

Criminal Justice Committee Roundtable: Orders for Lifelong Restriction (OLRs)

Summary Note – 19 March 2026

Overview

The Criminal Justice Committee hosted a roundtable discussion on Orders for Lifelong Restriction (OLRs), chaired by Rosemary Agnew of the Scottish Human Rights Commission (SHRC).

Participants included representatives from statutory bodies, the third sector, academia, and individuals with professional and lived experience of the OLR system.

The discussion was structured around three themes:

- the purpose and operation of OLRs;
- access to rehabilitation and progression, including human rights considerations;
- the impact of OLRs and areas for further consideration.

This note summarises the discussion. It does not represent the views of the Committee.

1. Purpose and operation of OLRs

Original policy intent

Participants reflected on the policy intent underpinning OLRs, introduced following the MacLean Committee's recommendations.

It was noted that OLRs were intended to:

- operate as a sentence focused on risk management and public protection;
- involve an integrated custodial and community-based approach, with time spent in the community forming part of the sentence;
- provide structured progression, supported by ongoing oversight.

Some participants, including those involved in the original policy development, suggested that the current operation of OLRs differs from that intended model. In particular, it was noted that:

- relatively few individuals have been released to the community under OLR;
- the system may operate primarily as a custodial sentence in practice;
- the number of individuals subject to OLRs has increased over time beyond initial expectations.

It was suggested that this may reflect a combination of resource constraints and changes in the volume and profile of cases.

Some participants also raised concerns regarding levels of trust and confidence in the operation of the system.

Application of the sentence

Representatives from the Risk Management Authority (RMA) outlined the current framework:

- the High Court determines whether the statutory criteria for an OLR are met;
- Risk Assessment Reports consider a range of factors, including offending history and behavioural indicators;
- individuals subject to OLRs are generally assessed as presenting a high and enduring risk of serious harm;
- risk assessment is an ongoing process throughout the sentence.

The role of the RMA in setting standards and quality assuring assessment processes was noted.

It was noted during discussion that a high proportion of individuals subject to OLRs are assessed as meeting the “high risk” threshold, with some participants referring to figures of around 90% of cases.

It was also noted that a significant proportion of the OLR population has a history of serious offending, including violence and/or sexual offending.

Some participants raised questions regarding:

- how the threshold for “high risk” is applied in practice;
- the extent to which assessment processes differentiate between individuals;
- the use of alleged or unproven conduct within assessments;
- consistency of outcomes across cases.

Other contributors emphasised that responsibility for sentencing decisions rests with the judiciary.

Participants also referred to issues relating to recall, including the operation of licence conditions and their impact on individuals subject to OLRs.

Risk assessment and emerging evidence

Representatives from the Risk Management Authority indicated that work is ongoing to strengthen the evidence base underpinning OLR decision-making and outcomes.

This includes:

- analysis of the characteristics of individuals who receive OLRs;
- ongoing quality assurance of Risk Assessment Reports and Risk Management Plans;
- consideration of how assessment tools are applied across different populations;

- research examining individuals who were assessed for an OLR but did not receive the sentence.

It was noted that this work may support a more detailed understanding of:

- how risk thresholds are applied in practice;
- longer-term outcomes for different cohorts;
- the effectiveness of current assessment approaches.

Some participants also raised points regarding transparency and understanding of assessment processes among individuals and families.

Understanding of the sentence

It was noted that individuals subject to OLRs, and their families, may not always have a clear understanding of:

- the implications of an indeterminate sentence;
- the relationship between the punishment part and release;
- the requirements for progression and parole.

Some participants suggested that expectations regarding release at the expiry of the punishment part may not reflect how the system operates in practice.

2. Rehabilitation, progression and human rights considerations

Access to interventions and progression

Participants discussed access to offence-focused programmes and other interventions.

Issues raised included:

- waiting lists and variability in access to programmes;
- sequencing of interventions relative to the punishment part;
- challenges engaging individuals with complex needs, including trauma and neurodivergence;
- the role of programmes in demonstrating risk reduction.

Reference was made to information indicating that over 1,000 individuals were on waiting lists for generic programmes as at early 2025.

The Scottish Prison Service (SPS) indicated that:

- a common progression framework is applied across the prison population;
- individuals are typically considered for interventions in advance of the punishment part expiry;
- programme participation is not the sole determinant of progression;
- work is ongoing to review case management and progression processes.

SPS also noted that the relatively short punishment part associated with OLRs can present challenges in sequencing interventions and managing expectations.

Resource and system capacity

Participants referred to wider system pressures, including:

- availability of psychological services and specialist interventions;
- staffing capacity across custodial and community services;
- competing demands within the prison population.

It was suggested that these factors may affect:

- timeliness of access to interventions;
- delivery of individualised support;
- opportunities for progression.

Neurodiversity and complex needs

Participants highlighted characteristics of the OLR population, including:

- the presence of neurodivergent conditions or learning disabilities in some individuals;
- high levels of trauma and adverse childhood experiences;
- potential challenges in engaging with standard programme-based approaches.

Issues were raised regarding:

- screening and diagnosis at the point of entry to custody;
- adaptation of interventions to meet individual needs;
- availability of one-to-one psychological support.

Participants also referred to the experiences of individuals with physical and mental health needs, including access to appropriate support.

Human rights considerations

The SHRC outlined concerns identified in its 2025 discussion paper, including potential implications for:

- the right to liberty (Article 5 ECHR);
- the right to private and family life (Article 8 ECHR);
- broader considerations relating to dignity and treatment.

Participants discussed whether, in practice, individuals subject to OLRs have:

- a realistic opportunity to progress and achieve release; and

- access to the interventions required to reduce risk.

Reference was made to judicial findings relating to delays in progression and access to rehabilitation.

3. Impact of OLRs

Experiences of individuals and families

Participants with lived experience described:

- the challenges associated with indeterminate sentencing;
- uncertainty regarding progression and release;
- the impact of navigating complex processes over extended periods.

Some participants referred to figures suggesting that a high proportion of individuals subject to OLRs remain in custody beyond the expiry of their punishment part, with some citing figures of around 90% or more, and average periods of several years beyond tariff.

Some contributors suggested that a lack of clarity regarding progression pathways may affect engagement.

Psychological and emotional impact

Participants referred to psychological effects associated with indeterminate sentences, including:

- uncertainty regarding the future;
- anxiety relating to progression and recall;
- reduced motivation to engage with interventions in some cases.

It was noted that such impacts are also observed in other indeterminate sentencing contexts, although some participants suggested that the absence of an end point may intensify these effects.

Community supervision

Participants discussed experiences of individuals released on licence, including:

- the scope and operation of licence conditions;
- the impact of supervision on daily life;
- barriers to reintegration, including access to employment and services.

The importance of balancing public protection with sustainable reintegration was noted.

4. Areas identified for further consideration

Participants referred to a range of issues that may merit further consideration, including:

- the operation of OLRs in practice compared with original policy intent;
- clarity and consistency of progression pathways;
- the role and operation of risk assessment processes;
- access to, and resourcing of, interventions;
- support for individuals with complex needs;
- communication with individuals and families;
- engagement with victims and front-line practitioners;
- comparative approaches in other jurisdictions;
- the availability of further research and data, including on specific groups.

5. Concluding remarks

The Chair noted that the discussion had highlighted a range of perspectives on how OLRs operate in practice, including areas where participants considered that the system may not fully reflect its original design.

The Chair thanked participants for their contributions. The discussion will inform the Committee's ongoing work and legacy reporting.

Annex A: Key contextual points

Orders for Lifelong Restriction (OLRs)

- Introduced by the Criminal Justice (Scotland) Act 2003.
- Apply to individuals assessed as posing a high risk of serious harm.
- Include a punishment part, after which release is considered by the Parole Board for Scotland.
- Individuals remain on licence for life if released.

MacLean Committee (2000)

- Established to review sentencing for serious violent and sexual offenders.
- Recommended a system focused on risk management and public protection.
- Envisaged integration between custody and community supervision.

Lady Poole judgment (Article 5 ECHR context)

- Reference was made to a decision involving Lady Poole concerning delays in access to rehabilitative opportunities.
- The judgment found that delays in access to progression opportunities may breach Article 5 ECHR.
- This reflects wider legal principles requiring a realistic opportunity for release in indeterminate sentences.

IPP sentences (England and Wales)

- Introduced in 2005 and abolished in 2012.
- Subject to criticism due to indeterminate detention and barriers to progression.
- Referenced for comparative purposes during discussion.

Risk Management Authority (RMA)

- Responsible for standards and accreditation in risk assessment and management.
- Oversees Risk Management Plans but does not conduct assessments directly.

- Is undertaking analytical and research work to support understanding of risk thresholds, proportionality, and outcomes.

Scottish Prison Service (SPS) review work

- SPS is undertaking a programme of work to review case management and progression pathways.
- This includes consideration of communication, sequencing of interventions, and individualised support.

Annex B: Written Contributions from Shirley Hutton, Founder of NOLR

Note: Shirley could not attend on the day and asked that these contributions be incorporated into the note of the meeting. These written contributions respond to the questions asked during the roundtable.

Q1:

'The Maclean Committee envisaged that: 'the period spent in the community should be regarded as being an integral part of the sentence.' To what extent has this this distinction from the custodial element been realised in practice?'

According to latest figures there have been 33 individuals released by the Parole Board, which account for approximately 10% of OLR prisoners. As shockingly low as this is, it does not reflect the whole picture. As of August 2024, 5 of these releases were on compassionate grounds. Of those, 14 individuals have been recalled to prison – latest research shows that recall for minor breaches of licence account for approx. 75% of recalls. We know that 92% of OLR prisoners in prison are over their tariff to an average of 7 years per person. For a sentence which has been in place for 20 years, we feel able to say with certainty that it is only the very lucky few who get to serve the OLR in the community but live with the constant fear of recall, often for trivial reasons. The IPP sentence has an end date now of 3 years if the prisoner adheres to licence conditions and shows evidence of good conduct.

OLR prisoners have no end date even when in the community.

Q2:

'To what extent are the human rights standards relating to access to rehabilitation and progression realised in practice?'

We know that access to rehabilitation and progression are gravely hampered by lack of resources, appropriately placed programmes and long waiting lists.

For example: we represent an individual who has been assessed as needing trauma work which is not available in the prison estate in Scotland – just how is this person meant to progress?

We also know that OLR prisoners are adversely affected by the indefinite aspect of their sentence, as prisoners with release dates are prioritised for rehabilitation. OLR prisoners go to the back of the queue. Under Article 5(1) to avoid detention being 'arbitrary' the conditions of detention must reflect its purpose and last only as long as strictly necessary. If individuals are not being offered the help that Judges believe they need at the time of sentencing then their continued detention becomes unjustified. Waiting lists for courses are based on prioritisation dates. Since 2023, for OLR prisoners, the prioritisation date is supposed to be the punishment part minus 4

years. So for an individual we represent who received an 18 month punishment tariff, the date would have been set before the individual even committed the offence! Decisions over access to rehabilitation appear to be arbitrary. This same individual was told 8 years ago that he had completed all his rehabilitation. When he asked 'what do I need to do now?' was told 'Nothing, you're doing fine- just keep doing what you're doing'. Just prior to his latest parole board hearing, he was informed he needs to do further work. When he, his lawyer and the parole board asked what that work would be, they were told 'we don't know yet'. Is this the outcome the MacLean Committee envisaged?

Q3:

'What do we know about the psychological and emotional impact of OLRs on prisoners, victims and families? What evidence is there about this and is more needed?'

It is clearly documented that the UN has already described indefinite detention as psychological torture.

There is an marked loss of hope for OLR prisoners which then results in disengagement with the process and loss of trust in the system. The Scottish Human Rights Commission spoke of the uniquely hopeless tone of communication from OLR prisoners – they have given up believing that any one can help them. Article 3 defends against torture and inhumane treatment – the OLR creates toxic conditions which make rehabilitation very difficult.

We know from the IPP that indeterminate sentences increase the risk of suicide by 2 and a half times. More research into suicides of OLR prisoners is needed but should not delay the reforms which are urgently needed.

Given the high level of neurodivergence, poor mental health and adverse life experiences many with OLR's have experienced – this is at odds with the Vision for Justice which states that *'Justice services eliminate discrimination, advance equality, and foster good relations while taking a right's-based approach, ensuring those most vulnerable and facing the biggest barriers are able to understand and realise their rights'*.

Family members serve the sentence with their loved ones. We know imprisonment carries shame and stigma- how much is that increased when loved ones remain incarcerated years after punishment tariffs expire? How do you explain to friends and family that the punishment far exceeds the crime?

The rights to family life enshrined in Article 8 is being affected by the lengthy jail time being served. Family connections are often seen as mitigations of risk and reoffending – the OLR erodes these links.

As a campaign group – we recognise that for many, the group will be the only safe space for the loved ones of OLR prisoners. Members often share the adverse

psychological impacts and practical disadvantages they face on a daily basis. They also have the added role of trying to maintain their loved ones emotional stability – worrying when they disengage for a while as we find they often do as a coping mechanism. Trying to give them hope and motivation to keep engaging when they know there is none. As a founder of this group – there is a unique pain in that moment for relatives when they realise what the OLR actually means for them and their loved one.

As for victims – we recognise the harms caused by the offences committed and understand that offences should have consequences for the perpetrator. We also believe the public would be concerned about disproportionate incarceration. We don't help victims by creating new ones out of perpetrators.

Q4:

'What is needed in the short and long term to achieve human rights compliance in relation to OLRs?'

On the 20th anniversary of this sentence – we need to remember that the OLR was designed for the 'exceptional' offender who presented a very real risk of SERIOUS harm to the public. This makes the use of them for minor offending problematic. A 14 month sentence for breach of the peace which results in 14 years imprisonment and counting is unjust and unfair and extends far beyond proportionate punishment.

How can it be fair that someone who has demonstrated serious harm is not risk assessed for an OLR but someone who has evidenced less harm goes down that route?

The OLR sentence is based on perceptions of 'risk' which in itself is a dangerous route to arbitrary detention.

The 'Vision for Justice' states that *'Justice services will implement transformative actions which are informed, funded and prioritised by recognised, credible and robust evidence, and are routinely monitored, evaluated and reviewed'*.

We ask – what aspects of the OLR meet this criteria?

There is difficulty in determining what is short and long term when the current situation is critical. We have the following recommendations to make and ALL should be considered to avoid continued breaches of Human Rights:

- A tightening of the criteria for receiving an OLR: the concept of 'dangerousness' is faulty – it leads to people who have committed minor offences being labelled 'high risk' and being imprisoned for what they might do in the future. ONLY those who have committed the most SERIOUS VIOLENT offences should be considered for an OLR. There is precedent for this with the IPP which tightened up its criteria along these lines in 2008 prior to its abolition in 2012 .

- Immediate resentencing in order of length of time over tariff for those serving the OLR who received a punishment part of 4 years or less. This comprises the majority of OLR's which in itself undermines a sentence designed for the exceptional offender.
- Increased oversight of the Risk Assessment Process – risk assessment tools are controversial even when used appropriately. OLR prisoners are no more dangerous than other prisoners – they've just been unlucky in being selected for risk assessment.
- An end date to the OLR if good conduct is evidenced on release in line with the IPP sentence. Let there be a way out of the OLR.
- Compensation for unjust imprisonment – a system which has 92% of it's prisoners over tariff in a sentence not designed to lead to continued incarceration is a failed system.