



Indeterminate Sentences for Public Protection

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'I have to stay in custody until someone says I can leave. But when will that be? Because nothing is changing while I'm just sitting here every day waiting to be told what to do.'

'When I first arrived I didn't know what was happening, the Prison Service didn't know, probation didn't know, nobody knew what to do. After two years still no-one seems to know what they are doing.'

'I have found it really hard to adjust to my sentence. I was told that IPP means 'indefinite' which is quite scary. I'm not justifying what I done but why do I need life? I would have preferred a fixed sentence that is longer, but at least I would have a light at the end of the tunnel.'

Serving prisoners, on their experiences of IPPs

1. Foreword and Recommendations

Drawing on a range of sources, including public documents and interviews, this Howard League for Penal Reform report illustrates that the Indeterminate Sentence for Public Protection (IPP) has been ill-conceived and is ultimately flawed. The system is unable to support the numbers being sentenced under the IPP provisions, creating difficulties for the criminal justice system on a range of levels.

A series of High Court judgments have now ruled that detention beyond the term of sentence is unlawful, if prisoners sentenced to the IPP are not provided with the appropriate behaviour management courses and assessments in order to present evidence to the Parole Board as to whether or not they still present a risk. With the prisons facing record overcrowding and a £60m cut in their budgets, and a complete failure on the part of the government to plan for the consequences of the IPP, it is unsurprising that many custodial institutions are unable to provide the courses and assessments needed. The result is that hundreds of prisoners on IPPs may now be freed if the Court of Appeal upholds the recent judgments.

The government is now reviewing the IPP sentence, and this report – particularly the recommendations in this foreword – is intended as a contribution to that review. The Howard League for Penal Reform has had concerns over both the principles and practicalities of the IPP since the sentence was first proposed by the former Home Secretary, David Blunkett. Events since the IPP entered the statute book in 2005 have confirmed our worse fears.

We believe that the IPP is a misguided sentence that should be abandoned. It is wrong for individuals to be sentenced to indeterminate periods in prison based on acts they might engage in - in the future. It is also unworkable in the long term. Assessment is an imprecise science that is increasingly measured by the prisoner being able to demonstrate their reduction in risk. With an overcrowded system struggling to provide courses to address offending behaviour, this failure of provision, in turn, drains further resources throughout the secure estate, while adding to the pressure of numbers, as prisoners sentenced to the IPP remain in custody - unable to prove their fitness for release.

A recent Parliamentary Question covering the period up to April 2007 revealed that in the two years since the IPP was introduced, 2,450 people have been sentenced for public protection. Of these, only five have been released. Because of the length of the sentence and the system's inability to process people, a bureaucratic nightmare is developing - one which will not simply haunt the current government, but also its successors.

To add to this, those released on licence under IPP are liable for recall at any time in the following ten years, and annually thereafter if the Parole Board deems it necessary. The potential for breach of licence during this long period is immense, and would effectively return anyone who breaches to square one. In other words, the secure estate will see yet more strain placed on its limited resources - not only with incoming IPPs, and those already in the system, but also with those returned to jail after breaching licence conditions.

The principle of preventive detention for public protection is one that has been explored before (Rose 2007). The Prevention of Crime Act 1908 and the Criminal Justice Act 1948 both expanded the use of preventive detention and were eventually repealed after fundamental injustices and withering assessments of their effectiveness. Expanding preventive detention has been tried before and has failed. Repeating historical mistakes is no way to construct a coherent and effective sentencing regime.

Given that the IPP remains on the statute books, however, this report highlights issues that must be addressed to overhaul the current sentence structure. The Howard League for Penal Reform believes that:

- Discretion and a fact-sensitive approach to sentencing must be emphasised. The legislation should be amended so that the IPP is used in exceptional circumstances, rather than as a standard prescription. The Sentencing Guidelines Council should provide guidance on the criteria for exceptional circumstances. Courts should also have discretion to impose a licence of *up to* ten years, rather than the standard application of ten-year licences, as is currently the case. To summarise, courts should be given discretion so that where 'there is a significant risk to members of the public of serious harm' the IPP *may* be imposed, rather than *must*
- In relation to the assessment of 'dangerousness', the courts should be provided with a consistent assessment process for all cases where an IPP is considered
- In order to be meaningful, courts should ensure that the IPP tariff allows sufficient time for an application for parole to be prepared. Short sentences that do not provide sufficient time indicate that the IPP may not be appropriate in the first place
- There should be a dedicated officer responsible for those receiving indeterminate sentences in every prison, probation area and youth offending team region. These officers would oversee sentence planning, ensuring that an ongoing risk assessment process is commenced from the beginning of the sentence. Staff with responsibility for IPPs would have a duty to help these individuals understand the nature of their sentence and to ensure access to offending behaviour programmes and other obligations that must be met. Clearly this has implications for the provision of resources, resources that are currently not there. Resources must be secured and ring-fenced to ensure that the means on which to base IPP assessment are in place. The Howard League for Penal Reform is very clear that the resources should not be taken away from other sections of the prison population, for instance lifers, for whom courses and assessments are equally needed and important. Once again, we return to our initial point – whatever changes are wrought to the IPP sentence, the Howard League for Penal Reform believes it is essentially unworkable in the long term

- Resettlement issues for IPPs should be investigated, with a view to a multi-agency approach to formulating and monitoring a release package that reduces the chances of IPPs reoffending. Any review should consider how a new release package for all IPPs will work with existing, complex arrangements, such as the Prolific and Priority Offender (PPO) programme and the Multi-Agency Public Protection Arrangements (MAPPA) for violent and sexual offenders. Crucially, IPP status - and the dangerousness it implies - should automatically engage the assistance of other agencies, such as social services and housing authorities, upon resettlement

The Howard League for Penal Reform would like to thank Karen Cooper, Centre for Criminology at the University of Oxford, for writing this report.

Frances Crook
Director, the Howard League for Penal Reform

2. Introduction

This report outlines the current debate surrounding the sentencing and management of individuals receiving Indeterminate Sentences for Public Protection (IPPs).

The report is based on primary and secondary sources. Following an extensive literature review, primary data were sought to illustrate the impact of IPPs on the penal system and those who are either subject to them or working to put the sentence into practice.

In the course of research for this report, key National Offender Management Service (NOMS) staff and criminal justice professionals were interviewed about the issues arising from the implementation of the IPP. In addition, a London local prison provided a case study. Staff, prisoners currently serving an IPP sentence, and Independent Monitoring Board (IMB) members, provide an insight into the impact of IPPs on the prison. Analysis of prison documentation further highlights many of the difficulties encountered within this institution and provides details about the current issues facing local prisons more widely.

In outlining the findings, the report addresses the key concerns and failings of the IPP and draws upon the data sources to highlight areas in which policy and practice should be addressed.

3. Background to the IPP

Key Points

A product of the Criminal Justice Act 2003, the IPP must be imposed upon individuals who are convicted of a serious offence (that is a specified sexual or violent offence carrying a maximum penalty of ten years imprisonment or more) where 'the court is of the opinion that there is a significant risk to members of the public of serious harm'. The IPP applies to offences that were committed on or after 4 April 2005.

There are 153 specified offences eligible for an IPP, compared to just 11 for an automatic life sentence, which the IPP replaced. The offences range from manslaughter and sexual assault, to affray and exposure. The court of appeal has held that courts should presume that anyone convicted of one of these offences who has previous convictions is dangerous, unless this conclusion would be 'unreasonable'.

The IPP is similar to a life sentence in that those sentenced are told by the court that they must serve a minimum prison term ('the tariff'), before being considered for release. All minimum terms are set by the trial judge in open court.

Individuals subject to IPPs are released from custody by the Secretary of State at the discretion of the Parole Board, on grounds of public safety. The offender is then subject to supervision on licence by the Probation Service for a period of at least ten years, after which time the licence may be terminated by the Parole Board if it considers it safe to do so. If the licence is not terminated, supervision will continue indefinitely, although further applications can be made to the Parole Board at yearly intervals.

During licence supervision, those sentenced to IPPs are subject to the same recall arrangements as those on life licences. The decision to recall an IPP licensee to prison is made by the Post Release Section (Public Protection Unit, NOMS), on behalf of the Secretary of State, where there is considered to be a risk to public safety¹.

In 2001, The Halliday Report, *Making Punishments Work* (Home Office 2001), highlighted a lack of disposals for people who had committed offences which did not carry 'life' imprisonment, but which had a high risk of committing a further offence that would cause serious harm to the public. In the subsequent Criminal Justice Act 2003, the government thus sought to create a scheme of sentences aimed specifically at offenders who commit sexual and violent offences and who have been assessed as 'dangerous'.

¹ The decision to revoke and recall an IPP licensee to prison is made on the recommendation of the Parole Board, but it can be made without recommendation where the Post Release Section consider there to be an 'immediate and unacceptable' risk to public safety.

The introduction of the IPP heralded a departure from sentencing practices which were determined by the presentation of facts to the court about a specified offence, to decisions based upon the potential future risk that a defendant might pose to the public. In a 2006 appeal judgment, Lord Justice Judge commented on this departure:

'Although punitive in its effect, with far-reaching consequences for the offender on whom it is imposed, it [the IPP] does not represent punishment for past offending...the decision is directed not to the past, but to the future².'

A combination of statute and appeal court guidance has led to the IPP sentence being used in almost all instances where offenders have been convicted of the specified offences. This has resulted in an explosion in numbers of those receiving IPPs in England and Wales. In April 2007, the total adult population in prison serving indeterminate sentences was 8,494 ³. Within this group, the number of prisoners sentenced to an IPP was 2,547 ⁴. When broken down by gender, the figures given for the period April 2005 to March 2007 ⁵ can be seen in Table 1.

Table 1. The Number of Individuals on IPP Received Into Prison, April 2005 to March 2007, by Gender

Year	Number of male prisoners	Number of female prisoners	Total
2005/2006	670	30	700
2006/2007	1,670	40	1,710

Source: Parliamentary Answer, 21 May 2007 (*Hansard*, col. 1149W).

According to statistics held by NOMS, since April 2005 the use of the IPP has been increasing at the rate of approximately 120 cases per month (accelerating to 160+ in December 2006 and January 2007). In the last quarter of 2006, some 590 prisoners were received into prison on IPPs. This is the equivalent of a prison the size of Altcourse, Brixton or Durham, full of people who are almost certainly in the prison system for a significant period of time.

The increasing frequency with which individuals are being sentenced to indeterminate sentences is having a visible impact on the wider prison population:

'The largest proportionate increases since April 2006 were for those sentenced to indeterminate sentences (life sentences and indeterminate sentences for public protection) which increased by 31 per cent.'

Ministry of Justice, 2007a, p.1

² *R v. Johnson and other appeals* [2006] EWCA Crim 2486 at [3].

³ This figure represents *all* indeterminate sentences including life sentences. It does not however include either 15 to 17-year-olds, or young adults who have received Detentions for Public Protection (DPPs) (Ministry of Justice 2007a). As with the IPP, a DPP applies where a juvenile is convicted of a serious offence (that is a specified sexual or violent offence carrying a maximum penalty of ten years imprisonment or more) and who are considered by the court to pose a 'significant risk to members of the public, of serious harm'.

⁴ Parliamentary Answer, 10 May 2007 (*Hansard*, col. 438W). It is important to note that Parliamentary Questions asked on different days generate variations in the numbers of individuals on IPP and this might account for some differences in the figures presented here.

⁵ The figures presented in this brief detail the situation with regard to IPPs in April 2007, according to the latest figures held by NOMS (NOMS 2007).

To put this in context, within one local prison, our study prison, the forthcoming IMB annual report cites the rate of 'lifers' coming into the prison as increasing by 2% per week, which represents some 10% of all convicted and sentenced prisoners. On a national basis, the situation looks set only to worsen. In a Parole Board meeting in May 2007, the Prison Service stated that the population of life sentenced prisoners is projected to be in the region of 25,000 by 2012. It is likely that this will only serve to exacerbate many of the emerging problems within the criminal justice system today.

The use of IPP sentences is no doubt a major contributor towards the current crisis in prison numbers. As of 7 September 2007, there were 80,832 people in prison in England and Wales. Following the establishment of the Ministry of Justice in May 2007, the issue of prison overcrowding was held to be a central concern, with steps taken to implement early release for non-violent offenders, and plans announced to build 8,000 more prison places by 2012 (Ministry of Justice 2007b, p.4). However, the policy of expanding prison space, whilst being regressive in the long term, offers no more of a panacea in terms of short-term policy.

4. The Assessment and Management of Individuals on IPPs

This section addresses aspects of the overall assessment and management of those on IPPs. Data are drawn from sources which have sought to examine issues relating to the implementation of the IPP sentence. Interviews are also included from a small number of key personnel in organisations tasked with managing individuals sentenced to IPPs. The findings are presented under the following themes:

- Risk assessments and sentencing
- The implications of short tariff IPPs
- Managing IPP cases

Risk Assessments and Sentencing

In defining sentencing criteria, the government proposed that the decision to impose an IPP should be oriented towards punishment of serious and dangerous offenders, based upon the 'risk' of their future offending. From the outset there were notable concerns about the ways in which this would be implemented.

In the House of Commons Standing Committee, several amendments to the Criminal Justice Act 2003 were tabled. In particular, the issue of 'significant risk' was debated at length by the Committee as a means of assessing an individual's level of 'dangerousness'. This discussion concerned Section 225 of the Criminal Justice Act 2003 in which it is stated that an IPP applies where:

'...the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission...of further specified offences.'

During discussion, the following points were raised:

- The ambiguity of the meaning of the word 'significant' and the need for this provision to be more tightly worded
- The wide total of 153 specified offences, all of variable associated risk, and the inclusion of some comparatively minor offences
- The 'inappropriate' setting of the threshold for IPP at crimes that carry a maximum sentence of ten years and the resulting likelihood of high numbers of individuals being sentenced

Hilary Benn, the then Prisons Minister, argued that while there may be a wide range of considerations in assessing dangerousness, sentencing would be established on the basis of thorough risk assessment. It would therefore be for the courts to apply the test for significance, based upon the facts presented in each case. He further conceded that the impact of the decisions would be 'difficult to know'.

In the light of overwhelming evidence of IPPs being imposed almost automatically upon any individual who has committed one of the specified offences, the Standing Committee discussions serve to highlight the justification for these early concerns. Indeed, the most recent statistics held by NOMS (April 2007) revealed that the majority of offences for which individuals received IPPs were not as serious as those which would previously have merited a life sentence. For example, 40% of people receiving IPPs were convicted of robbery or assault with intent to rob, and 21% were convicted of wounding with intent to cause GBH. To highlight this further, statistics held by the study prison reveal the range of offences for which the 70 individuals serving sentences of IPP on 20 June 2007 were convicted (see Table 2).

Table 2: Offences for Which Prisoners on IPP Had Been Convicted in the Study Prison: June 2007

Offences	%
Sex offences	44
Robbery/Conspiracy to robbery	24
Armed robbery	9
Other	11
GBH	4
Wounding	4
Attempted/Murder	4
Total	100

Since their implementation, the dangerousness provisions have been widely criticised, with the Court of Appeal referring to them as 'labyrinthine proposals'⁶. Attempts were made to restrict the meaning of the provisions, '...in part because they were nervous of the idea of even minor offenders having indeterminate sentences being imposed on them' (Gillespie 2006, p.830), but in doing so, the options open to a judge faced with sentencing offenders were severely limited. More recently, in their written submission to the Home Affairs Select Committee, the organisation Justice wrote:

"The 'dangerousness' requirements are insufficiently stringent only to catch those offenders who need this kind of sentence."

Justice, 2007, p.9

⁶ *Lang and others* [2004] EWCA Crim 2864 at [16]; [2006] Crim L R 174.

Further to the problems of ambiguity within the original provisions has been a lack of sufficient resources to enable thorough risk assessment procedures to take place. In written evidence to the Home Affairs Select Committee, the Prison Governors Association (PGA) stated:

'In many cases, sentences are passed without sentencers having been provided with or sought adequate pre-sentence reports. It would be in the public interest for sentencers to be obliged to obtain adequate risk assessment reports instead of passing an indeterminate sentence without...for instance a psychiatric report.'

Prison Governors Association, 2007

One means of assessing both the likelihood of reconviction and the risk of harm an individual presents is the Offender Assessment System (OASys). During an interview for this report, Julia Long of the Public Protection Unit, NOMS, outlined the disparity between the intended use of OASys and the reality of the situation:

'What should be happening is that [offenders] should have a pre-sentenced report and an OASys assessment prior to sentencing. We know that doesn't always happen. At one stage we did a review and I think something like 50% of those being sentenced to IPP were without a full OASys assessment.'

The ambiguity over the concept of 'risk' seems all the more relevant when it is considered that by 30 April 2007, of just five prisoners released from IPP sentences, two of these individuals had their full sentences quashed on appeal after their release⁷. In one instance, in April 2006, the Court of Appeal imposed a determinate sentence and in doing so, a warning was given by the appeal judge. Mr Justice MacKay referred the court to an important guidance case in which it was argued:

'Sentences must...guard against assuming there is a significant risk of serious harm merely because the foreseen specified offence is serious'⁸.

In this case, it was found that the judge had erred in asserting that the defendant was a danger to the public. However:

'It is also the case that the matters that the sentencer should take into account...[were] not addressed by the judge because he did not have the evidence to do so'⁹.

The force of blame was directed towards the fact that the court was not presented with adequate information and assessments in order to make an accurate judgment about the level of risk the individual posed to the public. Similarly, in a second case where the IPP sentence was later quashed, the defendant again received a determinate sentence when it was agreed that he had been wrongly labelled as dangerous. Not only does this 'risk inflation' hold massive implications for the prisoners, but it also has a damaging effect on both the victims of the crime, who have to deal with the reduced sentence, and the public's trust in the judicial ability to recognise and manage offender risk.

⁷ Parliamentary Answer, 21 May 2007 (*Hansard*, col. 1149W).

⁸ *R v. Lang and others* [2005] EWCA Crim 2864 at [17].

⁹ *R v. David BAIRD (and another)* [2006] EWCA Crim 993 at [21].

The Implications of Short Tariff IPPs

The initial custodial period or ‘tariff’ element of an indeterminate sentence provides the individual with opportunities to begin addressing their offending behaviour in preparation for consideration of release from custody. Table 3 illustrates the numbers of males and females who received IPPs and the lengths of their tariffs, as recorded in England and Wales.

Table 3. Number of IPPs by Length of Tariff (Months)

Number of months	1–18	19–36	37–48	49–60	61–120	121 +	Not recorded	Total
Male	138	311	107	44	53	4	24	681
Female	9	15	0	2	0	0	0	26
Total	147	326	107	46	53	4	24	707

Source: Home Office (2006, p.139).

As the IPP sentence is based upon the level of risk that an individual presents, many prisoners receive IPP sentences with short tariffs. Table 3 illustrates that the average tariff received for both males and females was 19–36 months. In a memorandum submitted to the Select Committee on Home Affairs, Simon Creighton explains:

‘The length of the minimum term must be fixed at one half of the equivalent determinate sentence. As the sentence of IPP can be imposed for such a wide range of relatively minor offences, such as ABH or affray, it is perhaps unsurprising that there has been an explosion in the numbers of lifers serving minimum terms of between one to three years.’

Creighton, 2007

As indicated above, Home Office statistics on prisoners serving IPPs between April 2005 and March 2006 showed that the median tariff given to prisoners on IPP was just 30 months, with over 20% of individuals receiving less than 18 months (Home Office 2006). However, the shortest tariff handed down to a defendant, in March 2007, was just 28 days¹⁰. It is no doubt a failure of the legislation that during an interview for the present report, the Howard League for Penal Reform was told by a key NOMS staff member that in principle:

‘It’s entirely possible for an IPP to have a sentence with a negative tariff and if something like that is technically possible then something is wrong somewhere.’

¹⁰ As reported in a memorandum submitted to the Home Affairs Select Committee by Simon Creighton (2007).

The implications of sentencing apparently 'dangerous' offenders to such short tariffs have been widely criticised. Professor Sir Duncan Nichol, the Chair of the Parole Board, argued that the outcomes that have arisen from short tariff sentences were not properly considered when they were introduced by the Criminal Justice Act in 2003. Additionally, in a written submission to the Home Affairs Select Committee inquiry 'Towards Effective Sentencing', the organisation Justice points out:

'IPPs with short minimum terms may be inherently problematic because of the difficulty of persuading the Parole Board that risk has been sufficiently reduced in the short intervening period between sentence and expiry of minimum term, particularly if availability of programmes is limited.'

Justice, 2007, p.9

The problems have been highlighted in another piece of written evidence presented to the Committee in May 2007, by the PGA. The PGA stated that in light of the numbers of individuals on short-tariff IPPs, the Prison Service and Parole Board had been handed an 'impossible task' to 'assess let alone treat' prisoners in the timescales given. As such, it seems that little initial thought was given to the impact that short-term tariffs would have on those serving indeterminate sentences.

Managing IPP Cases

One aspect of risk management which has caused considerable concern is the preparation and assessment of an individual's release from custody. The Ministry of Justice (2007c) paper, *Penal Policy - A Background Paper* states that:

'...sophisticated assessment processes are enabling skilled staff to inform decisions about the risk an offender poses.'

Penal Policy - A Background Paper, p.4

However, in a lecture at King's College London five months earlier, Professor Sir Duncan Nichol noted that given the number of prisoners sentenced with short tariffs, the current situation had resulted in individuals:

'...entitled to be considered for release almost as soon as [they are] received into custody following trial. The practical effect can often be, therefore, that not only has the prison had no time to assess the individual for the purposes of writing reports, but that the [Parole] Board's role in assessing his risk to the public is rendered almost academic by the fact that nothing has changed in the very short period between the sentencing judge deciding he is a significant risk, and the [Parole] Board considering his case. The [Parole] Board must make up its own mind, regardless of what the judge said, but in practice there is very little to go on. Hence an enormous amount of resources are expended on what can sometimes appear to be a futile exercise.'

This highlights a real divergence between government rhetoric regarding the anticipated management of risk assessments and the practicalities of carrying out these activities. Creighton (2007) perceives a failure by the Prison Service in some cases to even recognise that those serving minimum sentences of IPP will require a review by the Parole Board at the end of the minimum term. In written evidence to the Home Affairs Select Committee, he cites one case whereby a review by the Parole Board at the end of a 12-month tariff had to be deferred for a further six months as the prison had not prepared any sentence planning documents or reports. He continues:

'Very often, parole hearings have to be deferred or adjourned as full sets of reports are not ready in sufficient time.'

Creighton, 2007

The PGA further suggests that assessment resources are so 'overwhelmed' that assessment and interventions do not happen until 'well beyond tariff'. This is evidenced by the fact that as of 27 April 2007, whilst tariff had expired in 173 IPP cases¹¹, just five individuals had been released from their IPP sentences. It is thus clear that the Parole Board does not currently have the capacity to deal with the numbers of IPP cases coming through the system on short tariffs.

Speaking to the Howard League for Penal Reform, the Head of Casework at the Parole Board, Terry McCarthy, summarised:

'The Parole Board do not have sufficient resources either in terms of money or manpower...The long-term implications are extremely serious both for the Parole Board and the prison service as a whole.'

For women prisoners serving IPPs the situation is perhaps even more dire; with the prison system unable to invest adequately in the specialist assessment and support structures necessary. The numbers of IPP sentenced females entering the system has led to a substantial increase in the female lifer population and the direct consequence of these insufficient resources is that 'women who receive IPP sentences with short tariffs are the group least likely to be released on tariff expiry' (Creighton 2007). In the light of such evidence, Creighton further notes:

'...the practice of trying to assimilate IPP lifers into the existing life sentence system has been an abject failure. Sentence planning for lifers, internal prison reviews and attendance on courses designed to address offence related problems are all time-consuming. Formal parole reviews require six months to complete. The result is that the sentences imposed by the courts for IPP lifers are being rendered meaningless as it is quite simply impossible for offending behaviour needs to be identified and addressed and reported upon in the timescales available.'

According to Terry McCarthy, the lack of resources required to implement the IPP policy has had huge implications for ensuring that the human rights of each prisoner are not breached. In recent judicial reviews, IPP prisoners have indeed contended that they are being arbitrarily detained in breach of the European Convention on Human Rights. Reflecting on one case, the argument was put forward to the Howard League for Penal Reform by David Walker's solicitor, John Dickenson of Irwin Mitchell Law Firm:

'It is 'irrational' for the prison service to provide for a process leading towards release and then not to be able to put that into effect.'

David Walker received an IPP with a tariff of 18 months for a sexual offence. Walker was based at a local prison, and during the period spent in detention had not received any of the sentence planning, assessments or offending behaviour coursework required for a life sentenced prisoner. As a direct result, Walker faced 'an arbitrary extension' of his sentence.

¹¹ Parliamentary Answer, 10 May 2007 (*Hansard*, col. 1441W).

On 31 July 2007, the High Court judgment in this case was made (*R (on application of Wells & Walker v. The Parole Board & The Secretary of State for Justice* [2007] EWHC 1835 (QB)). In his judgment, Lord Justice Lord described the system as 'shambolic'. He continued:

'to the extent that a prisoner remains incarcerated after tariff expiry without any current and effective assessment of the danger he does or does not pose, his detention cannot in reason be justified. It is therefore unlawful.'

The government was granted a stay pending an urgent application for permission to appeal to the Court of Appeal.

If the Court of Appeal upholds the judgment, the government could be faced with having to release thousands of prisoners serving short-term indefinite sentences, once their tariff has expired.

Other cases involving IPP sentences have been heard, leading to an IPP sentence being quashed and replaced with a determinate sentence (*R v. Lawrie* (02/08/07) Court of Appeal, Case no 0703211 A4). On 20 August 2006, the case of Brett James (*R (on application of James) v. Secretary of State for Justice* (CO/4143/2007) was heard in the High Court. Brett James's IPP tariff was set at one year and 295 days in 2005, and ran out in July 2007. He had been held in Doncaster prison which did have the resources to assess dangerousness nor provide courses which he would need to complete to demonstrate reduced risk to the Parole Board. Mr Justice Collins ruled that detention post-tariff was unlawful if there were no means by which dangerousness could be assessed. The court ruled that Mr James should be immediately released but the order was stayed pending a Court of Appeal hearing.

Mr Justice Collins said:

'Because of the failings of the Government, a fairly large number of IPP prisoners are likely to be released if the Court of Appeal finds the detention unlawful.'

Within the current political climate, when it comes to assessing prisoners for release there is little doubt that the Home Secretary is aware of the dangers of freeing a potentially 'dangerous' offender into the public domain. In recent sentencing debates the IPP has been held up as evidence of the government's commitment to being 'tough on crime', ensuring that serious offenders are detained indefinitely. However, a propensity towards keeping the public free of these individuals might ultimately lead to a tendency to be over-cautions, causing significant consequences for prisoners approaching parole.

In a recent article for the *New Statesman*, Rose (2007) points out that there has been an 'innate and understandable bias' towards such risk inflation. He cites a 2002 study of long-term sex offenders, which found that individuals, who had been rendered 'high risk' and hence refused parole, actually had a low reconviction rate (Hood *et al* 2002). In sentencing on the basis of public protection, there is arguably the potential for '...an inherent tendency to over-predict and to inflate the level of risk when assessing an individual's criminal propensities to re-offend' (Von Hirsch 2000, p.99).

In the light of the above evidence, it seems certain that within the current policy framework, and in the absence of stringent assessments of dangerousness, many individuals look set to receive long periods in custodial detention which are clearly disproportionate to the crimes that they have committed.

5. Examining the impact of IPPs: Inside the prison

Having outlined many of the broad issues which arise in relation to the IPP, this section focuses more specifically on the problems occurring within the prison system. In order to explicitly detail many of these problems, the report draws on one specific case study.

The study prison is a Category B local and remand prison with an operational capacity in excess of 1,400, making it one of the largest prisons in Europe and the UK's most sizeable penal institution. On 20 June 2007, it held 70 prisoners sentenced to IPP.

Utilising information collected from a small number of prison staff and inmates, along with recent prison documentation, the findings are divided into three sub-sections

- Lack of progression through the system: Access to resources
- Sentence confusion and lack of information about the IPP
- Working with IPP prisoners in local prisons

Lack of Progression Through the System: Access to Resources

As a direct result of prison overcrowding, there has been increasing evidence of an inability to manage IPPs within the prison system. In particular, it is clear that a primary concern resulting from an overstretched system is a profound lack of access to courses oriented towards offender resettlement.

Following sentence planning and assessments, individuals sentenced to IPP are expected to tackle key areas of concern in order to make progression towards release. In addressing their offending behaviour, prisoners may be required to engage with problems such as substance abuse, or they might be asked to attend more specialist courses (e.g., the Sex Offender Treatment Programme (SOTP)). In doing so, it is anticipated that the offender will work towards meeting criteria set by the Parole Board to reduce the risk that they present to the public.

There is evidence that inadequate access to appropriate courses has been causing considerable difficulties for prisoners on IPPs. In 2006, the Chairman of the Parole Board, Professor Sir Duncan Nichol, stated that places on offending behaviour courses were likely to be 'scarce', with prisoners spending greater periods of time in custody awaiting such courses. In addition, individuals serving sentences of IPP are also disadvantaged by the fact that annual completion targets for courses (e.g., the SOTP), mean that in some cases, prisons are unwilling to take on prisoners on IPPs who are waiting for transferral to a first stage lifer prison, as these individuals might not have sufficient time to complete a course before they are allocated to a different institution.

In the light of such delays, IPP prisoners are becoming increasingly aggravated and desperate to undertake resettlement work compatible with Parole Board release requirements. A recent Chief Inspector of Prison's report (HM Inspectorate of Prisons, 2006) highlighted the fact that prisoners, and particularly those awaiting SOTPs, were 'very frustrated' with their lack of progress. The Howard League for Penal Reform has also received information that one IMB received a 'steady number' of complaints from short-tariff IPPs, suggesting that IPP prisoners have been merely 'treading water' whilst unable to 'get on with their lives'.

The Perspectives of Prisoners

In order to achieve a detailed examination of the perspectives of offenders, five prisoners serving IPPs were interviewed about their views on their sentences and the services they had received. Their perspectives give a valuable insight into the experiences of individuals currently serving sentences of IPP within the context of a local prison.

In general, the prisoners indicated that they had real concerns about the lack of resources for dealing with individuals on IPPs. All faced long delays in accessing courses and there was a view that prisons are currently unable to cater for those on IPPs, either in terms of their management, or in assisting their progression towards release.

In one instance, an individual had been accepted onto and started an offending behaviour course when he was then informed that he was moving to a different prison establishment. He, therefore, had to abandon attempts to complete the course in order to be available for transfer. However, shortly afterwards the move was cancelled, leaving the individual disappointed and aggrieved at the management of his situation. Faced with such ongoing uncertainty, the prisoners remain 'on hold' indefinitely at our study prison, unable to access the necessary courses, and awaiting transfer out to first stage lifer centres.

As a result of these common situations, interviewees stated that it was apparent that many IPP prisoners were increasingly 'getting frustrated'. One individual stated that he would 'explode' unless something could be done to alter his situation. Furthermore, in light of the significant numbers of IPP prisoners entering the system and the increased demand for prison services, another offender likened the government's management of prisoners on IPPs to '...trying to build an ark after the flood'. Case study 1: 'Garry' summarises the experiences of one interviewee.

Case Study 1: 'Garry'¹²

Garry was sentenced to an IPP with a five-year tariff for armed robbery. His next formal review is scheduled for late 2008.

Whilst awaiting transferral to a first stage lifer centre, Garry remains on a waiting list for courses he needs to address his offending behaviour. He believes that this is because other prisoners on determinate sentences tend to get placed on courses before prisoners on IPPs as they have specified release dates, by which time courses must be completed. Garry recalled one specific instance in which he had applied for a course and was told that, as he was awaiting transfer, he was precluded from participation. This was due to the fact that he may have to leave before the course could be completed. However, the reality was that Garry remained 'on hold' in the same institution throughout the duration of the course.

¹² All interviewees serving sentences of IPP have been given pseudonyms to protect their identity.

Case Study 1: ‘Garry’...continued

Garry has found there to be a total lack of information from the Prison Service about how he might progress through his sentence. He feels that everything he has done so far during his time in custody, including taking up a voluntary drug treatment programme, has been self- rather than institutionally-led. Garry also believes that the criminal justice system does not currently know what to do with the numbers of individuals on IPPs and it is the prisoners who are suffering the most from this confusion:

‘I have to stay in custody until someone says I can leave. But when will that be? Because nothing is changing while I’m just sitting here every day waiting to be told what to do?’

Garry further stated that he would like to see those serving indeterminate sentences moved onto a separate wing or prison where they could access the facilities and courses that they need. He believes that this would allow them to focus on the future and to progress towards rehabilitation and ultimately release. At the present time however, with no information about his future options, Garry feels a real sense of hopelessness about his situation.

Sentence Confusion and Lack of Information About the IPP

The available data suggest that for many prisoners there has been a great deal of confusion regarding the practical experiences of being on IPPs. This has been compounded by the lack of information that individuals receive about their sentence. According to HM Chief Inspector of Prisons (HM Inspectorate of Prisons, 2006) report on Wandsworth it was clear that:

‘...some IPP prisoners had little grasp of their position and did not understand fully why they were treated as life-sentenced prisoners when they had committed relatively minor offences.’

HM Inspectorate of Prisons, 2006, p.71

The views of those interviewed at our study prison support these findings, with individuals experiencing a dearth of information about why they had been sentenced to IPPs and what this would mean for them during their sentences.

In the first instance, many prisoners commented on what they saw as the relatively low-level offences they had committed and as such, tended not to see themselves as ‘lifers’. As one individual stated: ‘...I don’t feel that I fit into that category of lifer’.

Prisoners also cited confusion about why they had received IPPs when other potentially violent and dangerous individuals had received determinate sentences for apparently serious crimes. This tended to indicate to them a distinct lack of logic and unfairness within the system. This was furthered by their belief that not everyone who had received an IPP necessarily posed a level of public risk that required being detained in custody on an indefinite basis:

‘I have found it really hard to adjust to my sentence. I was told that IPP means ‘indefinite’ which is quite scary. I’m not justifying what I done but why do I need life? I would have preferred a fixed sentence that is longer, but at least I would have a light at the end of the tunnel.’

Brian, IPP prisoner

In relation to their understanding of the IPP more broadly, interviewees recalled few attempts by prison staff to communicate with them about their sentence. One individual commented:

'They need to give us some hope by giving us information and liaising with us about what is happening.'

Nick, IPP prisoner

Prisoners cited this lack of information as intensely 'frustrating' and saw that in the present situation, the prison had no way of meeting their needs. John's case study (Case study 2) highlights how the shortfall in information and provision caused him difficulties in coming to terms with his sentence.

Case Study 2: 'John'

John received an IPP for a sexual offence with a tariff period of seven months. Two years on, John remains in custody. He has a parole hearing scheduled for Spring 2008.

The primary difficulty John has encountered with his IPP is a general lack of knowledge about his sentence. John entered custody with the mistaken belief that when his tariff was up he would be released. Once it became clear that this was not the case, he began asking questions about what would happen to him, only to find that no-one was able to give him any answers:

'When I first arrived I didn't know what was happening, the Prison Service didn't know, probation didn't know, nobody knew what to do. After two years still no-one seems to know what they are doing.'

John feels that there is a desperate need to get information through to prisoners. In particular, he cites the need for further details regarding how individuals can expect to progress towards release. Related to this, John believes that everyone on an IPP must be adequately assessed at the beginning of their sentence in order to set them up with the necessary programmes that will see them progress through the system.

At his first parole hearing, John was told that he had not attended the necessary courses to lead towards rehabilitation. One of these courses was the SOTP. However, when John previously applied to begin his SOTP he was told that he was not eligible to take part because there was not enough time during his tariff period to complete it (the SOTP takes a minimum of 12 months). John feels that had he been given access to the necessary courses early on in his sentence this would have allowed him to try and meet the criteria set by the Parole Board. As it stands, at the next opportunity for parole, John will have been in custody for nearly three years.

John found that while he has been unable to undertake the initial courses set for him in prison, further additional courses have nevertheless been added for him to take, the benefits of which have not been made clear. As such, he feels that it is a case of 'moving the goal posts' without providing any explanations for doing so. More recently, John has been told that he must take a Healthy Sexual Functioning (HSF) course, which he was not aware of before. The waiting list for this course is extremely long and John does not know when he will be able to begin this course. At the current time he has no idea about whether he will be able to meet the criteria at his next parole hearing.

Case Study 2: 'John'...continued

John considers himself to be currently *'in limbo'*, awaiting transfer to a first stage lifer centre. A month ago he was told that he would not be moving any time soon, although he has little understanding of why this is the case. John believes that it is *'unreasonable and unfair'* to keep him in prison indefinitely based upon the assumption that he is a potential 'risk' to the public, yet not offer him any way of working towards altering this level of perceived danger.

A common area of concern for prisoners was their inability to come to terms with what being 'a lifer' means on a daily, practical basis. The difficulty in dealing with the indefinite nature of their sentence is particularly confusing given the short tariff period within which offending behaviour is expected to be addressed. The prisoners could not understand the reasoning behind the insufficient time-scales for completing courses and addressing behavioural concerns.

Moreover, in addition to the personal difficulties that they faced, prisoners were acutely aware of the impact their sentence had on their families. One individual explained how being on an IPP had 'a devastating impact' on his wife and son, as, faced with a lack of any information about his future, they had been unable to move forward or to plan ahead. The knowledge that an IPP could technically mean remaining in prison for life was particularly difficult to accept, and the lack of information and attention to sentence progression only served to exacerbate concerns. This is exemplified in the case of Brian (Case study 3).

Case Study 3: 'Brian'

Brian was sentenced to an IPP in November 2006 following a conviction for robbery. He received a seven-year tariff.

Brian's general understanding of IPP was extremely limited. Asked what he knew about his sentence he replied *'not a lot'*. Brian admitted that it was also confusing for his family, who thought that the tariff he received was the sentence that he would serve. Brian did not feel that he could explain the situation to them as he did not fully understand what was happening himself. In particular, Brian felt that the IPP sentence was insufficiently explained to him in court. As such, when he was told afterwards that he was a 'lifer' Brian was confused and upset and did not feel that the implications of this status were outlined clearly enough.

Brian has found that the prison establishment is not set up to cope with the numbers of individuals receiving IPPs and believes that essentially the government *'...has put something in place that has not been thought enough about'*.

Brian is also aware that long waiting lists add to the problems that the prisoners face, preventing progression towards personal targets set by the Parole Board. The living conditions that the inmates face do little to appease the situation. Brian believes that as a lifer he should be given a single cell, but has been told that this is not possible due to overcrowding. Brian explained how this is being viewed by prisoners: *'...you can't get it [single cell] unless you start making threats that you are a violent and a danger to share with and that doesn't seem right'*.

Case Study 3: 'Brian'...continued

Brian believes that if little is done to improve the situation then this will cause immense problems amongst the prison population. He does not feel that the government has considered the effect that this is having on prisoners and the sense of desperation and utter confusion that they have about their current situation:

'If you bend over backwards to meet all the targets that they set for you, you still might not be able to get access to the courses that Parole say you need. Then you get knocked back...If I don't meet my targets then how long will it be before I'm allowed back out? How long can I be kept 'on hold' like this?'

Working With IPP Prisoners in Local Prisons

Following being sentenced to an IPP, an individual is sent to a local prison to await allocation to a first stage lifer centre where they can begin the first phase of their sentence. These prisons aim to provide full risk assessments and set prisoner targets, in order to enable individuals to progress through the system. To help prisoners deal with their situation they also have specialist trained staff to work with individuals serving life sentences.

However, in May 2007, there were 2,603 prisoners serving IPPs being held in local prisons, the majority of whom were awaiting transfer to first stage lifer centres¹³. There is evidence that waiting lists for prisoner transfer have been a long-term concern. In 2006, the Chief Inspector of Prisons (HM Inspectorate of Prisons, 2006) report on Wandsworth Prison identified that despite the fact that individuals should not wait more than a month for onward transfer to an identified prison:

'Prisoners newly sentenced to life or an indeterminate sentence for public protection invariably waited between six months and a year before transfer to a first stage lifer prison.'

HM Inspectorate of Prisons, 2006, p.70

For sex offenders, the situation was found to be even more serious, with the report finding that some first stage lifer prisons had waiting lists of up to two years for this group. The situation is further reiterated in our study prison where, in January 2007, a memo from the Head of Offender Management Unit stated that having been 'inundated' with applications from prisoners about transfer requests, there were nevertheless 'no plans...to move large numbers of IPP or life sentences prisoners out of [the prison]'

The report (HM Inspectorate of Prisons, 2006) further detailed the problems to arise from prisoners on indeterminate sentences being left 'on hold' at local prisons like Wandsworth. She commented:

'The requirement to wait at Wandsworth for bureaucratic procedures to be completed and for a place to become available at a first stage lifer prison – during which time they [prisoners] were unable to address any of their risk factors – did not meet the needs of those with short minimum terms.'

HM Inspectorate of Prisons, 2006, p.71

For individuals working within prisons, there is also increasing frustration at the number of prisoners on IPPs entering the system. A member of the IMB at the study prison told the Howard League for Penal Reform that he believes the

¹³ Parliamentary Answer, 10 May 2007 (Hansard, col. 433W).

implementation of IPPs to be nothing short of an ‘unmitigated disaster’, with those serving sentences having to come to terms with the fact that they are being held ‘*ad infinitum*’. In order to address the current problem there is therefore a need to equip the Prison Service with the resources to be able to do something ‘very serious’ about managing the IPP. Speaking to the Howard League for Penal Reform, the IMB member explained:

‘Prisoners are in limbo, they are frustrated, they can’t do courses and they can’t move prisons...if the situation continues there is a real potential for individuals becoming aggressive and violent or even suicidal.’

In addition to the frustrations of individuals sentenced to IPPs, he also points out that the difficulties arising from the overcrowded prison system and the treatment of those on IPP as ‘lififers’, has had wider implications for other prisoners. In particular, those serving life sentences are beginning to ‘...feel aggrieved that they are not given the facilities that they have come to expect’, including, for example, single cell facilities and access to the necessary offender behaviour courses.

In the 2005/2006 annual report of HM Chief Inspector of Prisons for England and Wales, it was stated that, as a direct result of the increasing prison population, insufficient attention was being paid to short-term prisoners, leading to a lack of ‘decent and purposeful’ regimes (HM Inspectorate of Prisons 2007, p.21). Moreover, the overcrowded system and ongoing resource shortages have created intense competition for course places and led to a situation whereby sufficient resettlement planning may not take place within the available short detention periods. The report continues:

‘Access to relevant and timely interventions and programmes, [a] key element of effective resettlement planning, has been adversely affected.’

HM Inspectorate of Prisons, 2007, p.62

The implications for *all* prisoners are therefore evident and as such, there is a real need for clarity of information about the present situation, both from the wider Prison Service, and within that overall context, at a staff/prisoner level. One IMB member at our study prison, talking to the Howard League for Penal Reform, pointed out the importance of ‘coming clean’ about what can and can not be offered within the current system. At the present time, however, it is clear that increasing pressure to accommodate vast numbers of prisoners on IPPs is contributing to a reduced ability of the prison system to manage resources, and ultimately to ‘effectively rehabilitate offenders’ (Nacro 2007).

6. Conclusion

This Howard League for Penal Reform review of the available published information and testimony from prisoners and criminal justice professionals clearly illustrates that in its present format, the IPP has been ill-conceived and is ultimately flawed. The current system is unable to support the numbers of individuals who are being sentenced to IPPs, creating difficulties for the criminal justice system on a range of levels. If the IPP is not abandoned as ultimately unprincipled and unworkable, then the Howard League for Penal Reform believes that, at the very least, an overhaul of the sentence structure is required.

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