

## The never-ending story: Indeterminate sentencing and the prison regime Research briefing

# the **Howard League** for **Penal Reform**

### Key points

- The Imprisonment for Public Protection sentence (IPP) was poorly planned and implemented and resulted in unjust punishments, particularly for those sentenced prior to 2008. Despite the abolition of the sentence in 2012, serious implications for the prison estate remain
- There are currently 5,809 people in prison serving an IPP; over half (3,570) have passed their tariff date
- Urgent action needs to be taken to enable the safe release of people serving post-tariff IPPs into the community
- The analysis is based on information provided by 103 senior prison governors, whose responses drew almost exclusively on their experience of working with IPP prisoners. The majority reported that IPP sentences had a negative impact on prisoners, prison staff, and the prison regime
- The findings suggest that there are insufficient resources to deliver IPPs effectively. Resource shortages often lead to resentment between IPP prisoners and other prisoners and may threaten the safety and stability of the prison regime
- Ninety-two per cent reported that IPPs decreased staff job satisfaction as they undermined staff credibility, prevented staff treating all prisoners fairly, and often meant staff were unable to assist prisoners in progressing through their sentences
- The majority recommended that the government enable post-tariff IPP prisoners to be safely managed into the community. To achieve this, respondents said it was necessary to increase resources, enhance the role of probation, alter the release process for IPP prisoners and convert IPP sentences with short minimum terms to determinate sentences.



## Introduction

In December 2012 the Imprisonment for Public Protection sentence (IPP) was abolished by the Legal Aid, Sentencing, and Punishment of Offenders Act (LASPO) 2012. The Act was not applied retrospectively, and there are currently 5,809 people in prison serving an IPP, 3,570 of whom are being detained after their tariff date has expired (Ministry of Justice, 2013a).

The Howard League for Penal Reform has longstanding concerns about the principles behind, and the application of, the IPP sentence. In 2008 the charity published a report urging the government to abolish the sentence, arguing that it was ill-conceived and fundamentally flawed (Howard League, 2008); four years later these concerns were addressed and the sentence was abolished.

The legal team at the Howard League has represented children sentenced to Detention for Public Protection sentences (DPP – the parallel indeterminate sentence for juveniles) regarding issues such as access to offender behaviour courses, transfer to open conditions, and detention after the end of the tariff period.

The Prison Governors' Association (PGA) has expressed concern about those who remain in custody serving IPP sentences. Its 2012 conference voted overwhelmingly in support of a motion welcoming the end of the IPP, and calling on government to take action to prevent existing IPP prisoners from serving disproportionately long sentences.

Concerns remain regarding IPP prisoners and their safe management through the prison system and back into the community. The PGA and the Howard League have worked in partnership to survey PGA members in order to ascertain the impact of IPP prisoners on the prison environment and on prison staff; and to put forward recommendations for managing safely the release of those currently serving IPPs into the community.

The survey elicited 103 responses, almost all respondents were highly experienced senior prison service staff, with direct experience of working with IPP prisoners. On average, respondents had worked in the prison system for 21 years. One fifth of respondents were currently working in prisons holding over 100 IPP prisoners. The survey comprised ten research questions exploring three main issues:

1. The impact of IPP prisoners on the overall prison regime
2. The impact of IPP prisoners on prison staff
3. What, if anything, ought to be done to manage the safe release of post-tariff IPP prisoners back into the community?

This briefing presents an analysis of the survey findings and puts forward recommendations to

enable those in custody serving IPP sentences to be managed safely into the community. Recommendations are based both on responses to the survey and the Howard League's knowledge and experience of the issues surrounding IPP sentences.

## Background

The IPP sentence was introduced by the Criminal Justice Act 2003. It was created to increase the powers of courts when dealing with those termed 'dangerous offenders'. IPPs operate in a similar way to life sentences, where a sentenced person must serve a minimum term or tariff before they can be considered for release. Once the tariff has expired, the Parole Board must determine whether it is 'completely satisfied that the risk had sufficiently diminished for that person to be released and supervised in the community' (Criminal Justice Service, 2002: 95). Following release, a person is subject to a life licence.

Under the 2003 Act, an IPP sentence could be imposed if a person committed one of 153 specified violent or sexual offences listed in the legislation. There was also a rebuttable presumption of dangerousness for those who had a previous conviction of any one of the specified offences. Judicial discretion was limited; once the criteria were met a judge was required to hand down an IPP unless they thought it unreasonable to do so.

The IPP sentence can be seen as the epitome of the move towards a 'risk-based penal strategy' (Ashworth, 2010: 422) based primarily on the future risk an individual is predicted to present, rather than on the offence for which they have been convicted. The New Labour years in government (1997–2010) saw a distinct change in criminal justice and sentencing policy; public protection took a more prominent role as a purpose of sentencing, and proportionality – the concept that the sentence reflects the seriousness of the crime – increasingly had less influence (Jacobson and Hough, 2010). Such an approach has been heavily criticised by both academics and those working within the criminal justice system on the grounds that the ability to identify dangerousness and predict risk is questionable (Ashworth, 2010), and that the reduced prominence of proportionality in sentencing leads to unfair and unjust sentences (Jacobson and Hough, 2010).

The IPP sentence came into force in April 2005. Within two years almost 3,000 people had been sentenced to an IPP (Ministry of Justice, 2013b) which was substantially more than the Home Office had anticipated. By September 2012, this figure had risen to 8,233 (Ibid.). Although the sentence was designed to apply to those who committed serious and dangerous offences, many of those sentenced had a trigger offence that was of a less serious nature and accordingly



received short tariffs; a third had a tariff of less than two years (Jacobson and Hough, 2010) with one tariff set as low as 28 days (Strickland and Beard, 2012).

The future-risk-based rationale of the sentence was predicated on those sentenced having access to offending behaviour courses that would theoretically enable them to reduce their level of risk, and demonstrate this to the Parole Board. IPP prisoners are therefore a particularly resource-intensive group, and the large numbers of IPP prisoners entering prisons placed considerable strains on the system (Ibid.). The Prison Service was not resourced to deliver the rehabilitative courses required and the Parole Board did not have the capacity to hear the numerous additional cases (HM Chief Inspector of Prisons and HM Chief Inspector of Probation, 2008). These factors, in combination with the very short tariffs many IPP prisoners were serving, resulted in the vast majority being detained post-tariff and very few being released at all. This in turn significantly increased the prison population and saw the indeterminate-sentenced prison population grow by 135 per cent between 2005 and 2012 (Strickland and Beard, 2012).

In order to ameliorate these issues steps were taken to limit the application of the IPP in the Criminal Justice and Immigration Act 2008. This tightened the eligibility criteria, requiring that a person be convicted of a serious, specified offence meriting a determinate sentence of at least four years (effectively a minimum two year tariff), removing the rebuttable presumption of dangerousness and giving judges greater discretion as to whether to hand down the sentence. These alterations had a modest impact, reducing the rate of new IPP sentences by around a third and increasing the average tariff length (Strickland and Beard, 2012). However, the number of prisoners released continued to be small and the problems of increasing numbers and insufficient resources remained. The non-retrospective application of the Act meant that those sentenced prior to 2008 with short tariffs remained in custody serving increasingly disproportionate sentences with little opportunity to prove their risk had diminished (Jacobson and Hough, 2010).

The IPP was abolished in LASPO 2012, replaced by a system of 'two-strikes' life sentences and extended determinate sentences. Kenneth Clarke QC MP, the then Justice Secretary, stated that IPPs were 'unclear, inconsistent and have been used far more than was ever intended... That is unjust to the people in question and completely inconsistent with the policy of punishment, reform and rehabilitation' (Hansard, 2011). However, the abolition was not applied retrospectively. Of the post-tariff prisoners currently serving an IPP, a significant number were sentenced prior to 2008 with a tariff period of less than two years.

The post-tariff detention of those serving IPPs (particularly those sentenced prior to 2008) has been subject to numerous legal challenges. In 2012 the issue went before the European Court of Human Rights (ECHR) in *James, Wells and Lee v. the United Kingdom*, where the seven-judge panel unanimously held that failure to provide access to the rehabilitative courses required to prove risk reduction rendered the detention of IPP prisoners post-tariff 'arbitrary and unlawful'. The Coalition Government sought leave to appeal the decision, but this was rejected in February 2013 (ECHR, 2013).

### Box 1: Numbers of IPP prisoners sentenced and released each year

Year	Number sentenced to IPP	Number of IPP prisoners released
2005	147	0
2006	1283	3
2007	1687	13
2008	1691	36
2009	1132	53
2010	959	97
2011	867	300
2012	792	444

Sources: Ministry of Justice (2013c), Criminal Justice Statistics, September 2012 Table Q5.6; Ministry of Justice (2013a), Offender Management Statistics (quarterly), October to December 2012 Table 3.1; Ministry of Justice (2011a), Offending Management Caseload Annual statistics 2011, Table A3.5.

### Survey Findings

The survey of PGA members addressed the impact that IPP prisoners, particularly those detained following the end of their tariff period, have on the wider prisoner population, prison staff, and the prison regime as a whole. Respondents were also asked whether they thought steps ought to be taken to manage IPP prisoners into the community safely with a particular focus on those who had passed their tariff period. Full survey results can be found on the Howard League website: ([www.howardleague.org](http://www.howardleague.org)).

### Impact on prisoners and prison staff

#### Resource implications

Respondents highlighted the resource implications of managing large numbers of IPP prisoners, and the impact this had on other long-sentenced prisoners and the prison regime as a whole. It was noted that attempting to allocate IPP prisoners to the relevant courses or transfer them to prisons providing the necessary rehabilitation programmes took up a significant amount of staff time. Several respondents added that the high number of complaints and legal challenges that post-tariff IPP prisoners made placed additional and unsustainable administrative burdens on staff.

A large majority (77 per cent) stated that the additional demands IPP prisoners placed on prison resources had a detrimental impact on access to

rehabilitative and educational courses for non-IPP prisoners. Seventy-eight per cent reported that waiting lists for rehabilitative courses were very long in the prison they worked in. Respondents felt that the needs of life-sentenced prisoners in particular were likely to be neglected as resources were more focused towards IPP prisoners, potentially delaying the release of life-sentenced prisoners.

These resource challenges were regarded as a source of resentment and frustration among both IPP and other prisoners. One respondent noted that IPP prisoners experienced '[f]rustration that they have passed their tariff date but are unable to secure a space in the appropriate prison to meet their needs and/or they are unable to secure a place on the intervention they need due to waiting lists and funding' (Respondent 5). Forty-two per cent of respondents highlighted that the IPP sentence led to divisions within prisons and difficulties between prisoners, as those serving IPPs resented determinately-sentenced prisoners who secured places on rehabilitation courses while they remained on waiting lists, and non-IPP prisoners often resented what they perceived as 'queue-jumping' (Respondent 75) by IPP prisoners in terms of access to courses, parole hearings, and time with staff.

### *Discipline*

Respondents indicated that resentment and perceived unfairness resulted in increased discipline problems and security threats. Forty-six per cent of respondents reported that institutions housing IPP prisoners saw increased levels of indiscipline. With regard to post-tariff IPP prisoners respondents stated that 'invariably they could see no chance of release as they struggled to access appropriate courses or indeed were not suitable for these courses. This led to anxiety, resentment and discipline problems caused by frustration' (Respondent 63), and produced '[f]eelings of no incentive, and no deterrent not to misbehave' (Respondent 14).

The findings suggest that the large number of people sentenced to IPPs, particularly those sentenced with short minimum terms, had contributed to feelings of unfairness and injustice within many prisons. Academic research and official reports into prison indiscipline and disturbances (for example Woolf, 1991 and Liebling, 2004) consistently highlight the importance of just and fair treatment that ensures prisoners do not become disaffected in order to maintain a stable, safe, and decent regime. The survey indicates that difficulties managing the needs of IPP prisoners, especially those who are post-tariff, present potential tests to prison safety and stability. As one respondent noted: 'I feel the IPPs need to have something achievable to aim for otherwise resentment will build with potentially disastrous consequences for prisons and prison staff' (Respondent 16).

## **Box 2: Impact of IPP sentences on prison staff**

No impact at all	2%
Problems with prisoners wanting access to courses	75%
Have to deal with more indiscipline among prisoners	37%
Dissatisfaction with the job as unable to help/support prisoners	42%
Reduces prison staff's credibility as not seen to be fair	43%
Frustration with ability to do job	48%
Problems managing movement of IPPs and other lifers through system fairly	88%
Problems with security issues due to diminished relationship with prisoners	27%
Good job satisfaction as able to support prisoners	6%
Dealing with large numbers of IPP prisoners	42%
Poorer relations with prisoners	20%
Difficulty in achieving fair treatment between long and short tariff prisoners	63%

### *Staff morale*

It is clear from the survey that managing IPP prisoners had a detrimental impact on staff morale. Ninety-two per cent reported that IPPs decreased staff job satisfaction as they undermined staff credibility, prevented staff from treating all prisoners fairly, and often meant staff were unable to assist prisoners in progressing through their sentences. As a result many respondents felt staff were frustrated and demoralised with their work. Several (20 per cent) noted that this led to poorer relationships between staff and prisoners, and some (28 per cent) linked the difficulties staff faced when working with IPP prisoners to increased security threats and indiscipline.

The crucial role of staff-prisoner relationships and the necessity of a motivated work force in the creation and maintenance of safe and stable prison regimes has long been noted by researchers and commentators (See for example Hulley, Liebling and Crewe, 2012). Reports of feelings of helplessness among staff and negative effects on relationships with prisoners are therefore troubling. One respondent reported, 'I have regularly had conversations with staff who state 'I can see where he is coming from. He complied, we failed him, he is now not bothered and sees no end to the wait!'' (Respondent 32).

### *Prisoner wellbeing*

Respondents also highlighted that the nature of the IPP sentence frequently had a negative impact on the health and wellbeing of those serving the sentence: 86 per cent reported that IPP prisoners experienced high levels of anxiety, and several noted that IPP prisoners were at increased risk

of self-harm. This was particularly the case for those pre-2008 sentenced prisoners serving short tariffs who would not have been eligible for the sentence following the changes made in the Criminal Justice and Immigration Act 2008. It was emphasised that this cohort of prisoners had particular difficulties with anxiety as they saw others who had been convicted of similar crimes after 2008 enter and leave prison while they were detained substantially beyond their tariff date.

Respondents noted that IPP sentences were particularly difficult for prisoners who had pre-existing mental health problems, learning difficulties, or a personality disorder. Such prisoners faced additional obstacles in accessing rehabilitative courses, for example: 'Some offenders have ADHD, aspergers etc. and the interventions teams are not equipped to deliver intervention to this group of offenders, so again they can serve disproportionate sentences' (Respondent 63). Respondents viewed the impact of IPP sentences on prisoners suffering from these problems as particularly unfair.

## **Managing prisoners safely into the community**

Almost all respondents (97 per cent) agreed that changes needed to be made to the current system to enable post-tariff IPP prisoners to be managed and released into the community safely. Three broad courses of action were identified: increasing resources; supervision in the community; and altering the release process.

### *Increasing resources*

Many respondents suggested that additional resources should be made available to enable IPP prisoners access to rehabilitative programmes and to have a sense of progression through their sentence towards release. Fifty-seven per cent recommended increasing staff numbers and 31 per cent recommended increasing the time staff spent working directly with IPP prisoners on issues related to their release. Many respondents also highlighted the need to increase the resources of the Parole Board and ensure that it hears applications more frequently.

Staff training was also highlighted as an issue that needed to be tackled. Respondents noted a reduction in training for working with indeterminately-sentenced prisoners. Ensuring staff had sufficient training to work with IPP prisoners was seen as key to enabling their safe management into the community.

While recommendations to increase resources might be considered unrealistic in light of the current constraints on public spending, failure to invest in the provision of rehabilitative courses in order to make savings presents a false economy.

It costs an average of £39,573 per year to keep a person in custody (Ministry of Justice, 2011b) and it is likely that this figure will be notably higher for those sentenced to IPPs as they are particularly resource-intensive. Further, following the judgment in *James, Wells, and Lee v. United Kingdom*, it is likely that those who are detained beyond their tariff without access to the courses required to reduce their risk will be entitled to compensation from the government.

### *Supervision in the community*

Survey results show that the issue of risk remained important for pre-2008 sentenced IPP prisoners, but respondents were of the view that for many in this group supervision in the community was appropriate.

Respondents valued the work of the probation service, and suggested that the probation service was under-utilised with regard to IPP prisoners. Respondents thought more should be done to enable probation officers to have a greater role in the risk assessment of prisoners, and also to set up effective 'through the gate' provision. A significant number (35 per cent) thought that more probation officers ought to be recruited to work with this group of prisoners, and that offending behaviour courses should be available in the community with attendance forming part of licence requirements.

A majority of respondents felt that the length of licences and stringency of licence requirements ought to be increased where necessary to ensure public safety. Other respondents noted that IPPs were likely to be released on life licence and felt this was sufficient to protect the public.

A large number of respondents (71 per cent) favoured utilising electronic or satellite tracking technology in appropriate cases, although evidence as to whether tagging is effective in preventing further offences is mixed, with research conducted by the Ministry of Justice suggesting that tagging has a neutral impact on reoffending (Hansard, 2009).

### *Altering the release process*

The survey indicated that many respondents were keen to revise the process for identifying, managing and assessing risk, in order to prevent, where appropriate, the continuation of prisoners' sentences post-tariff.

Several respondents drew attention to the risk-averse nature of Parole Board decision making and suggested this should be re-evaluated. Many stated that the Parole Board ought to be less reliant on the completion of particular offending behaviour courses, with one respondent noting that 'offenders with a low risk of reconviction do not benefit, or benefit very little from completing OB programmes' (Respondent 74). Further,



many recommended that governors be given a greater role in conducting risk assessments of IPP prisoners and making recommendations to the Parole Board (47 per cent).

In addition, a small number of respondents suggested that the government ought to '[c]onvert sentences to determinate length with extended licence to support the safety of the public' (Respondent 23). The minimum tariff for an IPP sentence was determined by calculating the length of the equivalent determinate sentence for the offence and then halving this (Ashworth, 2010). The conversion of IPPs into determinate sentences could therefore be achieved by doubling the length of the minimum tariff and removing the indeterminate element of the sentence.

### Box 3: Respondents' recommendations for safe management into the community

Governors to undertake initial risk assessment and make recommendation to Parole Board	47%
Allow IPP prisoners greater access to Release on Temporary Licence	25%
Circumvent the current system to allow quicker access to Parole Board	29%
Speed up the process to open conditions	23%
Employ more prison staff to deliver the necessary courses	57%
Recruit more Parole Board members so that boards sit more frequently	50%
Allow prison staff more time to work with prisoners to prepare for release/ Parole Board hearing	40%
Change the criteria and access conditions to rehabilitative courses	21%
System is working well, there is no need to change anything	2%

## Recommendations

- The government must urgently review the situation of post-tariff IPP prisoners and implement a system to enable them to be safely managed into the community
- All short tariff IPP prisoners should be provided with a clear strategy to manage their safe release into the community before the end of 2013. This could be achieved by converting all IPP sentences with short minimum tariffs into determinate sentences.
- Resources must be increased to enable all those serving IPPs to access the courses needed to reduce their risk, and to ensure that staff have sufficient training to work with this group. Failing to invest in resources will result in increased costs in the long term
- Prison governors ought to have a greater role in risk assessment and making recommendations to the Parole Board
- The Parole Board must be given capacity to hear more cases and the criteria for release must be reviewed and amended
- The Probation Service have an important role in enabling the safe management of post-tariff IPP prisoners into the community. This role must be recognised and strengthened.

A full list of references is available on our website at [http://www.howardleague.org/never-ending\\_story/](http://www.howardleague.org/never-ending_story/)

## About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

It campaigns, researches and takes legal action on a wide range of issues. It works with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

More information available at:  
[www.howardleague.org](http://www.howardleague.org)

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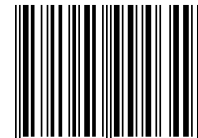
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