The impact of policy change on prisoner resettlement and community integration: A case of disproportionate response

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Abstract
The involvement of prisoners on license in the recent London Bridge and Streatham, London attacks have triggered a series of policies aiming to restrict community release. These aim to address not only the point at which prisoners in England and Wales are released, but also the level of engagement prisoners can have with the community before release. They have been introduced with little consultation of the available evidence and, seemingly, with little consideration of those who will be directly impacted as a result of their implementation. This commentary considers how announced changes in policy relating to the use of Release on Temporary Licence (ROTL) with prisoners, represent a response which is not only disproportionate to the scale of the problem but may also negatively impact upon prisoner rehabilitation. It draws upon evidence surrounding the impact of early release and evidence surrounding the practices which work to promote desistance from crime to highlight the flaws in these new policies, but also the importance of maintaining community engagement in the rehabilitation of people with convictions.

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Introduction

There are growing policy tensions surrounding the point at which those serving a custodial sentence should be released into the community. The debate tends to centre around the balance which needs to be struck between the at times competing aims of HM Prison and Probation Service, public protection and the rehabilitation of people with convictions. This balancing act has been thrown into sharp relief of late after two high profile incidents involving former prisoners on license, supervised in the community. On 29 November 2019 after an event at Fishmongers Hall in London, celebrating the success of an offender rehabilitation programme, Usman Khan, who attended the event, attacked several members of the public on London Bridge, fatally wounding two of them. Khan had been released from prison on licence in 2018 and was being supervised by the probation service at the time of the incident. On 2 February 2020, Sudesh Amman stabbed two people in Streatham, London. Amman, like Khan, had been released on licence and was under active counter-terrorism surveillance at the time.

Penal populism and punitive politics

The populist political reaction to the attacks was both swift and punitive. In November (2019) Boris Johnson called for emergency legislation to prevent those sentenced for terrorism offences from being released from custody before the end of their sentence. He suggested that such a bill was 'ready to go' should a Conservative Government be elected in the December 2019 general election. A call for such emergency legislation was reiterated after the attack in February 2020. The justice secretary, Robert Buckland QC, announced emergency changes to terrorism laws which will block the automatic early release of those sentenced for offences within the Terrorism Act (TACT) 2000, Anti-terrorism, Crime and Security Act (ATCSA) 2001, Terrorism Act (TACT) 2006, Counter-Terrorism Act (CTA) 2008, Terrorism Prevention and Investigation Measures (TPIM) Act 2011 and Counter-Terrorism and Security Act (CTSA) 2015, as well as those sentenced for other offences which have a ‘terrorist connection’ (Ministry of Justice, 2020). The bill received royal assent in February 2020.
Along with this emergency legislation, on 14 February 2020 it was reported that the Ministry of Justice had introduced, with immediate effect, a range of policies aimed at those who may be eligible for Release on Temporary License (ROTL). ROTL, as the name suggests, allows those serving custodial sentences to be temporarily released in order to undertake community engagement activities or to rebuild family ties in preparation for release (MoJ, 2019a). The policies introduced were, as follows:

1. Temporary suspension of Release on Temporary Licence (ROTL) for the purpose of attending public events celebrating offender achievements, and a corresponding suspension of permitting offenders on licence from attending such events.
2. Any such events hosted by HMPPS in a public setting, with planned attendance by prisoners on ROTL or offenders on licence, should not go ahead until further notice.
3. In cases where such an event in a public setting is hosted by a partner organisation, the decision about whether to cancel is for that organisation. However, where events do take place, HMPPS staff should not attend.
4. Internal HMPPS events within prison establishments may go ahead, subject to local risk assessment. (Clinks, 2020).

Through consultation with Clinks and the offices of the Director General of Prisons and Probation (2020, personal correspondence), it was noted that these policy changes were delivered through internal communication within the prison service, and as such, no formal guidance was published. Such proposals, while clear in their aims, are disproportionate with the level of threat the problem presents. Not only this, but the proposals risk undermining existing policies which the available evidence has shown to be effective in supporting the successful rehabilitation of people with convictions.

**A disproportionate response: The scale of the problem**

The new laws have received a degree of scrutiny from academics and policy makers, with some arguing that such measures misrepresent the scale of the problem. Recent statistics show that, between January 2013 and December 2019 196 individuals convicted of a terrorism offence were released from prison, with only 6 (3.06%) of those being convicted of a further terrorism offence upon release (Parliament.uk, 2019). Others have argued that such changes are in direct contravention of Article 7 of the European Convention on Human rights which states that a person cannot be made to undertake a more severe punishment than they were originally sentenced to (Greene, 2020).
The use of ROTL, however, is much more significant. Whereas data shows that 196 individuals sentenced for terrorist offences were released from prison in the period between January 2013 to December 2019, ROTL is much more common, with over 376,000 instances of ROTL being used in 2018 alone (Beard, 2019). As such, the impact of these policy changes is, arguably, of greater significance than the emergency terror laws which have received the majority of attention. Where the emergency terror laws impose restrictions on the release of those who are serving sentences for terrorism related offences, the policy changes surrounding ROTL apply to all prisoners, the vast majority of whom, as evidenced below, successfully complete a period of ROTL when granted.

These reactive policy measures are, arguably, flawed on a number of counts, relating to both ROTL specifically and the broader implications for the role for the community in the reintegration of people with convictions. Firstly, the available evidence suggests that ROTL can significantly improve outcomes for former prisoners upon release, thereby assisting in the rehabilitation process (Hiller and Mews, 2018). Secondly, the new policies will directly target the root of ROTLs success in improving such outcomes, by reducing the potential for people to increase levels of community engagement prior to release. Finally, by preventing prisoners from attending events which are designed to celebrate their successes, the new policies are removing an avenue for symbolic reintegration for these individuals.

Release on Temporary Licence: Improving outcomes before release

Release on Temporary Licence (ROTL) 'enables [prisoners] to participate in necessary activities, outside of the prison establishment, that directly contribute to their resettlement into the community and their development as purposeful, law abiding life' (NOMS, 2015; emphasis added). There are four main types of release which fall under the banner of release on temporary licence, but the restrictions outlined here would focus specifically upon the ‘resettlement licence for day release’ which allows for activities linked to sentence plans to be undertaken (Beard, 2019).

International studies on the use of ROTL in prisoner resettlement suggest that it brings modest gains in outcomes for former prisoners upon release, with very low 'failure rates'. A study examining the use of ‘temporary absence’ schemes with prisoners in Canada found that such schemes 'allow inmates to demonstrate appropriate community behaviour and subsequently demonstrate suitability for additional forms of conditional release' (Helmus and Ternes, 2017: 23). Other systematic reviews of the scheme have found that temporary release, in the same fashion as ROTL, effectively help to reduce recidivism.
and have been associated with improvements on a number of release outcomes (Fox, 2015). A recent review of ROTL in England and Wales found that 'once an individual has been granted at least one ROTL, increasing their number of temporary releases in the six months prior to their release was associated with slightly lower [but statistically significant] odds of reoffending on release and fewer offences' (Hiller and Mews, 2018). The available data also suggests that ROTL successes significantly outweigh their failures, with less than 1% of the 376,000 ROTLs granted in 2018 ending in failure (Beard, 2019).

One potential reason for the success of ROTL relates to the level of risk assessment that is undertaken before ROTL can be granted. As part of Prison Rule 9 (1999 Rule 9: 4) (the regulations which govern how a prison is run), prisoners who have been assessed as presenting a high risk of reoffending will not be granted standard ROTL, thereby only releasing those who are assessed as unlikely to reoffend or fail to comply:

A prisoner shall not be released under this rule unless the Secretary of State is satisfied that there would not be an unacceptable risk of his committing offences whilst released or otherwise failing to comply with any condition upon which he is released.

Another potential reason for this success, however, lies in the community base within which ROTL draws its strength. Prisoner reintegration is undertaken at a community level, beyond the confines of criminal justice. As Day and Ward (2009: 91) argue 'the state cannot integrate offenders, communities can'. Therefore, the more an individual engages with the community they are due to be released into, the less likely it is that they will (re)offend against it. The core strength of ROTL is that it is designed to foster links with the community, which can be used to support rehabilitation upon release. The restrictions imposed upon the use of ROTL significantly reduce the extent to which rehabilitative community engagement work can be undertaken prior to release from custody. Not only this, but on a broader level, it has the potential to dramatically impact upon the symbolic restoration of people with convictions.

The role of the community in supporting desistance and prisoner rehabilitation

The majority of those serving prison sentences will be released at some point (PRT, 2019). Indeed, nearly 70,000 people were released from prison in 2018 alone (PRT, 2019). Unfortunately, nearly half (48%) of all those released are reconvicted within a year of this release (MoJ, 2019b). Research suggests that a criminal record, along with the stigma attached to it, can inhibit...
opportunities for civic engagement upon release (see Burnett and Maruna, 2006) which is an important factor in reducing reoffending (Uggen et al., 2011). It has been argued that ROTL 'can play an important part in helping people to prepare for release [as] it allows people to [...] reconnect with the world they will be released to' (PRT, 2019). As discussed above, the core strength of ROTL is that it allows for increasing levels of community participation for people with convictions prior to release. The field of desistance studies, which examines the underlying processes supporting the maintenance of a crime free life after a period of offending (Kay, 2016), is categorical in its assertion that community engagement is a fundamental factor in the desistance process. For some, 'community integration can be seen as a precursor to successful desistance' (Day and Ward, 2010: 91), for others 'if reintegration is not community based, it is not reintegration' (Maruna, 2006). Research has found that civic engagement can promote the transmission of community values (Bazemore and Stinchcomb, 2004), can aid the reparation of community attachments which have been ruptured by long periods of incarceration (Clear, 2007) and can harness 'the potential for constructing a positive self-identity' (Fox, 2015: 84)

Indeed, the role of the community in facilitating the desistance process can be seen throughout the available literature. Nugent and Schinkel (2016: 570) identify 'recognition of change by others' as a fundamental factor in maintaining desistance. Similarly, McNeill (2016) uses 'tertiary desistance' to refer to not only a recognition of change by others, but also the development of a sense of community belonging. The key theme amongst the majority of the desistance literature which proposes some form of identity transformation as part of the desistance process is that this transformation cannot be undertaken in isolation. Weaver (2013) in her work on the relational nature of desistance argues that our actions are, in part, down to a reflection of how we see ourselves, and that this, also in part, is in relation to how we see ourselves reflected in the eyes of others. McNeill (2016) argues that 'no amount of personal change can secure desistance if change is not recognised and supported by the community'. In order for long term desistance to be sustained, there needs to be active, participatory engagement on behalf of both the individual and community within which they are being released into.

Opportunities for community engagement, however, are limited for people with convictions, both pre and post release. Research suggests that, for the most part, 'resettled prisoners find themselves ‘in’ but not ‘of’ the larger society' (Johnson, 2002: 319). Indeed, Nugent and Schinkel (2016: 570) note that isolation and loneliness are experienced by many people with convictions attempting to desist upon release from prison. Such isolation can make the transition back into society after a period of incarceration much more difficult. Fox (2015: 87) undertook a study investigating the role of community engagement in promoting desistance and noted that 'transitioning to a more
conventional life was challenging because of [former prisoners] lack of familiarity with normal routines, and a dearth of role models for normative behaviours’. Research has also highlighted that other forms of civic engagement such as employment and relationship formation are difficult to obtain for people in transition (Barry, 2010). One such method for increasing the potential for civic engagement is ROTL. In fact, this aim is directly quoted within the ROTL policy framework (see above). It is also recognised that 'increased use of ROTL [as discussed above] is associated with a small but statistically significant reduction in rates of proven reoffending and frequency of reoffences' (MoJ, 2019a: 4). The policy restrictions on the use of ROTL target the very aspect that makes ROTL work, by limiting the amount of community engagement work that can be undertaken prior to release.

The impact of ROTL restrictions on community engagement and prisoner reintegration

There are significant advantages to increasing the opportunities for prisoners to engage with their community at the earliest available opportunity (once appropriate risk assessment measures have been undertaken). Studies have shown the link between temporary release from custody and increased civic participation, which have subsequently been shown to improve post-release outcomes for people with convictions. It has been argued that 'community integration tends to mitigate against the more damaging and exclusionary aspects of incarceration and the liminal state of re-entry' (Day and Ward, 2010: 91). By imposing the restrictions outlined at the start of this commentary, these policy changes are severely limiting one potential avenue through which community integration work can be undertaken. When such avenues are already seldom available for people with convictions, the restrictions imposed as part of these policy changes have the potential to significantly impact upon the successful reintegration of prisoners in the long term. Not only this, but the policy’s specific focus on attending events which celebrate prisoner success is concerning as such events can be seen to serve not only a practical function in relation to promoting community engagement, but also a symbolic function in relation to supporting the restoration of a non-offending identity.

We know, for instance, that the ritualistic nature of the criminal justice system is adept at stripping from individuals the rights and responsibilities of active participating members of conventional society. Take, for instance, the 'status degradation ceremonies' proposed by Garfinkel (1956) as a classic example. Yet interestingly, what it is perhaps not so good at is restoring parity once the period of punishment has been served. Maruna (2006: 30) argues that 'when it comes to resettlement, we forego all [. . .] ritual and try to
make the whole process as stealthy and unpublic as possible [. . .]. If we are going to ritualise the process of exile, we need to do the same for the return'. Such restoration ceremonies have been seen to promote the continued reintegration of people with convictions, particularly when such ceremonies were considered to have some form of official certification from 'community leaders [or] members of social control establishments' (Maruna, 2001: 157). The celebration event taking place at Fishmongers Hall, London in November 2019 could arguably be seen to be a kind of restoration ceremony highlighted above.

The event was a celebration of the 'learning together' programme which 'as well as offering high quality academic sessions, [. . .] was to create meaningful social connections where people could learn with and from each other through dialogue and the sharing of experience' (Bennett, 2020). Learning together had been successfully running for 5 years and had been recognised as an example of good practice in a review of prison education (Coates, 2016). The event, which was attended by prisoners, criminal justice practitioners and academics, acted as a celebration of the success of the programme and the individuals who had benefited from it. Such celebrations also serve to reinforce the positive messages that had been delivered throughout the programme. Suspending ROTL 'for the purpose of attending public events celebrating offender achievements, and a corresponding suspension of permitting offenders on licence from attending such events' (Clunks, 2020) and cancelling all such events hosted by HMPPS, while overtly reactionary, also fundamentally removes an avenue for symbolic restoration for people with convictions for the foreseeable future.

**Conclusion - ROTL restrictions: A disproportionate response?**

After two high profile events which involved prisoners serving the remainder of their sentences on licence in the community, a series of policies have been introduced which aim to address not only the point at which prisoners are released, but also the level of engagement prisoners can have with the community before release. The restrictions imposed on the use of Release on Temporary Licence are problematic on a number of accounts. Firstly, the available evidence suggests that ROTL is an effective way of increasing prisoner levels of community engagement before release, and that the overwhelming majority of ROTLs granted are completed successfully. Secondly, restricting the extent to which prisoners can participate in civic activity directly contradicts the available evidence base which suggests that such activity can be fundamental in the successful reintegration of people with convictions. Finally, the suspension of ROTL for the attendance at events celebrating offender success and the
withdrawal from HMPPS at all existing events signals a withdrawal from the state in matters of prisoner rehabilitation. Again, this is in direct contradiction to the available evidence which suggests that certification from authority figures (such as criminal justice authorities), can dramatically bolster the symbolic reintegration of people with convictions. At a time when nearly half of all those released from prison are reconvicted with another offence within a year of being released (Prison Reform Trust, 2019) and the estimated cost of reoffending being £18.1 billion (Newton et al., 2019), criminal justice policy should be looking to long term measures which utilise procedures such as ROTL in order to improve outcomes for people with convictions. While an investigation into both incidents in London should undoubtedly be undertaken, and lessons learned about the processes which inform the release of prisoners into the community, we should not lose sight of the benefits of criminal justice policy and practice which promotes community integration. The typical response to these discussions seems to be the withdrawal of such practice from use (as has previously been seen in relation to the rejected use of community sanctions over short prison sentences (see Gauke, 2019; Hyde, 2019)). This however, will ultimately do more harm than good.

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Note
1. Due to a number of high-profile ROTL failures in 2013, restrictions on the use of ROTL were imposed and a new form of ‘restricted ROTL’ with more stringent risk assessment measures was announced alongside the standard ROTL in 2014 (Beard, 2019).

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