day timescale, to ensure the submitted risk management report is based on all relevant information
6. review the operation of executive release to ensure it operates consistently across all organisations
7. ensure there is the necessary time to fully assess the suitability of potential release addresses when implementing home detention curfew arrangements.

Her Majesty's Prison and Probation Service, together with the Community Rehabilitation Companies, should:

8. ensure there is a shared understanding of the recall framework, including thresholds and criteria, within the new English regional probation divisions, when the CRC contracts end. This should include training in line with the events undertaken by HMPPS Wales following re-unification in December 2019.

1. Introduction

1.1 Background to this thematic review.

On 09 December 2019, Joseph McCann was sentenced to 33 life sentences for series of violent and sexual offences. At the time of these crimes, Joseph McCann was subject to supervision by the National Probation Service (NPS) following his release from prison on licence. The seriousness of the offences resulted in an automatic serious further offence (SFO) review being undertaken by the NPS. The circumstances of the case caused serious public concern. On publication of the SFO review in March 2020,⁴ the Lord Chancellor and Secretary of State for Justice commissioned a separate independent review to be undertaken by HM Inspectorate of Probation.

The review was to be in two parts. Part one, which was published on 30 June 2020, focused on the individual management and decision-making by the NPS in its supervision of the case.⁵ Part two was to be a thematic review of recall culture and practice across probation providers. Specifically, part two of the review was to identify whether there was any evidence that the mistakes made in the Joseph McCann case were a feature of recall decision-making across probation providers more generally. The following elements of the probation caseload were identified as the key areas of focus for the review:

- NPS and CRC-managed licence and recall cases
- cases sentenced as adults
- determinate sentence cases
- indeterminate sentence cases
- the recall process.

This report forms part two of the independent review requested by the Secretary of State for Justice. The full terms of reference are in Annexe 1.

1.2 Release on licence and recall to prison

All prisoners who are sentenced to imprisonment for a criminal offence and released in England and Wales are released on licence, which is supervised by the probation service. For most prisoners serving determinate sentences, their conditional release date is halfway through their prison sentence. They are then supervised on licence in the community for the remaining period of their sentence. *The Offender Rehabilitation Act 2014* (ORA) resulted in prisoners serving sentences of less than 12 months being released on licence for the first time. To ensure all prisoners received a minimum of 12 months' supervision by probation providers after release, this act introduced post-sentence supervision (PSS) for cases where the licence period was less than 12 months. In these cases, PSS begins when the licence period expires. Unlike licence conditions, however, probation providers cannot recall individuals subject to PSS. Enforcement of PSS requires formal breach proceedings at a magistrates' court.

Prisoners can be released earlier than the halfway stage of their sentence if they are released subject to home detention curfew (HDC). Arrangements for early release under HDC were revised in 2018 by Probation Instruction PI 01/2018,⁶ and this widened the eligibility criteria for releasing prisoners. Prisoners sentenced to between 12 weeks' and four years' imprisonment are eligible for

⁴ Ministry of Justice. (March 2020). *Serious further offence review in the case of Joseph McCann*.

⁵ HM Inspectorate of Probation. (June 2020). *Independent review of the case of Joseph McCann: final report*.

⁶ HM Prison and Probation Service. (2018). *Home Detention Curfew Assessment Process Probation Instruction 01/2018*.

release, under an electronically monitored curfew, up to 135 days before their conditional release date. The electronic monitoring services are responsible for electronic curfew arrangements, including advising PPCS of a breach of electronic monitoring conditions, but the other conditions of release on HDC are managed by probation providers.

The release of prisoners serving indeterminate sentences for either life or imprisonment for public protection is authorised by the Parole Board. Although the sentencing judge will set a minimum tariff for the time a prisoner must spend in custody, the decision to release the prisoner once this period has been served is the responsibility of the Parole Board. Once released, prisoners serving indeterminate sentences are subject to an indeterminate licence period supervised by the probation service. The supervision element of the licence can be suspended if appropriate. The released individual can, however, potentially be recalled to prison for the remainder of their life.

1.3 The Recall, Review and Re-release of Recalled Prisoners Policy Framework

The Recall, Review and Re-release of Recalled Prisoners Policy Framework (RPF)⁷ sets out the recall and release process and criteria for determinate and indeterminate prisoners. This guidance was initially issued to probation providers by the Ministry of Justice in April 2019 and re-issued with minor amendments in February 2020.

The guidance sets out the context and responsibilities of recall decision-making for both determinate and indeterminate sentences. The decision to recall an individual on licence to prison is the responsibility of probation providers. Recall to prison means that, potentially, a prisoner could serve the remainder of their licence period in prison or, for prisoners serving an indeterminate sentence, the time that is viewed as necessary to ensure a safe future release by the Parole Board. The decision to return an individual to prison clearly has significant consequences and it must be based on a breach of the release licence conditions.

Any decision by probation providers to recall an individual serving a determinate sentence to prison must be based on their behaviour on licence. Reasons for recall include:

- being charged with or committing further offences
- behaviour that indicates an increased risk of serious harm to the public or an imminent risk of further offences
- a breach of any licence condition, including the requirement to keep in contact and report to responsible officers.

The recall criteria for individuals subject to indeterminate sentences are different in order to account for the potential consequences of returning somebody to prison indefinitely. A 'causal link' must be identified between the behaviour causing concern and the behaviour exhibited at the time of the index offence. This could include evidence of:

- behaviour associated with the circumstances of the index offence
- behaviour likely to give rise to a sexual or violent offence
- behaviour associated with the commission of a sexual or violent offence
- failing to maintain contact with the responsible officer with the assumption that further sexual or violent offending might arise.

The RPF sets out the three different recall processes:

- **Fixed term recall.** This can be considered by probation providers only for individuals subject to a determinate sentence. Recalled prisoners are automatically re-released after a fixed period. Prisoners sentenced to less than 12 months are recalled for 14 days, and those

⁷ HM Prison and Probation Service. (2019). *Recall, Review and Re-release of Recalled Prisoners Policy Framework*.

serving 12 months or over are recalled for 28 days. Individuals serving indeterminate or extended sentences are not eligible for fixed term recall.⁸

- **Standard recall.** This applies to all cases where the risk of serious harm to the public is too high for a fixed term recall to be considered. Standard recall could result in the individual remaining in custody until the sentence expiry date. Recalled individuals therefore have a statutory right to have their case referred to the Parole Board. All individuals subject to indeterminate and extended sentences are processed under standard recall procedures.
- **Emergency recall.** When the risk of serious harm to the public or a specified individual is assessed as imminent, probation providers can request an emergency recall. This ensures that the police receive notification of the licence revocation within two hours and therefore have authorisation to arrest the individual and return them to prison. Indeterminate sentences are all processed as emergency recalls.

Probation providers are responsible for initiating recall decisions, which are submitted to the Public Protection Casework Section (PPCS) in a recall report called the Part A. The PPCS works within the Public Protection Group (PPG) in HMPPS and makes the final decision to authorise a recall on behalf of the Secretary of State for Justice. The role of PPCS is central to the recall process. As well as authorising and processing all recalls (including emergency recalls), it provides advice to responsible officers and managers about recall thresholds; can, if assessed as necessary, change the type of recall requested; manages the process for the statutory referral of recalls to the Parole Board; and exercises the Secretary of State's executive power to re-release certain recalled prisoners.

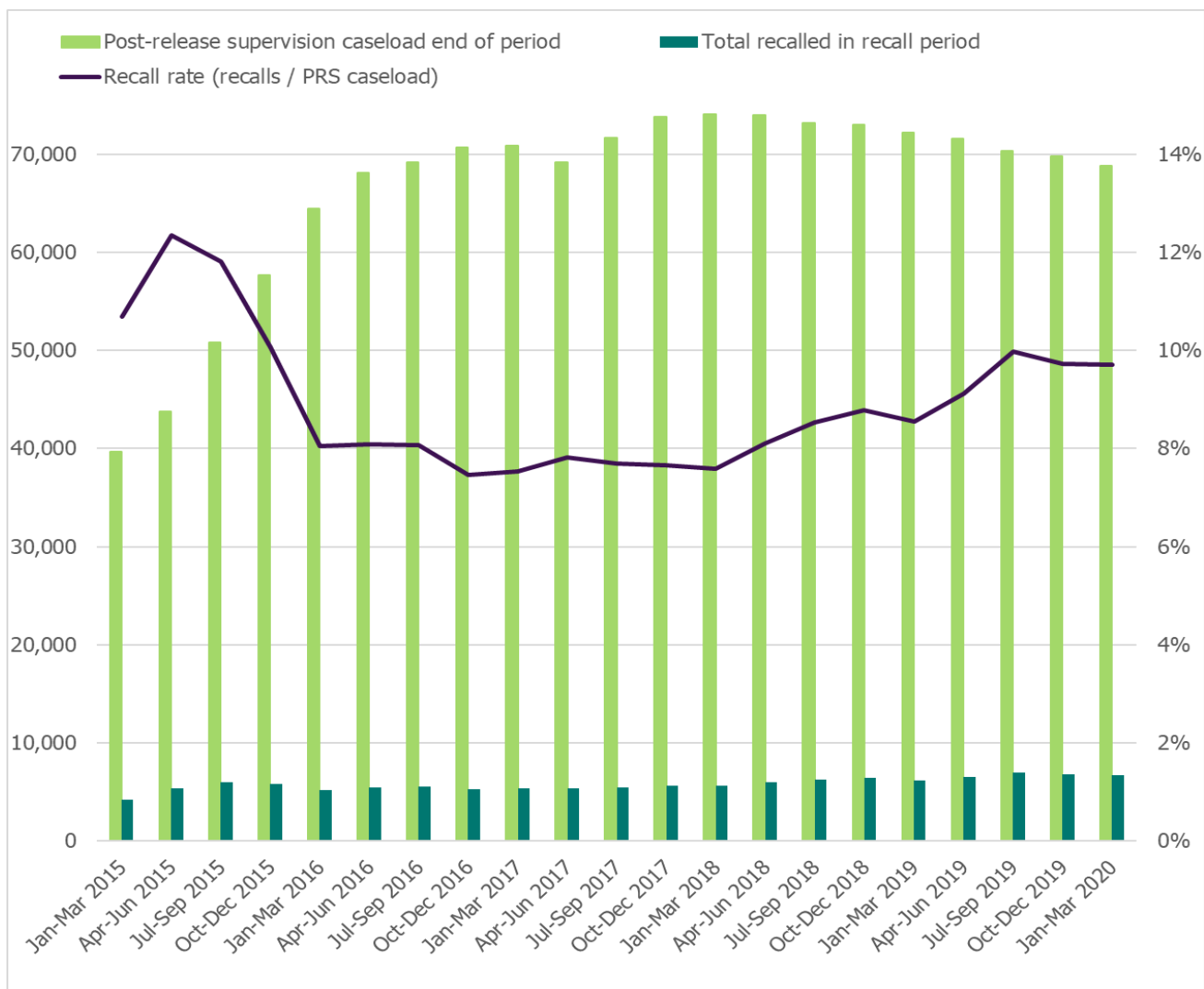
1.4 Key facts and data

On 30 June 2020 there were 9,211 prisoners who had been recalled to prison by probation providers. This constituted 12 per cent of the total prison population.⁹ The number of recalled prisoners demonstrates the central role of recall decision-making in both probation practice and in exercising probation providers' responsibility to protect the public. For the purposes of this review however, we estimated the recall rate by dividing the number of recalls undertaken in each quarter by the post release caseload at the end of the quarter (for further information see Annexe 2 Methodology). Figure 1 shows this estimated rate of recall since 2015 set against the post-release supervision caseload.

⁸ Section 226a of the *Criminal Justice Act 2003* gave judges the power to impose extended sentences on adult defendants for public protection. The defendant must have committed a violent or sexual offence listed in schedule 15 of the act and be assessed by the judge to be dangerous (a significant risk to the public of committing other specified offences). Those sentenced to less than 10 years are released on licence two-thirds of the way through their sentence. For those serving over 10 years, release is decided by the Parole Board. The licence period can be extended by up to five years for a violent offence and eight years for a sexual offence.

⁹ Ministry of Justice. (2020). *Offender management statistics quarterly: January to March 2020*.

Figure 1



The increase in the caseload between 2015 and 2017 resulted from the implementation of the *Offender Rehabilitation Act 2014* (ORA) and the consequent increase in the number of individuals released on licence. Although the number of recalls initially increased immediately after the implementation of ORA 2014, the number of recalls did not increase at the same rate as the total post-release caseload. This meant the overall rate of recall fell during 2015/2016. In HM Inspectorate of Probation’s independent review of the case of Joseph McCann, we assessed the impact of policy initiatives in relation to imprisonment for public protection (IPP) cases¹⁰ and alternatives to recall¹¹ on the number of recalls between 2015 and 2017.¹² These policies emphasised the routine consideration of alternatives to recall before the instigation of any recall. It is not possible to prove causality, but our view was that the decrease in the recall rate after 2016 was linked to these policies. Since 2018, the number of recalls has risen again, by 12 per cent in 2018/2019 and a further 9 per cent in 2019/2020. Again, causality cannot be established in relation to these rises but the clear view of probation senior managers and operational staff is that the rise since 2018 is linked to the publication of HM Inspectorate of Probation’s high-profile review of cases

¹⁰ HM Prison and Probation Service. (2017). *IPP action plan*.

¹¹ National Probation Service. (2017). *Alternatives to Recall guidance*. HMPPS. (2017). *Alternatives to Recall team briefing pack*.

¹² HM Inspectorate of Probation. (June 2020). *Independent review of the case of Joseph McCann: final report*.

such as Leroy Campbell¹³ and the publicity surrounding Joseph McCann. The implementation of the RPF in 2019, with its renewed emphasis on public protection being at the heart of recall decision-making, is also viewed as an important factor.

The most recent information on recall shows that the trend of increasing recalls has been maintained, although the rate of increase has eased. Between 01 April 2019 and 31 March 2020, 58,520 adult prisoners were released on licence from prison and supervised by probation providers. The total number of post-release cases managed by probation providers during this period averaged 70,136 per quarter (this included PSS cases, which are not subject to recall). The total number of recalls for the period was 27,025, an average of 6,756 per quarter. The recall rate¹⁴ averaged 10 per cent during this period. The 6,690 recalls in the final quarter of 2019/2020 represented an eight per cent increase on the number of recalls in the same quarter the preceding year. Eight per cent of the recalls undertaken in 2019/2020 were for women.¹⁵ Although some organisations monitor recalls in relation to other protected characteristics, this information is not routinely collated and communicated nationally. Exceptional delivery models were implemented in April 2020 as a result of COVID-19. The recall data for this period has not yet been published, but senior managers reported during our review that recall rates have remained stable and, in some cases, slightly decreased.

1.5 Inspection reports and profiles of recalled prisoners

HM Inspectorate of Probation undertook a post *Transforming Rehabilitation* inspection of enforcement and recall decisions in 2017/2018.¹⁶ At the time, magistrates and others had expressed a lack of confidence in enforcement practice. Our primary focus was on community enforcement work, but we also reviewed 52 NPS and CRC licence cases. While we had concerns about CRCs' community enforcement work and decision-making, we judged almost all the NPS and CRC recall decisions to be appropriate.

In May 2019, the HMPPS Operational and Systems Assurance Group (OSAG) produced the *CRC management of offenders recalled to custody: final thematic report*.¹⁷ The report reviewed the management of cases that had been recalled to custody, as well as the recall decision. It analysed over 414 cases and found that, while the final decision to recall an individual to custody was usually appropriate, the management of cases before and after release from prison was often insufficient. Areas identified included poor pre-release work; inconsistent access to programmes and services; and inadequate risk management planning in many cases. It also highlighted that there was no quality assurance process to review recall decisions and prompt consideration of alternatives to custody.

In 2018, HMPPS produced an analytical summary indicating that recalled prisoners had higher levels of assessed risk of serious harm and more complex needs than the prison population as a whole.¹⁸ Interviews and surveys indicated that recalled prisoners often experienced their recall as unjust and felt they were not sufficiently informed or included in decisions about them. Interviews with a small sample of responsible officers revealed perceived barriers to progressing cases positively following a

¹³ HM Inspectorate of Probation. (2018). *Independent review of the case of Leroy Campbell: final report*.

¹⁴ The estimated recall rate was derived by dividing the number of recalls undertaken in any quarter by the post release caseload at the end of the quarter. All references to recall rate are estimated on this calculation.

¹⁵ Ministry of Justice. (2020). *Offender management statistics quarterly: January to March 2020*.

¹⁶ HM Inspectorate of Probation. (2018). *Enforcement and Recall*.

¹⁷ HMPPS Operational and System Assurance Group. (May 2019). *CRC management of offenders recalled to custody: final thematic report*. London: HMPPS.

¹⁸ Fitzalan Howard, F., Travers, R., Wakeling, H., Webster C. and Mann, R. (2018). *Understanding the process and experience of recall to prison*. London: [HMPPS Analytical Summary](#).

recall. These included a lack of access to interventions or accommodation. They also identified that a lack of motivation to engage with supervision was frequently a key factor in negative outcomes. The summary concluded that both the quality of supervisory relationships and communication should be improved, to enhance the prospect of positive outcomes for recalled prisoners.

1.5 Aims and objectives

This review seeks to answer the following questions:

- Are the processes around recall properly matched to appropriate levels of risk of serious harm?
- Are responsible officers and their line managers making the right decisions on recall, in line with the guidance? Are they clear about what this guidance means?
- What impact has national policy had on recall decision-making? What is the impact of serious further offences and high-profile case reviews?
- Is there a culture of risk aversion in relation to recall decision-making and, if so, what is the impact?
- What management oversight is there of recall decisions and is this set at the right level and correctly exercised?
- Is there a consistent understanding of recall criteria and practice across senior managers and operational staff?
- How are recall and warning decisions monitored and quality-assured?

1.6 Report outline

Chapter	Content
2. Recall threshold and decision-making	Recall decision-making The reasons for recall The recall threshold Threshold variations
3. Licence warnings and alternatives to recall	Licence warnings The consistency of warning decision-making, recording and communication Alternatives to recall The effectiveness of warnings and alternatives to recall
4. The recall process: other key issues	Out-of-hours recalls Home detention curfew Quality assurance and disproportionality Recall to prison and executive release

2. Recall threshold and decision-making

This chapter considers the recall decision-making process and analyses why recall decisions are taken. It considers how recall decisions are made and whether the recall threshold is applied consistently, both within and between organisations. In particular, it reviews the impact on decision-making of the implementation of the 2019 Recall, Review and Re-release of Recalled Prisoners Policy Framework. Finally, it examines the effectiveness of recalls in relation to public protection and improving the compliance of individuals who are released on licence.

2.1 Recall decision-making

Probation providers are responsible for deciding whether an individual is recalled to prison. The decision to revoke an individual's licence is a serious one. It has immediate consequences for the person on licence and can be a decisive action in directly protecting potential victims and the public. It is therefore essential that the decision-making is consistent, methodical and fair. The process aimed at ensuring this, in both the NPS divisions and CRCs, is similar but with significant differences.

In both organisations, the responsible officer completes the standard Part A recall report, and a senior probation officer endorses the report before submitting it to the PPCS within 24 hours of the decision being taken. In the NPS, assistant chief officers are also required to confirm their agreement with the recall decision. As well as confirming the recall, the Part A form makes clear that the assistant chief officer's confirmation is also an endorsement of the overall quality and content of the report.

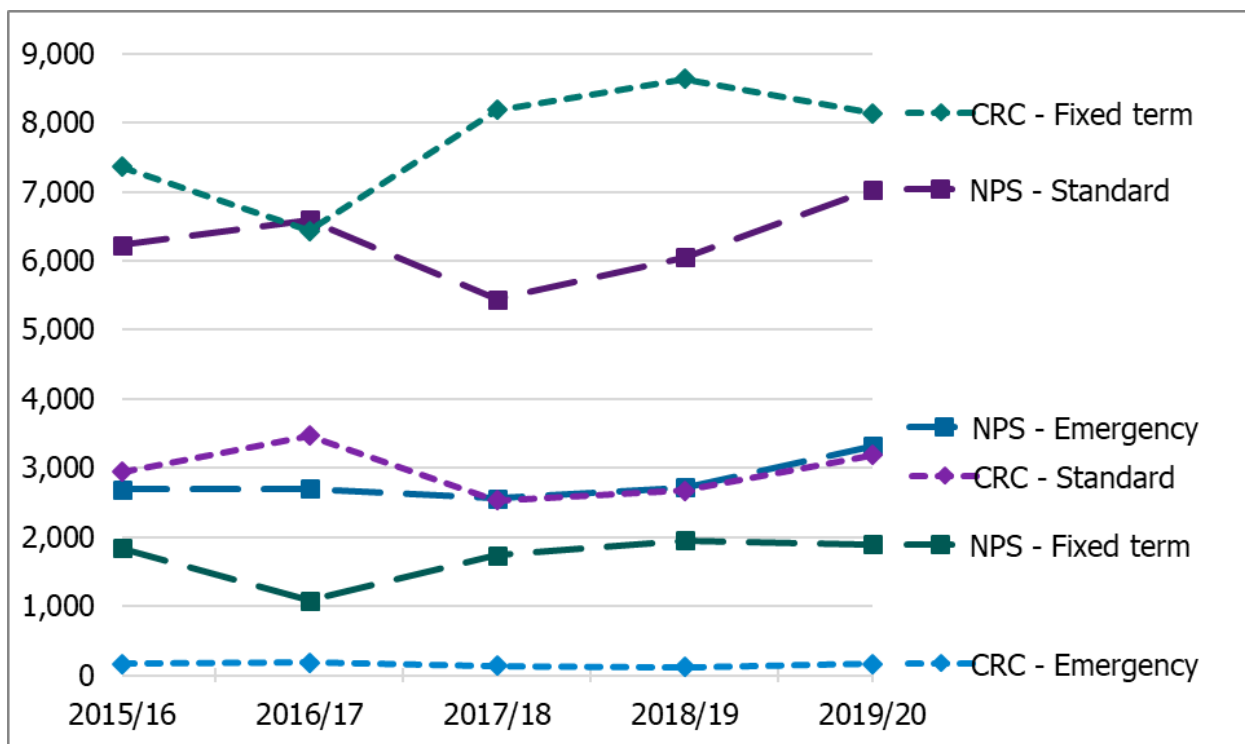
The CRC contract requires recall reports on low or medium risk of serious harm cases to be endorsed by senior probation officers prior to submission to the PPCS. As only the NPS manages high risk of serious harm offenders, any CRC recall cases that assess the risk of serious harm as increasing to high or very high require the endorsement of an NPS assistant chief officer. In practice, we found variations in how different CRCs implement this model. In some CRCs, only senior probation officers endorsed recall decisions; while in others, senior managers sanctioned the decision. In one CRC, concerns arose that the low number of recalls being undertaken; this resulted in a change in practice and all licence enforcement decisions being authorised by senior managers. This change in practice contributed to the number of recalls increasing by 26 per cent between 2018/2019 and 2019/2020. As well as being an example of effective management, this demonstrates the necessity, in our view, of senior managers being directly involved in recall decision-making.

CRC managers view the requirement for NPS senior managers to endorse their decisions in relation to high risk of harm offenders as unnecessary and inefficient. None of the cases we reviewed involved a CRC case being endorsed by the NPS as part of the recall process, and CRCs could not identify how many cases this applied to. The implementation of the new unified probation delivery model in Wales in December 2019 has eliminated the need for this part of the recall process. The extension of the model to the 10 regional divisions in June 2021 will see this replicated in England.

The recall decision for determinate sentences includes deciding whether to instigate a standard or a fixed term recall. This decision is mainly the responsibility of probation providers. However, PPCS has the authority to convert a fixed term recall to a standard recall, or a standard recall to a fixed term recall, on reviewing the case. The risk of serious harm and the management of the service user in the community are the key criteria, set out in the Part A recall report, for this decision. Fixed term recalls are primarily used by probation providers in cases where there is poor compliance with reporting conditions. Responsible officers have to balance potential loss of accommodation or services with the risk of re-offending and the requirement to enforce the licence. In our review of cases, fixed term recalls were used appropriately to stabilise chaotic lifestyles and to re-establish compliance before re-release.

Figure 2 depicts the proportion of fixed term, emergency and standard recalls since 2015/2016.

Figure 2. Number of recalls by type of recall and by provider type



The NPS supervises all cases that present a high risk of serious harm, and it is therefore not surprising that it instigates the majority of standard recalls. Similarly, since only NPS cases reside in APs, which house the highest risk persons under supervision, it is to be expected that the NPS will be responsible for most emergency recalls.

The fall in recalls after 2016/2017 was most pronounced for standard recalls in both the CRCs and the NPS. Fixed term recalls in the same period fell in the NPS but increased in the CRCs. This adds weight to the view that the alternatives to recall strategy had more impact on recall practice in the NPS than in CRCs (see chapter 3). Standard recalls for both CRCs and the NPS have increased since 2018. Fixed term recalls have slightly increased in the NPS and slightly reduced in CRCs. This increase in the use of standard recalls is in line with the renewed focus on public protection in recall decisions since 2018.

Probation providers can request emergency recalls in cases where it is assessed that there is an imminent risk of serious harm and that further offences are highly likely. Emergency recall is mandatory for individuals sentenced to indeterminate sentences; Multi-Agency Public Protection Arrangements (MAPPA) level 3 cases; and critical public protection cases authorised by the PPCS.¹⁹ Emergency recalls are processed by probation providers contacting the PPCS directly. Officials in the PPCS will decide whether the threshold has been met and, if so, authorise an emergency recall. The police are notified of an emergency recall within two hours of the recall being submitted to the PPCS. Probation providers have 24 hours to submit the recall report after the request for emergency recall has been agreed with PPCS. All recalls undertaken outside of office hours are processed as emergency recalls, and PPCS operates a 24-hour duty system to respond to requests.

The recall decision-making process is supported by the interface between probation providers and the PPCS, which authorises recalls on behalf of the Secretary of State. PPCS is not responsible for

¹⁹ Probation providers can apply to PPCS for cases managed in the community to be registered as public protection cases. Cases can include individuals assessed as very high risk of serious harm or high-profile cases. Registration potentially enables additional resources to be allocated in the management of the case.

deciding whether the recall decision is appropriate, but it is responsible for ensuring there is sufficient evidence to justify the decision. The relationship between probation providers and PPCS works effectively. Local senior and operational managers value PPCS's guidance on thresholds and advice. Emergency recalls, when necessary, are processed efficiently. Operational staff also consult PPCS to discuss potential recalls with a PPCS caseworker. PPCS does not undertake formal quality assurance of recall cases, but it does use its review of submitted recall reports and case discussions to ensure that recall thresholds are consistent.

2.2 The reasons for recall

Between April 2019 and March 2020, probation providers instigated 27,025 recalls to prison. Of these, 38 per cent were standard; 37 per cent fixed term; 17 per cent (4 per cent for indeterminate sentences) emergency; and 8 per cent for breach of HDC. Emergency recalls, by their very nature, indicate that there is an assessed imminent risk of serious harm. Standard recalls are also primarily instigated due to concerns about the risk of serious harm and further offending. This assessment is based on an individual's behaviour on licence. In the 2019/2020 recall figures, non-compliance with licence conditions was identified as a reason for recall in 73 per cent of cases. This could include any breach of a licence condition, such as failure to inform a responsible officer of a new relationship or prohibited contact with victims or potential victims, identified on a release licence. In many cases, therefore, non-compliance is directly linked to an increase in the risk of serious harm. In 34 per cent of recall cases during the same period, failing to maintain contact with the responsible officer was identified as a reason.²⁰ This failure to report as directed may indicate an increase in the risk of serious harm. It is, however, often directly related to entrenched patterns of behaviour underpinned by addiction and welfare problems. These two reasons for recall – the increase in the risk of serious harm and the failure to maintain contact with the responsible officer – were evident in our detailed review of 50 recall and warning cases.

a) Recall for failing to maintain contact with the responsible officer

In just under half of the cases we looked at, the individual on licence was out of contact with the responsible officer at the time of the recall decision. In some of these cases this lack of cooperation with reporting conditions was part of an entrenched pattern of behaviour, with the consequence that the individual was in and out of prison during the licence period. These 'revolving door' cases are frequently linked to problems of addiction, mental health and housing. The lack of contact with the responsible officer, however, does not necessarily indicate an increase in the risk of serious harm. Such cases require probation providers to take a personalised approach, focused on engagement and enforcement. The review identified cases where probation providers successfully balanced the requirements of public protection and enforcement within the context of a flexible and responsive approach. The requirement that recall decision-making takes account of individual circumstances is illustrated in the example on the next page:

²⁰ Ministry of Justice. (2020). *Offender management statistics quarterly: January to March 2020*.

Good practice example: fixed term recall following loss of contact

Don was sentenced to seven months' imprisonment for shoplifting following a fourth conviction for shoplifting over a 10-month period. He had a history of short prison sentences for similar offences. His history of cooperation with responsible officers was poor, and on previous sentences he had been recalled to prison several times. Don's offending was primarily motivated by his addiction to class A drugs, although he had also previously received medication for mental health issues. While Don was being supervised on licence, his responsible officers had attempted to engage him in addressing his addiction. However, these attempts had met with failure and a swift return to further offences. Don's risk of serious harm was assessed as medium.

The support and supervision plan put in place for Don's release from the seven-month sentence was comprehensive. It included supported accommodation; intervention from an addiction agency, including provision for a methadone prescription; and mental health support, including medication. The responsible officer liaised effectively with the key agencies, including the police, both before and after Don's release from prison. Don's cooperation with the supervision plan was sporadic. The responsible officer worked hard to encourage him to attend appointments, both with probation and the key agencies. Although Don missed appointments, there was no evidence that the risk of serious harm had increased so the focus was on re-engagement rather than enforcement. Recall was considered, but two licence warnings were issued instead, along with directions that Don should comply with the release plan. Don's ill health associated with drug use resulted in his admission to hospital. The responsible officer worked well with the medical services and accommodation was arranged for his discharge. Following discharge to the accommodation, Don failed to keep appointments with the responsible officer and moved out of the accommodation. The responsible officer contacted all the key agencies and Don's relatives but was unable to contact him. Following information from the police that Don was suspected of further shoplifting offences, the responsible officer discussed the case with the manager and instigated a fixed term recall. Don's whereabouts were unknown, and he had breached his licence by failing to keep in contact with the responsible officer. The recall was instigated to prevent further offences.

An individualised approach to recall decision-making relies on comprehensive risk assessment underpinned by the necessary information from other agencies. It also relies on practitioners being able to discuss and share decision-making with their managers. During our review, responsible officers repeatedly spoke of their 'fear' of failing to recall individuals immediately, if and when concerns about compliance and behaviour arose. They feared being held individually responsible for any serious further offences committed. A consistent recall decision-making process that allows for individualised decision-making is necessary to counteract this fear and minimise overly risk-averse decision-making. It is also imperative that managers visibly support operational staff in making often complex decisions. This shared decision-making should be clearly recorded. A responsible officer stated:

"Decisions are always jointly considered with my manager to reach a defensible decision. I therefore have confidence in the decision-making process and try not to consider the consequences of not recalling someone. We have to feel able to make professional decisions..."

b) Recall for non-compliance with licence conditions and evidence or indication of an increase in the risk of serious harm

The review of cases demonstrated that recall decisions focus mainly on protecting the public and potential victims. Where victims or potential victims were identified as being at risk of imminent harm, recalls were promptly instigated. The assessment of the risk of serious harm is central to effective recall decision-making. It relies on a comprehensive understanding of the individual's offending pattern and knowledge of their previous behaviour. It is also often dependent on

information being shared by other agencies. Where there is an imminent risk of serious harm, decisions often need to be taken quickly. This requires operational staff to have the time and capacity to make effective judgements. The example below demonstrates the importance of effective information-sharing to recall decision-making and public protection:

Good practice example: standard recall following non-compliance with licence conditions

Kevin was 21 years old and sentenced to three years' imprisonment for the assault of his partner. He was released from prison, initially on HDC licence, to his family's address. He was assessed as medium risk of serious harm. Licence conditions included the disclosure of intimate relationships and attendance at an accredited programme designed to enhance his understanding of relationships. There were concerns about Kevin's level of maturity, and he had been diagnosed with attention deficit hyperactivity disorder. The responsible officer made an appropriate mental health referral and the supervision appointments, including home visits, were sensitive to his learning difficulties.

Two months after Kevin's release, routine police checks identified that he was associating with a young girl who was in the care of the local authority. The responsible officer contacted children's social care for any relevant information and spoke to Kevin about the concerns that had been raised. He denied any involvement in a relationship or any contact with young girls. The information from children's social care confirmed that the young girl was in a relationship, but they were unable to establish with whom. Following consultation with his manager and further liaison with children's social care, including the exchange of a photograph, the responsible officer established that Kevin was in a relationship with the vulnerable young girl in care. There was also evidence of controlling behaviour. In view of the imminent risk to the young girl, Kevin's dishonesty and his previous convictions for domestic violence, a standard recall was instigated and Kevin was recalled for breaching the licence condition that he must disclose all developing intimate relationships.

Our review of cases revealed that effective relationships are in place between probation providers and particularly the police to ensure all relevant information is made available. NPS London undertakes routine police checks on all cases during the supervision period; HMPPS Wales receives information on reportable incidents directly from the police; and in NPS NE, contemporaneous domestic abuse information is routinely exchanged via the multi-agency safeguarding hubs.

In order to make effective recall decisions, responsible officers require the time to obtain and consider all relevant information and patterns of behaviour. Discussions with and support from managers are also essential. Recall decisions are not always straightforward and are often taken in pressurised situations. One senior probation officer commented:

"Recall decisions often take significant time and resources if they are not obvious in terms of increases in the risk of serious harm. Further offences such as theft may not require recall but the meaning of the behaviour often needs exploration in terms of mental health, addiction and relationships. This requires time. You often have to give people the chance to fail but not to commit serious further offences. This is sometimes a very difficult balance to strike".

Most responsible officers spoke positively about the management support available in relation to recalls, but some felt that time and workload constraints made the decision-making process unnecessarily stressful. The number of recalls undertaken by probation providers demonstrates that it is a key activity of probation practice. In some organisations, processes were in place such as office duty arrangements to anticipate recalls and ensure that responsible officers had the necessary time to make considered decisions. Other operational staff reported more ad hoc arrangements. Operational processes should be prioritised to allow the necessary time to make effective recall decisions.

2.3 The recall threshold

The revised RPF details the recall criteria for prisoners serving indeterminate and determinate sentences (see section 1.3). The criteria focus on indications or evidence of increases in risk of serious harm. The RPF also identifies specific scenarios, such as further arrests and offenders thinking about further serious offences, as examples of when recall should be considered.

The RPF, initially issued by HMPPS in April 2019 and re-issued in February 2020, had been implemented by all the probation providers that we inspected. In the NPS divisions and HMPPS Wales, there was evidence that briefings with staff had been undertaken, including a video presentation on recalls by the chief probation officer. The RPF is detailed, and NPS divisions also issued their own practice guides. This guidance highlighted the recall decision tree in EQuIP²¹, which guides practitioners through the key recall criteria. In the CRCs, communication was inconsistent. There was evidence of the RPF being communicated, and in some organisations, practice guides had been issued and briefings undertaken. In other organisations, implementation was based on making the RPF available and discussing it at team meetings.

This individual and inconsistent approach to communicating the RPF was reflected in the awareness of it demonstrated by operational staff across the organisations. In London CRC, for example, operational staff were aware of the RPF's implementation but this was not reflected across all CRCs. Operational staff in HMPPS Wales and the NPS divisions were aware that there were different recall criteria for service users serving determinate and indeterminate sentences but were generally unclear about the specifics. Practitioners knew of the recall process decision trees accessible on EQuIP. These are mainly accessed for reference, although some practitioners use them routinely in recall decision-making.

The RPF is very detailed, and operational staff are not required to understand the details of every process in relation to recall. They should, however, be clear about the specific criteria for recall laid out in the document. This is currently not the case. There is, however, a consistent understanding across organisations that the recall threshold directly relates to increases in the risk of serious harm, increases in the risk of re-offending, and public protection. This consistency derives from established practice and practitioners' knowledge of risk assessment, as well as the recall framework.

Recall decisions must take individual circumstances into account, which makes it difficult to establish a consistent threshold for decision-making. The same breaches of licence are inevitably responded to differently, depending on the individual involved. The RPF, combined with the necessary risk assessment training and skills, should ensure that a consistent approach is taken to the decision-making. Our review of 50 cases revealed that public protection is consistently the prime consideration. It also revealed, however, that the complexity of the cases means that the judgements required in relation to recall decision-making will be finely balanced. The case detailed below illustrates this point. Inspectors agreed with the decision to instigate a standard recall, considering the previous patterns of behaviour and history of domestic violence. At the time of the decision, however, there was no identified potential victim and a delay in recalling the service user to seek further information could likewise have been justified.

²¹ EQuIP details all the HMPPS operational processes electronically and is accessible to all operational staff. As well as the processes, it contains practice guidance.

Case study: recall judgements prioritising public protection

Ben was sentenced to imprisonment for public protection with a 21-month tariff for five robbery offences. He had previously been released but had been recalled following concerns about his behaviour and his compliance with licence conditions. Ben was assessed as a high risk of serious harm to the public. He had a history of gang affiliation and involvement in drug dealing. He also had a history of domestic violence.

Following his re-release from prison, he was placed in an AP. He generally cooperated with the appointments with his supervising officer, although there were some minor curfew breaches that were addressed in supervision appointments. Ben had also obtained some casual labouring work. Two months after his release, he was allowed home leave from the approved premises to stay at a family address. A curfew was set for 11pm and Ben knew that this would be checked. When AP staff tried to contact Ben at the family address, they were informed he was not there and his whereabouts were unknown. They tried to contact him directly but again there was no response.

In view of his previous pattern of violent offending, concerns about his continued gang affiliations and the potential risk to any new partner, the duty manager decided to recall Ben as an emergency out-of-hours recall.

2.4 Threshold variations

Operational staff and managers across all the probation providers highlighted the influence of national policy, high-profile cases and serious further offences on recall thresholds and decision-making. The general pattern identified in the national data, of recalls falling following introduction of the alternatives to recall initiative in 2017 and then increasing in the aftermath of HM Inspectorate of Probation's Campbell independent review in September 2018, was evident in the inspected NPS divisions and HMPPS Wales. There were, however, significant variations. For example, recalls in London NPS increased by 27 per cent between 2018 and 2019. In NPS Midlands, recalls rose by only 8 per cent within the same period. London evidently has a very different socio-economic profile to the rest of the country, but this is a significant difference. In addition to the influence of serious case reviews and individualised recall decision-making, it is evident that there were strong messages from senior managers for operational staff to prioritise public protection in their decision-making during this period. The trends in CRCs in relation to the national pattern were more variable, with West Yorkshire CRC and Warwickshire West Mercia CRC not recording any reduction in recalls during 2017. Since 2018, most of the CRCs inspected have seen increases. Again, there were variations, with recalls in London CRC increasing by 14 per cent between 2018 and 2019, and Warwickshire West Mercia CRC reducing by 1 per cent.

Since 2018, the national average rate of recall²² has increased. From January to March, the first quarter of 2020, the recall rate nationally was 9.7 per cent. This was 1.2 percentage points higher than for the same quarter in 2019. This increase in the recall rate was reflected across all the organisations we reviewed, although there were variations in the rate of increase. There was no identifiable pattern to these variations, and they were not dependent on whether the organisation already had a high or low rate of recall. For example, in West Yorkshire CRC the recall rate was 9.9 per cent in the first quarter of 2020. This was 1 percentage point higher compared with the same period in 2019. In London CRC the recall rate for the same period increased by 2 percentage points to 8.3 per cent, but this still remained lower than the national average of 9.7 per cent. There were similar variations in the NPS divisions. In NPS South West, South Central, the recall rate for the first quarter of 2020 was 8.1 per cent, which was a 0.4 per cent increase on the same quarter in 2019.

²² The estimated recall rate was derived by dividing the number of recalls undertaken in any quarter by the post release caseload at the end of the quarter. All references to recall rate are estimated on this calculation.

For the same period, the recall rate in NPS North East, which was above the national average, increased by 0.5 per cent, to 10.2 per cent.²³

As well as variations between organisations, there are also variations within organisations. These variations can be significant. For instance, between 2018 and 2019, recalls in Warwickshire West Mercia CRC fell by 25 per cent in one local delivery unit (LDU), while in another LDU they increased by 41 per cent. Similarly, in the same time period, recalls in NPS West Midlands increased by 15 per cent in one LDU and decreased by 7 per cent in another. The number of recalls will inevitably be influenced by local crime patterns and police activity, but these local variations demonstrate the need for recall trends to be monitored both by probation divisions and by LDUs. In Devon, Dorset and Cornwall CRC, senior managers had monitored recall trends to improve practice in risk assessment. This had directly contributed to a rise in recalls of 26 per cent in 2019/2020. In other CRCs, although recall information was monitored, inconsistencies in local recall trends had not been the subject of management actions.

NPS divisions receive quarterly management information that includes a breakdown of recalls by LDUs. It also includes information that covers IPP cases, executive releases, parole reports and licence variations. This information is reviewed at senior management level to monitor recall performance. Senior leaders stated that, when the alternatives to recall strategy was implemented, there was pressure from the Ministry of Justice to reduce the number of recalls in their divisions. No performance targets were set in relation to recalls, but the quarterly information was primarily used during that period to track the impact of the alternative to recall strategy on recall numbers. The information is still used to review any variations in recall numbers but senior managers were clear that no upward limit is set on the number of recalls in their division.

The figures indicate that the alternatives to recall strategy in 2016 had a more pronounced impact on the NPS than the CRCs. This to some extent is confirmed by our meetings with NPS operational staff groups, who stated they had previously felt under pressure to avoid recalls. They said that the climate had changed significantly since 2018. Staff recognised the appropriateness of considering alternatives to recall, but now felt that there was a better balance in the threshold in relation to public protection. This balance was identified in many of the reviewed cases. There was evidence of excellent attempts by responsible officers to put in place appropriate support and services for non-compliant individuals on licence. Unfortunately, in the cases reviewed, these efforts did not result in successful outcomes and the service users were all eventually recalled to prison.

Although operational staff reported that the approach to recall was more balanced, they also consistently reported their fears of being blamed if they made the decision not to recall an offender and the offender subsequently committed a serious offence. Responsible officers also confirmed the views of their senior managers on how high-profile cases can affect the recall threshold. Comments made included:

"You don't feel certain you will be always supported. You feel responsible but recalls should always be shared decisions. There is always concern that you will be held responsible if you do not make the right decision".

"Fear is an issue in the decision. You are always concerned that something serious could happen. Often the police want recall so they don't have to rush their investigation. This does put pressure on and probation staff often feel they cannot take any risks".

"It depends on the culture at the time. At the time of McCann there was a massive drive on alternatives to recall. Now we have a lot more recalls happening. It influences

²³ From: Ministry of Justice. (2020). *Offender management statistics quarterly: January to March 2020*. Ministry of Justice. (2019). *Offender management statistics quarterly: January to March 2019*. Information and data provided by the Ministry of Justice.

decisions. The climate has a big impact. I previously worked in a CRC and the 'conspiracy' was not to recall because of financial impacts. After an SFO and Leroy Campbell, SPOs [senior probation officers] became keener to recall".

Risk-averse decision-making in relation to recalls is very likely to have contributed to the variations in the number of recalls both between probation providers and within them. As recall decisions are based on individual circumstances, counteracting this culture relies on a consistent process that allows time for information-gathering, decision-making and management support. Our review identified cases where recalls were undertaken but the decision could be viewed as defensive as well as defensible.

Case study: Finely balanced decision-making

Emma was sentenced to an IPP with a two-year tariff following an offence of arson and endangering life. She had an established offending history with previous convictions for offences including possessing a weapon and assault. She had previously been released and subsequently recalled for non-compliance with licence conditions and further offending, including being drunk and disorderly. Mental health and alcohol abuse were identified as the key issues linked to her assessment as high risk of serious harm.

Following Emma's release from prison, she was placed in an AP. Due to concerns about her alcohol consumption, she had a curfew of 9pm and was required to report to AP staff at set times during the day. For six weeks following her release, Emma generally complied with the AP regime, including curfew times, and had obtained voluntary work. Tests for alcohol abuse were negative.

Emma was recalled to prison following her failure to report for her evening curfew. Attempts were made to contact Emma but there was no response. Her whereabouts were unknown and, due to the seriousness of her previous offending and the concern that her behaviour could deteriorate very quickly, she was immediately recalled. It was later established that she had been arrested for being drunk and disorderly and was in police cells.

Emma's case again demonstrates how recall decisions can be finely balanced. It is also a case where concern for the potential consequences of failing to recall was the key element in the decision-making. On the one hand, her previous offending indicated the risk of serious harm was imminent, should her behaviour deteriorate. On the other, she had complied successfully for six weeks and had made some positive progress. The pro-active emergency recall decision was taken as Emma's whereabouts were unknown and there was concern about her potential to commit a serious offence. On the information that was available to the manager, this decision could be viewed as defensible but additional information should have been sought. In view of Emma's previous behaviour following release, contact with the police should have been made. If it had been known that Emma had been arrested, a more considered decision could have been made at a later stage. The case highlights the need for recall decisions to be made methodically, taking into consideration all available information.

3. Licence warnings and alternatives to recall

This chapter will focus on the consistency of probation practice in relation to licence warnings. It will review the criteria, recording and communication of licence warnings. In particular, it focuses on consistency and effectiveness between and within probation providers. The impact of alternatives to recall on probation culture and practice is also reviewed, with particular reference to the role of Approved Premises (APs).

3.1 Licence warnings

A key finding in part one of the independent review was that Joseph McCann was not recalled to prison when he should have been. In part two we have therefore reviewed the culture and practice of probation providers in cases where they used alternatives to recall and issued licence warnings instead of immediately recalling service users to prison.

Probation enforcement of release licences has always incorporated the issuing of formal warnings when there have been concerns about behaviour or breaches of licence conditions but the threshold for immediate recall has not been assessed as met. Both the NPS and CRC providers we reviewed had issued compliance and engagement guidelines to operational staff. This included guidance on recall decision-making and the use of alternatives to recall. The issuing of warnings is linked to the use of alternatives to recall. The NPS guidance *Compliance and engagement on licence*²⁴ provides a template for bespoke warning letters to accompany the use of alternatives to recall. This is consistent with the practice outlined on EQuIP. There is similar advice in the practice guidance issued by CRCs. Both the NPS and CRCs direct operational staff to record discussions and decisions on the use of alternatives to recall and warnings under 'recall discussion' on nDelius.²⁵

The fact that staff are directed to record warnings under a recall heading may contribute to the inconsistency we found in recording practice in relation to licence warnings. Operational staff across both CRCs and the NPS were unclear about the expectations. We found warnings recorded under enforcement, professional judgement and contact headings. This inconsistency in recording practice contributed to the difficulty we had in locating examples of cases where warnings had been issued but there had not been a recall. We found inconsistency in relation to warning practice generally. Some probation providers operated a process of issuing different levels of warnings, such as informal, senior probation officer and assistant chief officer warnings. Others issued generic warning letters. There were similar differences in relation to how warnings were communicated, with examples of letters being sent straight to the service user and warnings being communicated via 3-way meetings, including the probation manager. One senior NPS manager commented:

"It is inconsistent. In some LDUs the warnings are only issued after discussion with the ACO [assistant chief officer], in some it is done at SPO level only. It needs to be resolved into a clear position. This has happened due to resource constraints. Warning decisions need to be fully considered".

In the 50 cases we looked at, there were 18 where a warning had been given. Our review of these cases focused on the decision to warn the service user. We noted, however, that in 17 of the cases the service user had subsequently been recalled to prison. This was a small sample but, nevertheless, combined with the difficulty in locating cases, it does call into question the effectiveness of licence warnings. Apart from information recorded on licence variation by the NPS and anecdotal evidence, there is limited information on the use and effectiveness of warnings and

²⁴ HM Prison and Probation Service. (2019). *Compliance and engagement on licence*.

²⁵ nDelius is the case recording system used by both the NPS and CRCs.

alternatives to recall. In view of the significance of the decision in relation to public protection, this should be rectified.

Of the 18 cases where a warning was issued, we agreed with the judgement to issue a warning in 15. In the three where we disagreed, two related to service users who were being managed at medium risk of harm and were not maintaining contact with their responsible officer. In our view, the warnings served no constructive purpose and recall should have been initiated. In the third case, there was a potential victim and our view was that recall should have been sanctioned immediately. In the event, further information resulted in the recall being actioned within 24 hours of the warning being issued. There were no cases in the sample that replicated the Joseph McCann case, where the service user should have been recalled and this was not instigated over an extended period.

Both the NPS and CRC compliance and engagement guidance emphasises that warnings and alternatives to recall should only be considered if it is judged that the service user can be managed safely and effectively in the community. The need for comprehensive information and analysis is highlighted and potential actions in line with the alternative to recall strategy are detailed. These include bespoke actions in relation to women service users, for whom the need for a gender-specific and trauma-informed approach is emphasised. Licence warning decisions are inevitably made on complex individuals living in often chaotic circumstances. Assessing whether an individual can be managed safely in the community requires knowledge, skill and judgement. Practitioners emphasised the importance of having management support when making warning decisions. This includes managers recording their agreement with the decision. In half the cases we reviewed, discussions with managers and managers' decision-making were not recorded. In our view, this is poor recording practice and encourages risk-averse decision-making. Licence warnings are often borderline decisions, and we found good examples of them being given on the basis of informed, professional decision-making.

Good practice: licence warning

Jake was sentenced to 30 months' imprisonment for committing an offence of GBH section 20 on another male. His ex-partner was present and there had been previous allegations of domestic abuse. On release to an AP, his ex-partner was assessed as a potential victim and there were concerns about contact with his daughter, who was looked after by carers. He was assessed as high risk of serious harm and alcohol abuse was viewed as a key risk factor.

Following his release, Jake generally complied with the AP regime and he found employment. Regular alcohol testing demonstrated that he was consuming alcohol but not every day and his behaviour was assessed as manageable.

Four weeks after his release, Jake failed to return to the AP for curfew and the out-of-hours manager was contacted. The contingency plan for his failure to return stated that, unless there was a clear increase in the risk of serious harm, any recall decision should wait until the next day for the responsible officer to decide.

The following morning Jake returned to the AP. A search of his room identified empty cans of alcohol. In addition, the responsible officer had telephoned Jake's mother, who expressed concern about his behaviour. However, police and safeguarding checks demonstrated there were no concerns in relation to either his ex-partner or his daughter.

Following discussion between the responsible officer and their manager, it was decided that, as Jake remained in an AP, the risk was manageable in the community. There had been no contact with his ex-partner, he was in employment and he had engaged with the AP regime. A final ACO warning was given to Jake for the curfew breach.

Operational staff from both the NPS and the CRCs viewed the warning process as inconsistent and had mixed views on the impact of licence warnings on compliance and behaviour. Some staff said warnings were ineffective and merely delayed the inevitable recall, while others gave examples of cases where licence conditions had been reinforced and behaviour had improved. The communication of warnings was linked to their effectiveness. Operational staff recognised that, in line with the compliance and engagement guidance available, letters needed to be bespoke and to take account of the individual's circumstances and motivation. It was also recognised that, for many service users, warnings needed to be communicated verbally. Again, communication practices varied across probation providers, but where managers were involved in the delivery of warnings to service users, this was viewed as more effective. There is no evidence that this increases the effectiveness of the warning, but it does communicate its seriousness, and we view this as good practice. It also gives confidence to practitioners that decisions on warnings are shared and promotes professional rather than risk-averse decision-making. In NPS North East, 3-way licence review meetings are held to review cases where there are concerns. The service user, responsible officer and SPO attend and the warning is delivered at the meeting. A responsible officer made the following comment about the process:

"We use licence review meetings in which the SPO, responsible officer and service user meet if there are concerns regarding enforcement or recall. Our local police are excellent and they sometimes sit in. These meetings always come up with an action plan alongside the warning given. SPO involvement in warnings is essential in my view".

The use of licence warnings and alternatives to custody is an important part of probation practice and is directly linked to the responsibility for public protection. It requires consistent processes, and licence review meetings, in our view, provide a potential framework. The organisation of such meetings and routine participation in them require significant resources. To implement the meetings effectively, this work would need to be incorporated into the workload measurement of operational roles.

3.2 Alternatives to recall

The NPS's guidance on compliance and engagement on licence includes the following prompts and potential actions for operational staff as alternatives to recall. The list includes potential actions for responsible officers who are considering alternatives to recall. The CRCs communicated similar guidance to operational staff.

- Is a safeguarding or MARAC²⁶ referral necessary? (This may be child or adult safeguarding.)
- Does the offender meet the criteria for referral to the Integrated Offender Management (IOM) scheme?²⁷
- Would the use of formal warnings help to reinforce boundaries and expectations?
- Could you increase the frequency of reporting for supervision appointments or with other agencies stated in the risk management plan?
- Have you undertaken a home visit when an appointment has been missed? This can assist in assessing current home circumstances and may support the offenders' re-engagement with supervision. Where appropriate, you should consider joint home visits with supporting agencies. These could include the police and children's services.

²⁶ Multi-agency risk assessment conferences are convened by the police where an individual is identified as being at risk of domestic abuse. The potential victim is the subject of the conference and the purpose is to put an effective safety plan in place.

²⁷ Integrated Offender Management schemes are joint police and probation teams working together to manage offenders in the community.

- Have you reviewed any concerns with any partnership agencies involved? What additional support or monitoring could they provide?
- Could referrals to programmes designed to increase offenders' skills, knowledge and capabilities be expedited?
- Can family or other support networks be engaged to support change and increase social capital? You should consider faith and charitable organisations.
- Have you considered additional licence conditions?
- Have you completed an assessment of an offender's vulnerability? Are they at risk from others or themselves, rather than posing a direct/increased risk to a known victim group?
- Have you informed the offender of the alternative service provisions (for example, treatment, mentoring/peer support etc.)?
- Offenders with personality disorder traits are likely to have complex needs and you will find the task of getting them to engage with their supervision more challenging. If the offender has been screened into the Offender Personality Disorder Pathway (OPD) and s/he is resident in an AP, have you shared the case formulation with the AP staff and discussed it with the key worker?
- What strategies have been identified to support offenders with personality difficulties to engage and comply? Have you reviewed these strategies, in collaboration with the psychologist, in light of current circumstances? Does the offender require a transfer to an enabling environment AP?

In section 1.4, we analysed the estimated national recall rate between 2016 and 2019 in relation to national policy initiatives and high-profile case reviews. Senior managers, primarily in the NPS, were consistent in their opinions on the impact of policy and serious case reviews on recalls in their organisation. The view below was commonly held:

"Policies changed in response to political and ministerial pressure. Previous ministers were keen to reduce the prison population and one of the ways is to reduce numbers of recalls. The alternatives to recall approach was a way to try and meet ministerial priorities without reducing the safety to the public. The emphasis was only to recall in relation to risk, rather than compliance when risk hasn't been shown to increase ... the high-profile cases change practice and policy, on both local and national level".

The alternatives to recall guidance was underpinned by the direction that recall should always be instigated for reasons of public protection. However, the perception of operational staff, particularly in the NPS divisions, was that during 2017 recalls had generally been discouraged. This perception was recognised by senior HMPPS managers in the aftermath of publication of the Leroy Campbell review. The NPS Effective Practice division subsequently issued a briefing in 2018, titled *Recall "myths"*,²⁸ to dispel what were perceived as misconceptions affecting operational practice. This emphasised the primary role of public protection and confirmed there were no recall targets. Responsible officers recognised that, since 2018, there had been a change in emphasis and a renewed focus on public protection. One SPO commented:

"The strategy for alternatives to recall was positive but managers felt pressure not to recall. There was definitely a pressure and this didn't stem from public protection but stemmed from a simple direction not to recall. That emphasis changed after 2018".

Across the inspected organisations, there is currently no management pressure to avoid a recall when the assessed increase in risk of serious harm makes it necessary. Both senior managers and

²⁸ HM Prison and Probation Service. (2018). *Recall "myths"*. Effective Practice division.

operational staff believe there is now a well-balanced approach to recall decision-making, and we concur with this view. Throughout the organisations we inspected, it is considered good practice to consider alternatives to recall but public protection is now at the heart of recall decisions.

Access to realistic recall alternatives was, however, identified as problematic by responsible officers. CRC staff do not have access to AP places or the offender personality disorder pathway. They reported that the services required, such as mental health treatment or housing, were often not available, so a realistic support package could not be put in place. Although additional licence conditions and increased reporting requirements were available, these were often inadequate to manage either the risk of harm or lack of compliance.

NPS responsible officers provided examples of using electronic monitoring and, where there were close working relationships with the police, door-step curfews as alternatives to recall. For many cases, however, they viewed residence in an AP as the only realistic alternative to recall. This was based on the complexity of their cases and the frequent need to impose 24-hour monitoring to manage an increase in the risk of serious harm.

In our review of the McCann case in part one, it was identified that the demand for AP beds far exceeds supply and that emergency placements as an alternative to recall were difficult to access. This was confirmed by responsible officers we spoke to across the NPS divisions and HMPPS Wales. Emergency AP placements inevitably put pressure on AP regimes and can be disruptive for an established resident group. The impact of emergency AP placements as an alternative to recall has not been analysed, but AP managers stated that such admissions were rarely successful and usually only delayed recall. There was a clear view from them that APs should focus on planned placements and limit the number of emergency admissions.

Responsible officers we spoke to, however, viewed APs as having a central role in providing alternatives to recall, and indeed emergency placements are highlighted as options in the briefings and guidance. This difference in perspective between responsible officers in the community and AP staff is therefore of concern. One SPO stated:

"Staff always try to consider alternatives to recall – APs are the best option but often beds are not available or it is only for a short period. It sometimes feels they are working to their agenda... It is increasingly the feeling that APs are not working with us".

The decision to recall or to issue a licence warning is often finely balanced and the oversight and external controls that APs provide can potentially play a decisive role in the decision-making. The AP estate evidently lacks capacity and this limits the availability of emergency beds. In our view, however, it is important that APs retain the capacity to provide emergency beds as an alternative to recall.

4. The recall process: other key issues

This chapter will consider other key areas that are directly linked to the recall process. This includes the effectiveness of the out-of-hours process and the arrangements for HDC. We will also consider the arrangements for quality assurance and monitoring. Finally, the process for re-release after an individual has been returned to prison will be reviewed.

4.1 Out-of-hours recalls

All the probation providers involved in the review had out-of-hours management cover arrangements in place. These are principally in place to deal with enforcement matters such as recall. All out-of-hours recalls are processed as emergency recalls. Unsurprisingly, given its responsibility for the AP estate, the NPS is responsible for most out-of-hours recalls. In 2018/2019, 21 per cent of NPS recalls were out of hours. In 2019/2020, this increased to 22 per cent. For CRCs in both 2018/2019 and 2019/2020, one per cent of recalls were instigated out of hours.

The four out-of-hours recalls in our case sample were directly linked to residence at APs. Inspectors found that the threshold for emergency recall had been met in most cases and the appropriate action taken. Out-of-hours recall relies on duty managers having access to key information to aid their decision-making. This includes up-to-date contingency plans, particularly in relation to the required actions if an individual fails to return for curfew. Although AP managers stated that such detailed information is consistently unavailable and this impedes effective decision-making, the cases reviewed did not identify any concerns in this respect, and there was evidence of good communication between AP staff and responsible officers. The detailed contingency plans in some cases were the reason for emergency recalls not being processed.

AP staff are directly involved in a high proportion of recalls. This includes communicating key information about service users to responsible officers and duty managers. They should therefore be fully aware of recall criteria and thresholds, particularly in relation to a service user's current and previous behaviour. We found that this is not the case. Both residential workers and AP managers had limited knowledge of the RPF. Their general view was that recall decisions are the responsibility of responsible officers and therefore this was not necessary. In view of the central role APs often play in recall decision-making, this perception is misguided. In our view, it leaves a significant gap in the implementation of the RPF and should be rectified.

APs and the out-of-hours recall process nevertheless play a central role in public protection, as illustrated in the example below:

Good practice: out-of-hours recall

Bob was sentenced to imprisonment for public protection following his conviction for the robbery and attempted rape of an unknown woman. This was his first conviction for a sexual offence but he had previous convictions for violence. His IPP tariff was 42 months.

On release he was placed in an AP. There was regular communication between the AP staff and the responsible officer, and information was exchanged in relation to drug tests, alcohol tests and Bob's compliance with the regime. When Bob formed a new relationship, appropriate safeguarding checks were undertaken and actions carried out to protect his new partner's daughter.

After eight weeks in the community, Bob's behaviour began to deteriorate. His new relationship ended and there were concerns about his aggression and demeanour in the AP. An emergency recall was instigated by the out-of-hours manager when he failed to return for his evening curfew. Efforts were made by staff to contact him but he did not reply. In view of the potential risk to his ex-partner and child, AP staff contacted the out-of-hours children's social care team to ensure appropriate safeguarding measures were put in place. Within 12 hours Bob was arrested by the police and returned to prison.

The emergency recall process involves out-of-hours managers contacting PPCS team members to notify them of the decision and to ensure the threshold for emergency recall has been met. Managers of all grades across both the NPS and CRC valued this process for providing the necessary advice to help them make effective and defensible recall decisions.

4.2 Home detention curfew (HDC)

Individuals sentenced to between 12 weeks and four years of imprisonment may be eligible for early release on home detention curfew (HDC). This is for a minimum of two weeks and a maximum of 135 days, up until the conditional release date, which is the halfway point of the sentence. During the HDC period, released prisoners are subject to a curfew which is monitored by a fitted electronic tag. They will also be subject to licence conditions supervised by probation providers. Breaches of curfew are enforced by the electronic monitoring company in liaison with the PPCS. Breaches of licence conditions are enforced by probation providers. After the HDC has expired at the conditional release date, individuals are no longer on HDC and become subject to a standard release licence. If an individual is recalled to prison for a breach of curfew during the HDC period, they will be re-released at their conditional release date unless a standard or fixed term recall has also been instigated by the probation provider.

In January 2018, HMPPS issued revised guidance for HDC, Probation Instruction 01/2018 'Home Detention Curfew Assessment Process'. This set out to streamline the process and lead to the release of most prisoners eligible under the published criteria. Consequently, there has been a sharp increase in the number of short-term prisoners released early on HDC. For instance, for those with a sentence of 12 months or less, HDC releases almost doubled between January and March 2017 (656 cases) and January and March 2018 (1,246 cases).²⁹ In 2019/2020, HDC recalls constituted 10 per cent (2,611) of the total number of recalls. This is a significant increase from 2017/2018, when the figure was four per cent (881) and demonstrates the impact of the increased use of HDC on the recall population.

Only a small number of recalls reviewed by inspectors were the subject of HDC licences and there were examples of effective communication between the electronic monitoring services and probation providers.

Responsible officers, however, described HDC as an often pressurised process, in which their concerns about the suitability of release addresses are not consistently accepted. The pressure to ensure that all eligible prisoners are released on HDC has further increased since the onset of the COVID-19 crisis in March 2020. One responsible officer stated:

"HDC has become a rushed process. Accommodation is found and probation officers are asked to check. When the probation officer's decision is to not approve the accommodation, this is frequently challenged and the release proceeds anyway. The whole process has become too rushed".

The HDC process is primarily prison-based and the prison governor is responsible for the decision to release. Community-based responsible officers are asked for their view on the suitability of release addresses, but the final decision remains with the prison. Responsible officers reported that they are frequently given minimal time to assess addresses and that the process can feel arbitrary and unsafe. These concerns are illustrated in the following example.

²⁹ Ministry of Justice (2018). *Offender management statistics January – March 2018, Prison Releases: January – March 2018*. London: Ministry of Justice. Available at: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2018>

Poor practice: release on HDC

Ian was sentenced to 18 months' imprisonment for assaulting his ex-partner and for breaching a restraining order. A friend's address was approved for release on HDC after the minimum checks had been made by the responsible officer. Within 48 hours of his release from prison, Ian contacted his responsible officer to say he had been evicted from his address.

He subsequently telephoned the probation office to propose alternative addresses but there was no response from his responsible officer. The electronic monitoring service provided breach information to the PPCS, which processed the breach of curfew 12 days after his release on HDC. The responsible officer did not consider whether this recall needed to be upgraded to either a standard or fixed term recall and did not liaise with the police or undertake safeguarding checks in relation to Ian's ex-partner.

The revocation order for the breach of HDC curfew licence was not executed until Ian appeared in court for further assaults against his ex-partner. This was three months after PPCS had approved it. The release address in this case was not fully risk-assessed and the delay in the execution of the recall was, in part, a result of the inadequate oversight of the licence by the responsible officer.

The address in this case was clearly unsuitable for release on HDC. There was subsequently poor practice by the responsible officer in not reviewing the recall, liaising with the electronic monitoring service or responding to the offender's telephone calls. Although not accompanied by the same poor probation practice, there were other examples in our review of HDC being approved for unsuitable addresses. This is of concern. Release on HDC can be a constructive process but it needs to be underpinned by a balanced risk assessment to both protect the public and to reduce the likelihood of recall.

4.3 Quality assurance and disproportionality

The Part A recall report is submitted to PPCS for all recalls instigated by probation providers. In the case of emergency or out-of-hours recalls, the report can be submitted after the recall has been processed. It requires management endorsement, and for most providers this is at assistant chief officer level. The endorsement is of both the content and the quality of the report.

As we found in part one of the review, this is the principal mechanism by which recall decisions are quality-assured by probation providers. On receipt of the form, PPCS will review it to ensure the information included meets the necessary threshold to authorise recall, but this is not part of a quality assurance process. Senior management endorsement is appropriate given the seriousness of the operational decision. However, recall decisions are often processed at speed, and the report must be submitted within 24 hours of a decision being taken.

Probation providers undertake their own recall audits and dip-sampling of cases, but this is not consistent across organisations. The NPS has issued the Alternatives to Recall and Recall Report Part A Quality Assurance tool.³⁰ This had only been used in two of the divisions we reviewed. In NPS North East, it had been used to quality-assure recall decisions for women. In NPS South West, South Central, it had been used to sample 10 per cent of recalls processed during a two-month period. There was evidence in both divisions that the findings of the audit were communicated to operational staff to improve practice. In the CRCs inspected, enforcement was part of their quality assurance framework and annual plans. This included compliance on licence but did not include specific consideration of recall decisions.

The focus of the NPS quality assurance is recall decisions that have already been made and whether the recall was justified. The tool does not incorporate licence warnings and consider whether recall

³⁰ HM Prison and Probation Service. (2019). *The Alternatives to Recall and Recall Report Part A Quality Assurance tool. Version 2.* NPS Quality and Effectiveness team.

rather than a warning should have been instigated. This may be considered in the overall quality assurance of cases that takes place in all probation organisations but, given the findings of our review of the McCann case in part one, this is an area that we believe requires specific focus. There should be an overall quality assurance framework for recall and licence warning decisions that is separate from the decision-making process.

In 2019/2020, 17 per cent (4,665) of recalls were for individuals from a black, Asian and minority ethnic background. Inevitably, proportions vary across organisations depending on their local populations. In London CRC, 42 per cent (843) of recalls involved individuals from a black, Asian and minority ethnic background, compared with 7 per cent (26) in Warwickshire West Mercia CRC. The extent of any bias in recall decision-making is not known. Nationally, there is no routine analysis of disproportionality in relation to recalls. Risk assessments are often informed by judgements on behaviour, presentation, attitude and likely future behaviour. In recognition of the potential bias involved in this process, the HMPPS Effective Probation practice team issued a seven-minute briefing in June 2020 providing guidance on recall decision-making for black, Asian and minority ethnic young adults aged 18 to 25.³¹ The practice guidance includes advice on countering bias in decision-making and the assessment of maturity. Significantly, it emphasises that recall decisions should be taken in a structured and considered way. The guidance is implemented by probation providers locally and there is limited information on whether it has been incorporated into responsible officers' practice or is effective in addressing potential bias in decision-making.

Following the discrimination highlighted by the Lammy Review,³² NPS London analysed its recalls of all black, Asian and minority ethnic offenders under the age of 25 undertaken in 2019.³³ This included a detailed review of some cases. This is good practice, but recall cases are not similarly routinely analysed and dip-sampled at a national level either by PPCS or by other probation providers. The Lammy Review identified patterns of systemic discrimination within the criminal justice system. Recall rates should therefore be routinely analysed for indications of disproportionality and recall cases dip-sampled for evidence of unconscious bias.

4.4 Recall to prison and executive release

Following the instigation of a standard recall, the PPCS issues a recall revocation notice to the police, which authorises the individual's recall to prison. For standard recalls, where there is no set release date, once the individual has been returned to prison the responsible officer has 10 working days to submit the Part B report to the PPCS. On receiving the report, PPCS is responsible for assessing whether the prisoner is suitable for executive re-release. The 10-day timescale is set because if the prisoner is not assessed as suitable for executive re-release, the PPCS must submit the recall dossier to the Parole Board within 28 days of the return to custody. The prisoner must have time to make representations to the Parole Board on the contents of the reports.

The Part B risk assessment report requests an updated risk management plan; information on the prisoner's attitude to recall and behaviour in prison; and the view of the responsible officer on re-release. The completion of the report relies on the responsible officer having access to the prisoner to complete the assessment. This process is currently not working effectively. Responsible officers have inconsistent access to prisoners within the 10-day period and as a result only recommend release in a minority of cases, although the exact figures for the number of Part B reports that recommend re-release are unavailable. Reports based on incomplete information are often

³¹ HM Prison and Probation Service. (2019). *Reducing recall rates for BAME young adults (aged 18-25)*. NPS Effective Practice team.

³² HM Government. (2017). *The Lammy Review: An independent review into the treatment of and outcomes for Black, Asian and Minority Ethnic individuals in the Criminal Justice System*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

³³ National Probation Service. (2020). *Disproportionality in the recall of young adult BAME*.

submitted and essentially repeat the assessment in the Part A recall report. Responsible officers' comments included:

"The timescale is too short. It is very difficult to have direct contact and the questions are about the service user's attitude to recall. Prison offender management unit allocations sometimes take over a week to allocate a prisoner so it is even difficult to get the information from the prison. It still feels that probation and prison are not part of the same service".

"It's not a helpful timeframe – individuals are often still quite angry. There can also be delays in us being notified of a return to custody. It's not feasible to do it properly and we don't often get to speak to the service user. We try to email prisoners but it doesn't always result in a response".

The impact of recall to prison for individuals on licence is significant. It is right and just that they can challenge the decision. Making the 10-day Part B process work, however, has primarily become the responsibility of probation practitioners based out in the community, and they do not have the authority to make it work effectively. Both the 10-day timescale and the responsibilities within the process should be reviewed to enable it to work in a meaningful way. This should include a consideration of the role and responsibilities of the prison offender management units.

In the event of the Parole Board not granting release following a standard recall, responsible officers submit annual Part C risk assessment reports on each person in their caseload who has been recalled but not re-released. The Part C report can be submitted to PPCS to consider executive release at any stage. The PPCS reviews all risk management plans received to identify cases appropriate for executive release. Decisions are inevitably based on individual circumstances, but there is inconsistency in the number of executive releases between organisations. For instance, in 2019/2020, a total of 871 prisoners were given executive release. Of these, 175 executive releases were in NPS North East and 82 were in NPS South West, South Central. Executive release is a positive process but the consistency of its use and timeframes should be reviewed.

Conclusions and implications

Probation providers have a responsibility to ensure that recall decisions are considered, fair and prioritise public protection. Our review of Joseph McCann's case raised serious questions about the probation service's process for making decisions on recall between 2017 and early 2019. Those concerns have not been repeated in our thematic review of current recall culture and practice in the period since then. Operational staff and senior managers are focused on public protection in their decision-making. In the cases reviewed, individuals were being recalled appropriately.

Recall decision-making is, however, a complex process. Detailed information has to be collated and reviewed before the decision can be made. The circumstances of recalls often require the decision to be made in a pressurised environment with tight timescales. Escalating risk and the need to protect victims are frequently immediate pressures. However, external pressures are also significant. The pressure put on responsible officers from the police to action a recall has been a recurring theme in our review. The police perspective is important but recall decisions must be based on a careful assessment of all the information available and not driven by partially informed opinion. A consistent decision-making framework is therefore necessary. The two-tier management endorsement in the Part A recall report provides the necessary framework. It is, however, important that office systems allow practitioners to allocate the necessary time to make effective recall decisions. Recalls should not be unexpected given the nature of the probation caseload, and this should be reflected in the organisation of workloads and teams.

The importance of a consistent framework to allow professional decision-making is reinforced by the evidence that recall rates are influenced by national policies and high-profile reviews. The variations in recall rates since 2016 demonstrate this. Across organisations, there is now greater clarity about the focus on public protection and the role of alternatives to recall. The responsibility for recall

decision-making is shared between practitioners and managers. This should be reflected in the organisational culture. This is currently not the case. Practitioners are concerned they will be held personally responsible for serious further offences committed by individuals under their supervision. The development and maintenance of a robust decision-making framework that is not susceptible to knee-jerk reactions are central to developing a professional rather than a fear-based culture. To further prevent unduly risk-averse decision-making, practitioners must be supported by managers when they decide appropriately not to recall, as well as when recall is agreed. This support should be evident in the record of the decision.

Licence warnings are used inconsistently across probation providers. There is no consistent framework for decision-making, delivery or recording or for evaluating the impact of warnings. It is therefore difficult to identify cases that have been warned and not recalled. It can currently be presumed that most individuals who receive a licence warning end up being recalled, but data on the impact of licence warnings has not been collected and analysed. Similarly, despite the implementation of the alternatives to recall strategy since 2017, there has been no analysis of its effectiveness and whether it prevents or only delays recall. The current Alternatives to Recall and Recall Report Part A Quality Assurance tool focuses on recall cases and does not incorporate licence warning cases. This means that the quality assurance and audits that are undertaken do not include cases that were not recalled. This focus on recalled cases is replicated in the use of management information. Recall rates across and between organisations are monitored, but in the organisations inspected, there was evidence in only one CRC of management information being used to question the practice behind low recall numbers.

In part one of the McCann review, we recommended the implementation of a quality assurance process, independent of the decision-making process. This should incorporate a review of potential bias and unconscious bias in decision-making. The quality assurance process should also allow for the regular dip-sampling of cases to analyse potential disproportionality in relation to protected characteristics. As well as recall decisions, this should include the access to and the use of alternatives to custody such as additional licence conditions, referral to electronic monitoring services, and access to APs.

The central HMPPS Public Protection Casework Section (PPCS) team is central to the recall process. PPCS staff have effective relationships with probation providers and provide clear guidance in relation to thresholds and emergency recalls. The interface between PPCS authorisation and probation providers' decision-making responsibility is understood and underpins the recall process. The effectiveness of the Part B risk management report on suitability for re-release following recall should be reviewed, however. Currently, the responsibility for its effectiveness is left to community-based probation practitioners, with no defined responsibilities allocated to prison offender management units. Risk assessments and release plans are therefore often hypothetical, and the number of Part B recommendations for re-release is not recorded. The Part B assessment must be submitted in time to enable prisoners to challenge its contents at the Parole review, but an effective process centred on the assessment of prisoners for re-release cannot solely be the responsibility of community probation practitioners.

The focus of recall decisions on public protection is understood across organisations but the different recall criteria are not. Implementation of the HMPPS 2019 Recall, Review and Re-Release of Recalled Prisoners Policy Framework (RPF) has been inconsistent. Operational staff in the NPS divisions were aware of the framework, but there was inconsistency in their knowledge of the different thresholds for indeterminate and determinate sentences. Both staff and managers working in APs had very limited knowledge of the framework. In the CRCs, awareness of the framework among practitioners was again limited. The roots of this inconsistency lie in the deployment of the framework. In the NPS, national briefings were made available but individual divisions decided how to communicate the key messages. The importance of RPF required a unified, structured deployment that prioritised it over other policy and practice initiatives.

There are differences between the CRCs and the NPS both in terms of practice and culture. These differences include management endorsement, practitioners' expectations and the awareness of the

RPF. This will need to be addressed when the English NPS divisions are unified with the CRCs into regional divisions in June 2021. Lessons can be learned from HMPPS Wales. Following the unification of CRC and NPS offender management functions in December 2019, it ensured that all CRC staff were trained in risk assessment, risk management and safeguarding practice within three months to ensure consistent practice.

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Annexe 1: Terms of reference

Independent review, part 2

A national HM Inspectorate of Probation thematic review into the culture and practice within the probation service around recall

The circumstances of the Joseph McCann case have called into question the wider culture and practice within probation around the recall of offenders under supervision. The serious further offence review has suggested that there were opportunities to recall Joseph McCann that were not taken by the supervising officers. HM Inspectorate of Probation will investigate whether this has become common practice and why.

This thematic review will offer a national perspective on the culture and practice around recall decision-making, specifically whether staff are familiar with and are following the guidance on recall.

The thematic review will focus on specific elements of the probation caseload:

- both CRC and NPS licence recall cases
- determinate sentence cases
- indeterminate sentence cases (IPP and life sentence prisoners)
- recall process: Part A, Part B and Part C
- cases sentenced as adults (18 years and over).

Workstreams

There will be three workstreams:

1. Review of Ministry of Justice (MoJ)/HMPPS/inspection data on recalls, including:

- the degree to which recall rates vary by LDU and local offices, taking account of differences in offender populations (if possible)
- the impact of HDCs on the increase in recalls
- the recall rate per LDU/office by offence type
- a time series of changes to recall rates against the introduction of new policies
- IPP reoffending rates (since the focus on re-release)
- out-of-hours recalls
- recalls from APs.

2. Inspection fieldwork

We will conduct targeted interviews with managers and staff at a national level in order to understand policy and practice issues.

We will also conduct meetings with groups of staff and managers in the relevant NPS divisions, LDUs and CRCs, to elicit evidence on culture and practice at a local level.

3. Case reviews

We will conduct a deep dive of a small sample of cases to illustrate recall decision-making and provide case studies for the published report. The sample will be selected from a long list of licence cases where warnings have been issued by a senior manager. Some of these have been recalled and some have not. NPS cases will include some IPPs.

Annexe 2: Methodology

Pre-fieldwork

For part two of the review, we read the following documents:

Policy and guidance

- MoJ and HMPPS policy in relation to recall, enforcement and licence warnings
- NPS policy documents in relation to recall procedure, performance and practice
- NPS policy documents in relation to prisoners serving indeterminate sentences
- NPS performance information in relation to prisoners serving indeterminate sentences and recalls
- MAPPA guidance
- a review of relevant inspection reports
- a review of information submitted in advance from the HMPPS PPCS team
- a review of information from probation providers detailing recall processes, recall data and recall quality assurance arrangements
- a review of minutes from meetings, documented communication and evidence of practice submitted by probation providers.

Recall rate

Within the recall statistics there is no official recall rate available. For the purpose of this report we have defined the recall rate as the number of licence recalls in a recall period divided by the post-release supervision caseload at the end of that period. This is an approximate estimate which may not be an accurate reflection due to the complexity of the data. The licence recall total is a sum of licence recalls over the period, whereas the post-release caseload data is a fixed-point figure. Possible issues with these figures include, but are not exclusive of:

- individuals may have been recalled multiple times within the same recall period
- recalled individuals may still be in custody at the end of the period
- caseload figure does not reflect the general churn of individuals starting and/or ending licence supervision.

Inspection fieldwork

The fieldwork took place over three weeks between 20 July 2020 and 14 August 2020. The probation providers and NPS divisions involved are detailed below:

Area	CRC	NPS division
North East	West Yorkshire	NPS North East
London	London	NPS London
Wales	N/A	NPS Wales
West Midlands	Warwickshire, West Mercia	NPS West Midlands

South West	Devon, Dorset, Cornwall	NPS South West, South Central
National division		AP division
Public Protection Group		PPCS team

In total, we undertook 39 meetings with the following staff groups:

- responsible officers, NPS and CRC
- senior probation officers, NPS and CRC
- senior managers, NPS and CRC
- divisional directors, NPS
- chief executive officers, CRC
- senior managers, AP division
- AP managers
- AP residential workers
- Deputy Divisional Director, Public Protection Group
- Head of PPCS team and senior managers.

In part one of the review, we interviewed the Chief Probation Officer and the Head of Practice Development, HMPPS Effective Practice Division. These meetings also informed part two of the review.

The review of recall and licence warning cases

We undertook a qualitative review of cases from across the nine probation providers. This took place in two stages. In the first stage, we identified a sample of 50 recall and licence warning cases and undertook a file review of each case. This analysed the reason for the recall or warning; the decision-making process; the assessment of risk; and the appropriateness of the decision. The sample was taken from prisoners released on licence between 30 September 2019 and 31 December 2019. Due to problems identifying warning cases, this was extended until 31 March 2020 so that sufficient cases could be identified. The sample consisted of the following:

- 32 recall cases, 18 warning cases
- 36 white, 10 black, Asian and minority ethnic service users, and four unknown
- 43 men, 7 women service users
- 19 CRC cases, 31 NPS cases
- 44 determinate sentence cases, 6 imprisonment for public protection cases.

In the second stage of the case reviews, inspectors interviewed the responsible officers for the cases. The interviews focused on the decision-making in the case, recall thresholds and the effectiveness of the process.

Annexe 3: Glossary

Accredited programme	A programme of work delivered to offenders in groups or individually through a requirement in a community order or a suspended sentence order, or as part of a custodial sentence or a condition in a release licence. Accredited programmes are accredited by the Correctional Services Accredited Panel as being effective in reducing the likelihood of reoffending.
Approved premises	Premises approved under Section 13 of the Offender Management Act 2007, and managed either by the NPS or by independent organisations. They are used as a short-term residence for offenders considered a high risk of serious harm, who require close monitoring and supervision, to begin to integrate them back into the community.
CRC	Community Rehabilitation Company: 21 CRCs were set up in June 2014 to manage most offenders who present low or medium risk of serious harm.
Criminal justice system	Involves any or all of the agencies involved in upholding and implementing the law – police, courts, youth offending teams, probation and prisons.
Determinate sentence	A determinate prison sentence is where the court sets a fixed length for the prison sentence. It is the most common type of prison sentence. For example, an offender may be sentenced to four years in prison. This is the maximum period of time the offender could spend in prison. However, the offender will not necessarily spend the whole of this time in prison. The rules governing when a prisoner is released vary depending on the length of the sentence and when the offence was committed.
Exceptional delivery model	Exceptional delivery models were introduced by probation providers in response to the COVID-19 crisis in March and April 2020. These applied to all areas of probation practice, including offender management, the delivery of court reports and contact with prisoners.
EQuiP	Excellence and Quality in Process: an NPS web-based national resource providing consistent information about the processes to be followed in all aspects of NPS work. The process mapping is underpinned by quality assurance measures.
HMPPS	Her Majesty's Prison and Probation Service: from 01 April 2017, HMPPS became the single agency responsible for delivering prison and probation services across England and Wales. At the same time, the Ministry of Justice took on responsibility for overall policy direction, setting standards, scrutinising prison performance and commissioning services. These used to fall under the remit of the National Offender Management Service (NOMS).

HMPPS SFO review team	This team is located in the Public Protection Group of the NPS. It is responsible for administering the SFO review process and for quality-assuring all reviews and action plans. It provides guidance to probation providers and is responsible for developing national policy and guidance relating to SFOs.
Indeterminate sentence	An indeterminate sentence has no fixed length. The person will have to spend a minimum amount of time in prison (the 'tariff') before they are considered for release. Indeterminate sentences (for example, IPPs and life sentences) are given if the court thinks an offender is a danger to the public. The Parole Board is responsible for deciding if they can be released from prison.
Intervention	Work with an individual that is designed to change their offending behaviour and/or to support public protection. A constructive intervention is where the primary purpose is to reduce the likelihood of reoffending. A restrictive intervention is where the primary purpose is to keep to a minimum the individual's risk of harm to others. With a sexual offender, for example, a constructive intervention might be to put them through an accredited sex offender programme; a restrictive intervention (to minimise their risk of harm) might be to monitor regularly and meticulously their accommodation, their employment and the places they frequent, imposing and enforcing clear restrictions as appropriate to each case. Both types of intervention are important.
IPP	Sentences of Imprisonment for Public Protection (IPPs) were created by the Criminal Justice Act 2003 and started to be used in April 2005. They were abolished in 2012. They were designed to protect the public from serious offenders whose crimes did not merit a life sentence. Offenders sentenced to an IPP serve a minimum term (the 'tariff') in prison, after which they can apply to the Parole Board for release. The Parole Board will release an offender only if it is satisfied that it is no longer necessary for the protection of the public for the offender to be confined. On release on licence they are supervised by the National Probation Service.
Licence	Almost all individuals sentenced to imprisonment are, at some point, released on licence under probation supervision. This part of the sentence is served in the community. The licence includes a number of requirements and/or restrictions. Where the individual does not comply with these requirements, the probation offender manager may initiate their recall to prison.
LDU	Local Delivery Unit: an operational unit comprising an office or offices. They are generally coterminous with police basic command units and local authority structures.
MAPPA	Multi-Agency Public Protection Arrangements: where probation, police, prison and other agencies work together locally to manage offenders who pose a higher risk of harm to others. Level 1 is ordinary agency management, where the risks posed by the offender can be managed by the agency responsible for the

	supervision or case management of the offender. This compares with Levels 2 and 3, which require active multi-agency management.
NOMS	National Offender Management Service: until April 2017, the single agency responsible for both prisons and probation services, now known as Her Majesty's Prison and Probation Service (HMPPS).
NDelius	National Delius: the approved probation case management system used in England and Wales.
NPS	National Probation Service: a single national service which came into being in June 2014. Its role is to deliver services to courts and to manage specific groups of offenders, including those presenting a high or very high risk of serious harm and those subject to MAPPA.
OASys	Offender assessment system currently used in England and Wales to assess the risks and needs of offenders under supervision.
Offender Rehabilitation Act 2014 (ORA)	Implemented in February 2015, applying to offences committed on or after that date. This legislation extended supervision in the community to all adults sentenced to more than one day in prison. Formerly, only those sentenced to more than 12 months were supervised in this way.
OM	Offender manager: the officer who is responsible for supervising the case. It could be a probation officer or probation services officer. In focus groups, both grades of staff were present so we have used the generic term when referring to evidence.
Offender management	A core principle of offender management is that a single practitioner takes responsibility for managing an offender through the period they are serving their sentence, whether in custody or the community.
OMiC	Offender Management in Custody: the way prisoners are case managed through the custodial sentence has been revised within the OMiC model. The model provides the framework to coordinate and sequence an individual's journey through custody and post release. Under the model, prison staff and probation offender managers work closely together and with the offender.
Offender Personality Disorder pathway	An initiative jointly commissioned by the NHS and HMPPS that aims to provide a pathway of psychologically informed services for a highly complex and challenging offender group who are likely to have a severe personality disorder, and who pose a high risk of harm to others or a high risk of reoffending in a harmful way.
Offender Rehabilitation Act 2014 (ORA)	Implemented in February 2015, applying to offences committed on or after that date.
OSAG	Operation and Systems Assurance Group. They sit within the Performance directorate of HMPPS and undertake internal

	operational audit.
Parole Board	The Parole Board is an independent body possessing quasi-judicial function. It determines whether prisoners can be safely released into the community. The Parole Board is an executive non-departmental public body, sponsored by the Ministry of Justice.
PI	Probation Instruction. These are mandatory instructions issued by the HMPPS, detailing policies and guidance.
PIPE	Psychologically informed planned environment: PIPEs form a key part of the offender Personality Disorder strategy. They operate in selected prisons and approved premises. They are specifically designed environments where staff members have additional training to develop an increased psychological understanding of their work. PIPE services are supported by additional prison/probation staff and a qualified psychological therapist. PIPEs focus on providing prosocial relationships and interactions and form part of a treatment pathway of services. PIPEs are not a treatment programme in the traditional sense; instead, they support progression and transition through a pathway operating in prison and probation settings.
PO	Probation officer: this is the term for a responsible officer who has completed a higher-education-based professional qualification. The name of the qualification and content of the training vary depending on when it was undertaken. They manage more complex cases.
PPG	Public Protection Group: the group within HMPPS in which the national Serious Further Offence team sits.
PPCS	Public Protection Casework Section: the section in HMPPS that deals with pre- and post-release casework in respect of the release and recall of prisoners.
Recall	<p>An offender subject to licence can be recalled to prison if they fail to comply with the conditions of their licence. They can be released again after 28 days if they meet certain criteria; if not, the Parole Board will decide if they can be re-released at any point prior to the end of their sentence. In some instances, the responsible officer can support executive release, which allows the public protection casework section to decide whether an offender is suitable for re-release without a full Parole Board review.</p> <p>An offender subject to an IPP licence can be recalled to prison if they fail to comply with the conditions of their licence. Their case must be referred to the independent Parole Board within 28 days of their return to custody. They may only be released again at the direction of the Parole Board.</p>
Risk assessment	The process of collecting, verifying and evaluating information to establish the nature and extent of risk, either of likelihood of re-offending or of the occurrence of serious harm. Risk assessment is often aided by the use of formal risk assessment tools. Good-

	quality risk assessment builds on strengths as well as identifying difficulties; is grounded in evidence; is offender-centred; and is a continuing process rather than a single event.
Risk of serious harm	<p>The assessed level of risk of harm that the service user is identified as presenting. Serious harm is defined below. This assessment is part of the OASys assessment tool.</p> <p>There are four levels of ROSH:</p> <p><i>Low</i> risk of serious harm: Current evidence does not indicate likelihood of causing serious harm.</p> <p><i>Medium</i> risk of serious harm: There are identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example failure to take medication, loss of accommodation, relationship breakdown, or drug or alcohol misuse.</p> <p><i>High</i> risk of serious harm: There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact would be serious.</p> <p><i>Very high</i> risk of serious harm: There is an imminent risk of serious harm. The potential event is more likely than not to happen imminently and the impact would be serious. This assessment is likely to relate to a 'critical few'.</p>
Risk management	Refers to those strategies used to manage risk, either by reducing the likelihood that a harmful offence will occur, or by reducing the impact of the offence should it take place (for example, victim protection). Strategies most usually restrict opportunities to offend, restrict access to or impact on potential victims, and target risky behaviours for change. The term tends to be used with reference to risk of harm rather than risk of re-offending. Risk management is more effective when the offender is committed to and supports the activities, which is made more likely by a clear focus on desistance principles and opportunities to change.
Risk management plan	A shared, actively monitored plan for managing the identified risk of serious harm. Such a plan is required to be in place and documented for all offenders assessed as medium, high or very high ROSH.
SFO	Serious further offence: where a service user subject to (or recently subject to) probation commits one of a number of serious offences (such as murder, manslaughter, rape). These are offences committed by service users that fall within the remit of PI 06/2018 Annex A. The CRCs and/or NPS must notify HMPPS of any individual charged with one of these offences. A review is then conducted with a view to identifying lessons learned.
SFO review	The review undertaken when a service user commits an SFO.
Workload management tool	A tool to calculate the overall workload of an individual responsible officer. It takes into account numbers and types of cases.



Her Majesty's
Inspectorate of
Probation

HM Inspectorate of Probation
1st Floor Civil Justice Centre
1 Bridge Street West
Manchester
M3 3FX
ISBN: 978-1-84099-942-6