Ending the detention of people on IPP sentences: expert recommendations

June 2025

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Foreword

Although more than 12 years have passed since Parliament abolished the IPP sentence (and the equivalent DPP sentence for those convicted under 18), it continues to cause injustice and despair to those serving the sentence, and their family and friends.

Thousands of people on IPP sentences are still in prison, years beyond their tariff – the period of time set by the court for punishment. Official figures[1] show that at the end of 2024, there were still 1,045 people serving IPPs in prison who had never been released, and 99% of them had been there for longer than their tariff. Five of them, who had tariffs of less than six months, had served their sentences at least 22 times over. There were another 1,569 people on IPP sentences in prison who had been released and recalled. That includes people who had spent more than five years successfully in the community (and would have had their licence automatically terminated under the new rules), but were recalled before the Victims and Prisoners Act 2024 came into force and are waiting in custody for re-release by the Parole Board again.

Studies have shown that IPP sentences are psychologically harmful, leaving people in a state of hopelessness and detrimentally impacting their mental health.[2] The self-harm rate in prison is higher among people serving IPP sentences than for people serving other sentences. As of March 2025, 94 people on IPP sentences had taken their own lives in prison. And in the five years to April 2024, a further 37 people on IPP sentences had taken their own lives after their release.[3]

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[1] https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2024

[2] https://prisonreformtrust.org.uk/publication/no-life-no-freedom-no-future-the-experiences-of-people-recalled-whilst-serving-ipp-sentences/
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https://www.uservoice.org/wp-content/uploads/2024/08/User-Voice_Voice-of-People-on-IPP_2024.pdf

[3] https://www.independent.co.uk/news/uk/crime/ipp-sentence-deaths-prison-b2713948.html; https://www.theyworkforyou.com/wrans/?id=2025-02-12.31169.h&s=IPP#g31169.r0

Many people, from eminent lawyers to senior politicians from a range of political persuasions, have spoken about the gross injustice of this sentence. In 2020, the late former Supreme Court justice Lord Brown of Eaton-under-Heywood wrote, "I have *no hesitation in describing the continuing aftermath of the ill-starred IPP sentencing regime as the greatest single stain on our criminal justice system".*[4] Lord Blunkett, who as Home Secretary steered through the legislation that introduced the IPP sentence, said in 2024: *"What has happened with this sentence is the biggest regret I have in terms of the outcome of all the many things that I was involved in in the eight years I was in government".*[5] In the same year, the then Lord Chancellor Alex Chalk KC, repeated Lord Brown's conclusion of the IPP system as "*a stain on our justice system"*.[6] The Lord Chancellor also agrees; in one of her first speeches in the House, she stated that "*the situation with IPP prisoners is of great concern…we want to make progress with that cohort of prisoners*".[7]

The changes to licence termination brought in under the Victims and Prisoners Act 2024 were the most progressive attempts to reduce this stain since the sentence was abolished in 2012. They have greatly helped the cohort of people serving IPP sentences in the community. As of the end of 2024, 2,295 sentences had been terminated, representing more than a quarter of all IPP/DPP sentences imposed.[8]

However, the thousands of unreleased and recalled IPPs are left to rely on the government's Action Plan to progress to release. The greater focus from HM Prison and Probation Service (HMPPS) is welcome, but the Action Plan is not enough; for example, in October 2024, 30% of people in prison on IPP sentences were not in a suitable prison to meet their needs to progress.[9] Readying the IPP cohort to meet the current Parole Board test places an unrealistic burden on the prison service.

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[4] https://prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/no%20freedom_final_web.pdf

[5] https://www.theguardian.com/uk-news/2024/apr/28/david-blunkett-says-devising-99-year-prison-sentences-ipp-is-his-biggest-regret

[6] https://hansard.parliament.uk/commons/2023-05-15/debates/FC7E0C2D-1FF5-49A2-91AE-C9BC9804E524/VictimsAndPrisonersBill#contribution-4DF345CE-6D44-4912-8743-CFA624CD5070

[7] https://hansard.parliament.uk/commons/2024-07-18/debates/FA393282-D6B3-4485-84C5-DAD88D0E9FB4/PrisonCapacity

[8] Ministry of Justice FOIA Request 250420003

[9] https://hansard.parliament.uk/Commons/2024-10-29/debates/A94698D8-49EE-4506-BDAB-1987484DDEB3/IPPSentences#contribution-933523F2-E2D9-412A-BC0B-2CFDAFC3C93A

The successive governments' rejection of the Justice Committee inquiry's call for resentencing of IPPs means that urgent alternative solutions are required to resolve the ongoing punishment of people on IPP sentences. The priority must be on getting and keeping people out of prison, with a view to freeing them from the risks of this sentence as soon as it is safe to do so. It is the responsibility of the state to mitigate the wrongs of the sentence it imposed, and the Victims and Prisoners Act creates precedent for this.

Over the past six months, I have visited people serving IPP sentences in prison and, supported by the Howard League for Penal Reform, I have led an expert working group to look for other ways to tackle the problems. The group includes leading psychiatrists, psychologists, lawyers, a former Vice Chair of the Parole Board, a probation officer and an advisor with personal experience of serving an IPP sentence in prison. We recognise the need for a resolution that rights this injustice, while also protecting the public. What follows are our expert considerations and recommended solutions. They are not radical ideas but rather a series of tweaks to existing systems and structures. Any cost to the recommendations will be more than covered by the savings of not keeping these individuals in prison.

History shows that governments invariably find it difficult to remedy state wrongs; this is even more so when those subject to the injustice have broken the law. Successive governments have now recognised that the IPP sentence was a mistake. It is long overdue for those whose lives continue to be blighted by this sentence to be released from its clutches. There are only two options given the Government's rejection of resentencing: (1) do nothing new and let those subject to IPPs continue with the real risk that many will languish in prison until they die; or (2) adopt our proposals. Our proposals provide a route to ending this grave injustice while protecting the public. I urge the government to reflect and provide generously for this finite group who deserve special action. We must not let this opportunity slip as it is almost certainly the last chance.

Finally, we recognise that there are approximately 120 people in custody serving 'two-strike sentences' imposed pre 2005 which, like the IPP which replaced it, have subsequently been abolished, for whom these recommendations might also be relevant.

Lord Thomas of Cwmgiedd
Former Lord Chief Justice of England and Wales

23 June 2025

Recommendation 1: Two-year conditional release

In 2023, there were 189 first releases of people serving IPPs by the Parole Board. First releases have been markedly reducing year on year since 2017 (when there were 616 first releases) and are likely to continue to slow, as those remaining unreleased will be more complex cases. Relying solely on the Action Plan to progress these cases to release will take far too long and in that time the sentence will continue to do untold damage. Accelerated and safe routes out of custody for the unreleased over-tariff serving IPPs are required.

We recommend a modification to the approach by Parole Board in IPP cases. The current release test requires the Parole Board to decide whether it is necessary for the protection of the public for the individual to be detained. Instead, we propose that in IPP cases the Parole Board should be asked to set a date as to *when* a person will be released within a two-year window, and what is required to achieve that safely.

This approach would provide the certainty of a release date, alleviating the significant mental distress of those serving the sentence, increase the likelihood of re-engagement of those who have lost confidence in the system, and facilitate the safe and speedy release of those stuck in prison on IPP sentences. It would harness the existing skills and expertise of the Parole Board and other statutory agencies. No new bodies would need to be created.

We recognise the concern that this might lead to setting a date to release people who may still considered a risk to the public. The recommendation includes significant safeguards to prevent this.

First, the setting of a date of up to two years in the most serious cases provides a long period of time to enable professionals and statutory agencies to work together to plan and help the IPP prisoner prepare for a safe release. Those individuals who present the greatest concerns about risk can be prioritised to receive more support to be prepared for release and to be managed safely in the community. This proposal gives professionals a clear time frame to work towards, and, along with our proposal for enhanced community support in Recommendation 4, will serve long term public protection better than the current system allows.

Secondly, the reconsideration mechanism and setting aside provisions (with modifications) could continue to apply: these procedures enable decisions to be reviewed or set aside in certain circumstances. The rationale for the setting aside provision is to address changes in circumstances that could alter the original decision, allowing for a second look at a case if new information is discovered.[10] At present the setting aside window runs from when a decision becomes final until the person is released or 21 days, whichever is the shorter. To account for the longer run-in period until release, the mechanism for setting aside would need to be extended to between the decision becoming final and release taking place.

Further, once implemented, there is another safeguard in the Victims and Prisoners' Act 2024 for the Secretary of State to review certain serious cases in which the Parole Board has decided to release a prisoner and refer them on to a relevant court for a second check.[11]

Conversely, in the interests of fairness, and to ensure that under this scheme nobody spends longer in custody than necessary, the person serving an IPP sentence will have a right to apply to the Parole Board to ask for the date of release to be brought forward once six months have passed from the determination of the release date. This means that where a person has made greater progress than expected within the timeframe set, they will be entitled to be considered for release earlier.

We know that the remaining cohort of people serving IPP sentences includes some people who have committed very serious offences. These include sexual offences, which have occasioned serious harm to victims. These people have now been punished for far longer than would have been the case if they had been sentenced after the abolition of the IPP sentence and received an extended sentence. While we appreciate public concern at the nature of this offending, contrary to common perception, this group of prisoners have among the lowest rates of reoffending of anyone leaving prison. Every day, people who have committed serious crimes are released from prison at their custody end dates. People serving IPP sentences who have more than served their time for these same serious offences also must be released. Our proposals would see this achieved in the safest way possible for the public.

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[10] https://www.gov.uk/government/publications/setting-aside-a-decision

[11] https://bills.parliament.uk/publications/53289/documents/4128

Logistics

The review would be conducted in the same way that current oral hearings are, with some notable additional requirements and special features.

Those in custody serving an IPP who have never been released would be reviewed on the papers at the Member Case Assessment (MCA) stage by a specialist IPP Parole Board panel. Those unrepresented would be encouraged and assisted to instruct a solicitor. This review would take place at the next scheduled review or within 12 months of the implementation of the changes, whichever is the sooner. At the MCA, all the options available at present would remain available, with the exception that the review could not be concluded negatively on the papers.

It is envisaged that most cases would progress to an oral hearing, which would be prioritised, with those individuals most over tariff receiving top priority within that group.

In addition to the usual attendance at the oral hearing, it would be mandatory for a Secretary of State for Justice representative to attend.

The Parole Board would hear evidence from the individual and professionals as it does in all oral hearings but, if immediate release cannot be directed, the Parole Board would set a date for release within a maximum two-year timeframe. That period would be reduced to a maximum of one year for DPPs in recognition of having been sentenced as a child (as per the adjustments made for the licence termination qualification period in the Victims and Prisoners Act 2024).

The Parole Board would consider what ought to be in place before the set release date to best manage the person in the community. This could involve setting directions to include the provision of work in custody and the development of a tailored release plan, incorporating accommodation, mental health support, therapeutic intervention or purposeful activity in the community.

Progress towards the release date can be managed through periodic case management conferences to ensure that directions are being met and the safeguards to protect the public are in place. The panel who set the release date would retain jurisdiction over the case wherever possible until the individual's final release for consistency of approach in the decision maker.

The same process would be followed for people serving IPPs who are recalled, with a modification to the timing of the set release date. If immediate release is not directed at the scheduled review of recall by the Parole Board (or by the Secretary of State under the Risk Assessed Recall Review), the panel would set a date for release within a maximum six-month time frame, as opposed to two years for the unreleased.

Once the individual is released, they will be in the community on licence and under the supervision of probation until the licence is terminated in accordance with the provisions set out in the Victims and Prisoners Act 2024.

Recommendation 2: Recall reforms

NOTE: Lord Thomas and Lord Garnier were provided at their request (as members of a group of Peers concerned about IPP sentences in March and April 2025) with the recall papers of 63 people on IPP sentences recalled to prison in June 2024. The papers were provided on a basis of confidentiality. Lord Thomas and Lord Garnier have set out their views for the prisons minister and these have been summarised to the group of Peers. The drafting of Recommendation 2 in this paper has been prepared separately by the Expert Group and has not been informed by sight of the recommendations in the review undertaken by Lord Thomas and Lord Garnier.

The power to recall is significant, with momentous consequences: returning a person to prison, breaking their community ties and the progress made on licence, and restarting the period to count for licence auto-termination. There is no automatic way back out of custody; a review first needs to be taken by the Parole Board, most likely at an oral hearing. Since 1 November 2024 the power of RARR has been extended to IPP sentences so that re-release can also be directed by the Secretary of State, in limited circumstances.[12]

Although IPP sentences were outside of the scope of the Independent Sentencing Review, the concerns raised in the review about the inappropriate use of recall in fixed term sentences[13] apply equally, if not more, to IPP sentences. During 2023, there were 658 IPP recalls[14] yet only 448 of those people were re-released, having spent a mean time of 27 months in custody before returning to the community.[15] Official statistics show that the number of recalls is increasing, as is the mean time spent back in custody prior to re-release. Without review of the recall system, the population of people serving IPPs in prison will remain high, as even those that are being directed release are returning on recall.

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[12] As of 20 March 2025, the Secretary of State for Justice has agreed the re-release of 21 individuals serving either a IPP or DPP sentence through the RARR process; https://laurakjanes.co.uk/wp-content/uploads/2025/03/IPP_RARR_FOI-250305001-.pdf

[13] Recommendation 4.3: Introduce a new model for recall for those serving standard determinate sentences, with stricter criteria and thresholds; https://assets.publishing.service.gov.uk/media/682d8d995ba51be7c0f45371/independent-sentencing-review-report-part_2.pdf

[14] https://www.gov.uk/government/collections/offender-management-statistics-quarterly; N.B. (this is not the number of individuals recalled in each year but the number of incidents of recall

[15] https://www.gov.uk/government/collections/offender-management-statistics-quarterly

We consider that the recall system is failing in two main ways for people serving IPP sentences. First, the threshold for recall is too low and the 'causal link' test is often misapplied. Second, there is no independent scrutiny of recall decisions before they are enforced and the individual becomes stuck in the system. We make three key recommendations to address these concerns.

1) The recall test

The recall criteria for individuals subject to indeterminate sentences are set out in the Recall, Review and Re-release of Recalled Prisoners Policy Framework.[16] A 'causal link' must be identified between the behaviour causing concern and the behaviour exhibited at the time of the index offence.[17] However in practice, the causal link relied on for recall is often tenuous, with a failure to differentiate between rule-breaking or poor behaviour, with risk of harm leading to far too many recalls for administrative breaches of licence conditions. For example, in most probation areas there is a blanket policy that an individual should be recalled if they are late for their Approved Premises curfew. Whilst there are some cases where this may be appropriate, in all too many cases the decision is essentially punitive and/or "just in case" they do something. There are even situations where the decision to recall is made for breaching curfew even though the individual is back in the Approved Premises and any imminent risk has been managed.

Furthermore, recall is over-zealously used in the absence of exploring alternatives such as making minor adjustments to the community environment. For example, a deterioration in a person's mental health may be able to be stabilised quickly through changes to medication. Or a person passing through their exclusion zone without intent could be resolved with a clarification of licence conditions. High numbers of out of hours recalls – conducted by senior probation officers, many of whom will not know the individual and may only have access to limited information – exacerbate these concerns.

[16] https://assets.publishing.service.gov.uk/media/66bdd5ae3effd5b79ba49117/recall-pf.pdf

[17] One of the following criteria must be met when assessing whether to request the recall of an indeterminate sentenced individual: i. Exhibits behaviour similar to behaviour surrounding the circumstances of the index offence; ii. Exhibits behaviour likely to give rise (or does give rise) to a sexual or violent offence; iii. Exhibits behaviour associated with the commission of a sexual or violent offence; or iv. Is out of touch with the COM/ Probation Practitioner and the assumption can be made that any of (i) to (iii) may arise. COMs/ Probation Practitioners must ensure that there is evidence of increased risk of harm to the public and at least one of the criteria set out above is met.

We recommend a rigorous application of a recall test; it should be impermissible to initiate recall for a breach of licence conditions without evidence of a causal link between the concerning behaviour and the index offence *and* this behaviour directly raises the significant risk of serious harm. A breach on its own should trigger a formal review by probation and joint agencies of the support in place for the individual in the community, with considerations given to tweaking the risk management plan to rebalance the potential increase in risk. Furthermore, out of hours recalls should be an exception, with the expectation that they take place only in genuine emergency circumstances and in accordance with procedures set out in our third recommendation.

2) **<u>Further allegations of criminal offences</u>**

Although not explicit in the recall policy framework, in practice the default response to the arrest of an individual serving an IPP for an alleged further offence is recall, even before a charging decision has been made. This is most often on the ground of breaching the "good behaviour" condition of the licence. This is regardless of the nature, seriousness or relevance of the alleged offences to the index offence.

Furthermore, the re-release review is unlikely to be concluded by the Parole Board while the criminal matter remains outstanding, which leads to repeated adjournments and extensive delays. Even when further allegations are found to require no further action or an individual is found not guilty by the courts, and the further allegations are the sole reason for recall, there is no automatic re-release. The individual must continue through the Parole Board process. Those that receive a further custodial sentence must also go through the parole review process to be re-released once they have served the custodial element of their further sentence.

The basic premise should be that if a new offence is allegedly committed on licence, the courts will deal with it outside of the recall process. The alleged offence should be investigated, and the individual afforded a trial. If guilty, they should be punished for that further offence with its own sentence.

We recommend that arrest is not a ground for recall of a person serving an IPP sentence. Where there are further charges, the law should take its course. If a charge is sufficiently serious the individual can be detained in custody through remand without the need to be additionally recalled on the IPP sentence.

Logistics

It will be for the criminal courts to determine whether the alleged offence(s) meet the threshold for remand. If the charge is not serious enough to justify remand, then it should not be serious enough to justify recall.

If the person is detained and the further charge falls away, or the individual is found not guilty, they should be immediately re-released, as for any remanded person, without the requirement to go through the full recall process.

3) Scrutiny of recall decisions

The decision to recall an individual on licence to prison is in effect the responsibility of probation providers. In the past decade, the caseload on probation has dramatically increased and, as highlighted in the 2020 HMI Probation thematic review of recall,[18] "*decisions on recall and licence warnings often rely on the judgment of individual practitioners and are not routinely monitored for bias and unconscious bias"*. The review also reported that "*probation staff have concerns about the professional and personal consequences if they fail to instigate a recall and a high-profile incident subsequently occurs".*

Yet there is no independent body reviewing the decision to recall. A recall report is submitted by probation to the Public Protection Casework Section at the Ministry of Justice (PPCS) – which approves the recall and exercises, on behalf of the minister, the statutory power of recall – but there is no independent scrutiny of the appropriateness of the decision to recall until the case is back in front of the Parole Board. Even then, if the Parole Board determines that the recall was unjustified, the prisoner is not automatically re-released. They must still proceed through the parole process to prove that their risk is manageable in the community, despite this having already been established by the releasing panel. This process takes on average more than two years.

In a House of Lords debate on 12 March 2024 it was recognised that *"[s]ometimes, there is a mistake in the recall"*.[19] To remedy this, a new power was established in the Victims and Prisoners Act 2024 to disapply a recall for the purposes of the time to count towards auto-termination, when in the interests of justice to do so. Though

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[18] https://hmiprobation.justiceinspectorates.gov.uk/document/a-thematic-review-of-probation-recall-culture-and-practice/

[19] https://hansard.parliament.uk/lords/2024-03-12/debates/65ED94BB-D442-44D9-B323-60B1D58B3284/VictimsAndPrisonersBill

the power came into effect in November 2024, according to a Freedom of Information Act request response dated 27 March 2025,[20] the power had not yet been used by that time. It is unrealistic to assume there were no instances between November 2024 and March 2025 when a recall was unjustified and/or it was not in the interests of justice for the recall period to count towards the two clear years.

We recommend that rather than probation acting as the first and, in effect, final decision maker of who is recalled to custody, the decision should be independently confirmed to determine if the test for recall has been properly applied and whether the person serving the IPP can resume their licence or, if necessary, needs to be returned to prison. In the first instance, a more robust review should be taken by the PPCS and following that, the decision on recall ought to be effective only after independent confirmation by either a Judicial Member of the Parole Board or a District Judge. This independent confirmation should be a swift check on the recommendation of probation and provisional decision of the PPCS, to limit mistakes and reduce unjustified recall decisions before the full Parole Board cycle commences.[21]

Logistics

The process of the decision to recall should be completed within seven to 14 days. This should include:

Stage 1 (within 48 hours):

Using the existing process of approval by the PPCS, with added rigour, the PPCS should sift out inappropriate requests for recall, by ensuring that probation has

a. made proper enquiries into the behaviour raising concern
b. notified the individual and considered their response, and
c. provided a written explanation as to why the individual cannot be managed in the community or by a variation to licence conditions, and how the test for recall is met and a return to prison is necessary and will address the issue.

[20] https://laurakjanes.co.uk/wp-content/uploads/2025/04/DISAPPLY_FOI-full-disclosure-250322005.pdf

[21] This recall model was explored by JUSTICE in their report 'A Parole System Fit for Purpose', January 2022; https://files.justice.org.uk/wp-content/uploads/2022/03/22164155/JUSTICE-A-Parole-System-fit-for-Purpose-20-Jan-2022.pdf

The PPCS should also think creatively if recall can be avoided in the first instance, for example co-ordinating 'quick-fixes' such as emergency Approved Premises places.

Stage 2 (within five to seven working days):

If the PPCS cannot resolve the concern that triggered the request for recall other than by recall to custody, the recall would be referred urgently to a Judicial Parole Board Member or District Judge for independent scrutiny and confirmation as to whether recall should be initiated and if so, whether on a fixed or standard term. The scrutiny should take place on the papers, with the inclusion of legal representations.

Stage 3 (within a further five to seven working days):

If a decision on the necessity of recall cannot be reached on the papers, an urgent hearing should be convened, to include attendance of the person on the IPP sentence, their legal representative, probation and, if different, the probation worker who recommended the recall. The hearing should be held by videolink for speed and efficiency, unless it was in the interests of justice to be held in person.

If recall is not authorised, the individual resumes their licence on the IPP sentence, with no disruption to the period required for the auto-termination clause to apply. The person's licence conditions could be subject to full review by the Parole Board as per the existing licence variation process.

During this period while a decision on recall is being confirmed, arrangements will need to be put in place for dealing with the interim position of the individual. Ideally, the individual should remain in the community with increased reporting conditions to probation (if required), which can be put in place on the licence without variation. This way, Approved Premises beds or other accommodation placements, places on community interventions, employment, benefits and other support are not lost, unless a determination to recall is issued. This decreases the interruption to resettlement caused by an unnecessary recall request, especially given the existing difficulties people released on life licence have with accommodation and employment. There may be cases where probation consider it necessary to hold a person in police or prison custody during this period, but this should be subject to a process that ensures independent confirmation by a Judicial Parole Board Member or District Judge.

This approach is not new or novel. Courts are often asked to consider a breach of community sentences and other orders, in the alternative to an administrative response which results in a restriction on liberty that can be as great as the original punishment, if not more.

Recommendation 3: Reintegration and rehabilitation

Under the Rehabilitation of Offenders Act 1974 indefinite sentences are never spent. This means that individuals serving IPP sentences in the community will always need to disclose information about their conviction; even on basic DBS checks, adversely affecting their ability to get work, insurance or become a volunteer. The enduring consequences significantly interfere with reintegration and rehabilitation and are counterproductive when we know that employment is linked to lower rates of reconviction.

We recommend that, unlike other life sentences, IPP sentences can become spent, using the term of punishment imposed by the sentencing judge as the relevant sentence under the Rehabilitation of Offenders Act 1974.

For example, unless one of the excluded offences:

- A person serving an IPP with a tariff of 4 years would have their conviction spent after 4 + 4 years
- A person serving a DPP with a tariff of 4 years would have their conviction spent after 4 + 2 years
- A person serving an IPP with a tariff of 8 years would have their conviction spent after 8 + 7 years
- A person serving a DPP with a tariff of 8 years would have their conviction spent after 8 + 3.5 years

Logistics

This would result in individuals not needing to disclose their conviction on a standard record check, but it is not a completely 'clean slate' – disclosure would always be required for people wishing to work with vulnerable or young people under enhanced checks.

This simple change offers a chance for many to reduce *the "invisible stripes that hinder the reintegration of individuals with criminal records into society, making our communities more inclusive and just"*.[22]

[22] Dr Marti Rovira, 'Invisible stripes: individuals with a criminal record are discriminated against in the UK labour market', November 2023; https://www.sociology.ox.ac.uk/article/individuals-with-a-criminal-record-are-discriminated-in-the-british-labour-market

As with determinate sentences, there would be some IPP sentences which would, as the Rehabilitation of Offenders Act 1974 currently stands, never become spent – those serving offences listed in Schedule 18 of the Sentencing Act 2020.

Recommendation 4: Enhanced community aftercare support

The 2020 HMI Probation thematic review on recall reported that "*the services required, such as mental health treatment or housing, were often not available, so a realistic support package could not be put in place".* Robust risk management plans give confidence to Parole Board panels to direct release; adequate community support is required to enable rehabilitation and prevent the circumstances that result in recall from arising. Enhanced care provision, financial help, employment and accommodation needs to be available from the government to all people serving IPP sentences emerging into the community, in recognition of the harms that they have caused with this sentence. The burden should not fall to charities and the third sector to pick up the pieces with their limited resources and funding.

We recommend the introduction of an aftercare offer to all people serving IPP sentences released from custody with health or social care needs, equivalent to the aftercare duty provided under s.117 of the Mental Health Act 1983. While some people on IPP sentences already have aftercare rights due to having been sectioned under the Mental Health Act 1983, this would extend the right in appropriate cases to those with health and social care needs who have not accrued that right otherwise. This would assist with their safe and timely release and rehabilitation in the community and is both a more humane and cheaper way of dealing with the cohort's high needs, to enable people to be released safely and remain in the community.

What is section 117 aftercare?

Section 117 of the Mental Health Act 1983 provides free aftercare services for individuals discharged from hospital after being detained under specific sections of the Act.[23] It creates a duty on the relevant local and health authorities to provide multi-agency support, which helps enable patients to remain safe and well in the community. It includes healthcare, social care, housing support, employment assistance, and other services necessary for maintaining well-being in the community. The intended purpose of s.117 support is to help maintain the patient's presence in the community with as few restrictions in place as is necessary. To that end, well-organised s.117 aftercare can help a patient on release from prison to return to their home or other accommodation in a manner that goes a long way to help minimise the risk of deterioration of their mental health and the chances of them

[23] https://www.legislation.gov.uk/ukpga/1983/20/section/117

needing further hospital admission for treatment. Section 117 aftercare continues until the responsible health and social services authorities jointly decide the individual no longer requires support.

Logistics

Extending the s.117 aftercare duty builds on existing practice that applies to tens of thousands of people who currently benefit from s.117 support, meaning that it is a tried and tested process. The extension of the duty would have minimal resource impact as it would apply to a finite cohort, spread nationwide across Integrated Care Boards and Local Authorities. The benefits of this approach were supported by Baroness Burt of Solihull in a debate considering amendments to the Victims and Prisoners Bill, when she stated "*We all want to help [people serving IPPs] progress and leave this torturous situation, but we all know that it must be done in a safe way that will not endanger the public. [Aftercare services] would go a huge distance towards achieving this for those the system has damaged the most: those stuck in prison three or more years after their tariff has expired, whether or not they have been released and recalled in the meantime."*[24]

As with the current arrangements for those with aftercare support under the Mental Health Act 1983, a 'Care Coordinator' would be allocated to bring in all other relevant statutory agencies, as well as the OPD pathway and third sector organisations. There would be appropriate liaison with MAPPA.

Agencies should work together to:

- source appropriate accommodation where Approved Premises are not suitable.
- provide medical treatment and social support including free prescriptions for mental health medication.
- provide active assistance in finding work, supported employment placements, and/or training programmes to enhance skills and qualifications.
- source higher educational opportunities to help those serving IPP sentences identify as students and widen their social circles to include other non-criminal associates and improve employment opportunities.

[24] https://hansard.parliament.uk/Lords/2024-05-21/debates/21D1F04A-652C-41B8-8544-55D902903B6A/VictimsAndPrisonersBill#contribution-21DA5443-8172-4D76-AD0D-02A5C2037277

Recommendation 5: Restore annual licence termination reviews

The Victims and Prisoners Act 2024 removed the element of annual review in favour of a one-off review by the Parole Board after the qualifying period, of two or three years for those convicted as children and adults respectively. The changes mean that an individual who is unsuccessful at their licence termination review following their qualified period, or who has already had a review, must wait for auto-termination before their IPP sentence is terminated. As a minimum this will be two years later. However, if a person returns to custody before the expiry of that period, the two-year time frame starts again (unless the decision is made by the Secretary of State for Justice to disapply the recall).

The requirement of a period of two years continuously on licence for auto-termination will be a high bar for some people on IPPs to achieve. This is especially the case for those who have mental health conditions and chaotic or unstable lives which mean that they may be susceptible to recalls without their risk of serious harm increasing. It will lead to some spending many years on licence beyond the expiry of the qualifying period in a cycle of release and recall which could continue, such that a person could remain on licence indefinitely, never reaching auto-termination and without the right to a further review by the Parole Board, even if their risk of serious harm is low.

The ability of the Parole Board to decide to release a recalled IPP prisoner (whose qualifying period has expired) unconditionally, ie without a licence, does not in reality mitigate the position for those on IPPs who will struggle with their licence. Most people on IPP sentences need to be released on licence initially to be able to utilise the support of Approved Premises at the very least. Since unconditional release became possible in November 2024, it is understood that just five people have been released unconditionally by the Parole Board.

We recommend that the right to apply for an annual review is restored to the position that existed before the amendments in the Police, Crime and Courts Act 2022.[25]

This would provide an additional opportunity for people on IPP licences to apply to the Parole Board annually to review the licence and consider whether it was necessary for the protection of the public for licence conditions to remain in force. It would also deal with the fact that the new regime may result in unfair consequences

[25] Section 138 of this Act replaced the right to apply for a review annually with an automatic annual referral.

for some. For example, without this amendment someone who has already had an unsuccessful termination review and had spent several years successfully in the community but was recalled within the two years before the new provision comes into force, will be disadvantaged.

Logistics

Where the Parole Board decides not to terminate an IPP licence at review following the qualifying period, the individual will have a right to apply for a further review a year later. The presumptive test would continue to apply at the further review. If the individual was unsuccessful again at the further review, the licence would continue to be auto-terminated in line with the usual rules.

The recommendation would not create an undue burden on the Parole Board given that the applicable cohort will be reducing over time as more and more licences are terminated. Further, the previous position, where the onus was on the person serving the IPP sentence to apply for a review, resulted in far fewer reviews than the automatic referrals, as people tended to only apply when they felt they had a reasonable chance of success.

Recommendation 6: Enhanced approach to criminal appeals

There have been a significant number of successful appeals against the IPP sentence, for example in cases where the sentencing judge failed to consider the alternative to impose an extended sentence,[26] where the original order should have been a hospital order,[27] or where the judge erred in the finding of dangerousness.[28] No one could have anticipated that a significant number of those who received an IPP sentence would still be subject to the sentence so many years after its abolition. It is therefore desirable to provide for an exceptional process for bringing an appeal, though the test for allowing an appeal remains the same.

Many people serving IPP sentences have never appealed against their sentence. There are also those who appealed relatively early and without appropriate fresh evidence who may now have success with the Criminal Cases Review Commission (CCRC). However, full investigation of cases by the CCRC can take years and there is difficulty in finding those cases with merit.

We recommend that the hurdles for bringing an appeal are reduced, by creating a positive obligation for every person serving an IPP to have access to a special CCRC process, which can expedite their application to the full Court of Appeal (Criminal Division) to appeal their sentence. This should include the prioritisation of those unreleased and most over-tariff and supporting individuals to be legally represented.

Logistics

The Court of Appeal can only consider an appeal if they receive an application. We propose that the CCRC should proactively review all IPP sentences.

For those individuals who have already appealed unsuccessfully, the CCRC would act in its usual way as decision maker, although with enhanced resources, to enable them to consider which cases have a real possibility of being quashed on appeal. These cases should be expedited and an expectation set that they would be considered within a time-frame of six months. We recommend that a specialist team

[26] R v Hanson [2023] EWCA Crim 203

[27] R v PS [2022] EWCA Crim 1379

[28] R v Battersby [2021] EWCA Crim 637

within the CCRC conversant with the IPP regime and the subsequent case law consider these cases.

For those individuals who have not already exhausted their appeal rights before the Court of Appeal, the CCRC should use its s.17 powers to act as a secretariat rather than decision maker in this process, helping to identify appellants, gathering the necessary information and paperwork, and securing legal representation.

This would include those individuals with IPP sentences who are detained in secure hospitals.

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About the Howard League

The Howard League for Penal Reform is the world's oldest penal reform charity – a membership organisation that combines litigation, campaigning and policy work. Our aim is to build a more humane and effective response to crime that provides justice to all and helps to reduce reoffending.

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