HOUSE OF COMMONS

Justice Committee

Oral evidence: Imprisonment for Public Protection (IPP) sentences, HC 678

Tuesday 7 December 2021

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Watch the meeting

Members present: Sir Robert Neill (Chair); Rob Butler; Angela Crawley; Paul Maynard.

Questions 68 - 135

Witnesses

I: The Rt Hon. the Lord Blunkett, former Home Secretary (2001-2004); and the Rt Hon. the Lord Thomas of Cwmgiedd, former Lord Chief Justice of England and Wales (2013-2017).

II: Professor Nick Hardwick, Professor of Criminal Justice, Department of Law and Criminology, Royal Holloway University of London; Professor Graham Towl, Professor of Psychology, Durham University, and visiting clinical professor at Newcastle University; and Dr Jonathan Bild, Deputy Director, Sentencing Academy.

Written evidence from witnesses:

- Office of Rt Hon Lord Blunkett
- Professor Nick Hardwick
- Sentencing Academy

Examination of witnesses

Witnesses: Lord Blunkett and Lord Thomas.

Chair: Welcome to this meeting of the Justice Select Committee. Welcome to our two witnesses, Lord Blunkett and Lord Thomas of Cwmgiedd. I hope I have that pronunciation as near as I can. I have been practising over the years.

Before we start, we have to make our usual declarations of interest as members of the Committee. I am a non-practising barrister and former consultant to a law firm.

Rob Butler: Prior to my election, I was the magistrate member of the Sentencing Council and non-executive director of Her Majesty's Prison and Probation Service.

Q68 **Chair:** I do not think there is anything else relevant. I welcome again both our witnesses. We are considering the position in relation to IPP sentences—indeterminate sentences for public protection. I am particularly grateful to Lord Blunkett, as Home Secretary at the time these sentences were introduced, and Lord Thomas, as former Lord Chief Justice, for coming to help us with their expertise on these issues.

Lord Blunkett, I know we have discussed this informally in the past. You said that if you had your time again you would still have introduced IPP sentences—indeterminate sentences—but with substantial qualifications. Why would it still be appropriate to introduce them, given the experience that we have had?

Lord Blunkett: For the same reason that the junior Minister in the Committee stage of the Bill in the House of Commons—the present PCSC Bill—outlined, which was that there was a requirement to ensure that the public were protected where it was very clear that someone was likely to commit a further offence, and where the person was not adjudged to be safe to the public. Ironically, that was, of course, a debate about whether IPP should be reintroduced, and the junior Minister ruled it out on the grounds—I think his words were—that it was an inherently unjust imposition and penalty. I accept, and have accepted, both publicly and in the Lords debate on the PCSC Bill, that that was the case as applied. The two provisos that I would put on an introduction of IPP as opposed to the EDS measure that came in from 2012 is that the intention—we have gone through this many times—was that there would be proper courses and therapies applied to allow people a route out of prison, and to ensure that they were safe to do so.

If I had my time again, the Bill would have said explicitly that the measures could not be brought in until the funding had been provided to an adequate level by the Treasury, to ensure that those therapies and courses existed. The Treasury did not do that. The second thing would have been to have laid down explicitly, and Lord Thomas may not like

this, a very substantial determinate sentence before the IPP could be applied. Of course, Jack Straw, as Justice Secretary when the Department was split, in fact brought in measures that went some way towards that explicit bottom line, not enough, as it would appear now—the whole intention being that someone, both before they left prison and on licence, would have the support necessary to be able to progress, rather than the hopelessness that currently exists.

Q69 **Chair:** Is it the lack of those two things that led to the sentences not working, as you candidly accepted, as you had intended?

Lord Blunkett: I accept entirely the judgment of Lord Thomas on 18 March 2016 that the measures were properly and faithfully implemented. It was our fault for getting it wrong, although it has to be said that what was then the Sentencing Guidelines Council, now the Sentencing Council, obviously could have assisted with that. Having accepted my responsibilities, maybe in reflection all those years back, one or two people might accept theirs as well.

Q70 **Chair:** That is very candid of you. Thank you, Lord Blunkett. I appreciate that, and I am grateful too for the written evidence you have given us as well. Lord Thomas, were you on the bench when they came in?

Lord Thomas: Yes.

Q71 **Chair:** You were probably in the commercial court, weren't you, at that time?

Lord Thomas: No. In 2005, when they came in, I was the senior presiding judge—

Chair: Yes, you were very much engaged in it.

Lord Thomas: —so I had quite a lot to do with their immediate consequences.

Chair: Yes, you were immediately engaged in it.

Lord Thomas: Yes.

Q72 **Chair:** What impact did it have on you? What was your reaction as a judge now that you are no longer sitting?

Lord Thomas: One's memory often plays false, so I had a look back. Certainly, by March 2006, about 10 months after they had come into force, it was evident that there was a problem. As for the origins of the problem, I was a commercial judge at the time the Act was passed, but it became very apparent. I remember going to Leeds prison in the early part of 2006 and beginning to see the problem that was building up and the difficulties that we would face. The problems got more and more difficult.

Q73 **Chair:** It is probably stating the obvious, but it was manifesting itself in a

number of sentences being passed.

Lord Thomas: Also, as Lord Blunkett has said, a proper estimate of the number of sentences that were passed may have been very difficult to ascertain, but certainly the impact on the prison population—the lifer population—was enormous. It became apparent very quickly that there weren't the places in the lifer prisons—before the lifer prison population was much smaller—to cope with the influx, and there were not the courses available, as Lord Blunkett said. I am very grateful. I admire greatly what he said. This is an extremely resource-intensive business.

We must remember that the science relating to the mind has improved enormously over the last 10 or 15 years, and the extent to which you can manage future risk and the best way you can do it is something that we need to know much more about than we do at present. I am not sure that we have brought our research sufficiently up to date. In other areas where one has been concerned with the science of the mind, there have been enormous strides in trying to understand what happens.

Q74 **Chair:** I understand that. Lord Blunkett made the point about whether or not the Sentencing Council, or its predecessor, could have done more in giving guidance to sentencers.

Lord Thomas: I do not know. I was not privy to any of the discussions before the legislation came in, but it became quite apparent quickly thereafter that there was a problem. Steps were taken to try to get over to the judiciary the issues that had arisen, particularly the number of prison places available, the courses available, and, of course, the very difficult problem that arose in assessments. Whether the thing should have been done and more guidance given before they were introduced, I do not know. I am a great believer in discussion between the judiciary and those in the Ministry of Justice when they are thinking of making sentence reforms. The decision is always for the politicians, but there is a lot of experience where you can say, "Look, if you do this, this might happen. If you do that, that might happen." I do not know what happened, so I cannot comment on it.

Certainly, in 2010, when there were discussions about reforming this area of the law and other areas of sentencing, there was extensive discussion. For example, I seem to recall that the party coming to power in 2010 was keen on min-max sentences. We had a lot of discussion about the practicalities of those. When you looked at the practicalities of them, the problem was not pursued because there were tremendous practical difficulties. I would hope that in any future reform there is much more engagement, but the decision is for politicians, and the judges must not get involved and say you must have this length of sentence or that; they should look at the way in which it works. Another area where there was discussion was the use of suspended sentences because there is always a worry that all you are doing is putting down a time bomb to go off in three or four years' time. It is the practical considerations that are so important.

Lord Blunkett: Chair, I know others will want to come in and you are very short of time. I want to add that we cannot rerun history, but it is worth referring to a massive report called the Halliday report, which I inherited, that recommended the creation of a national probation service, which we implemented from July 2001. The presumption then was that they would play a significant part in licensing conditions and what happened when people came out of prison. We know how well that worked out. I have to say that none of us could have foreseen, including the incoming coalition Government Lord Thomas has referred to, what was going to happen when your erstwhile colleague, Christopher Grayling, became the Justice Secretary. Frankly, while it is my problem to put right, the collapse of the national probation service did not help those who found themselves on prolonged licence and recall.

Q75 **Chair:** I understand. Do you think perhaps that those changes contributed to the almost mechanistic approach to recall?

Lord Blunkett: Yes. We are in a really dangerous moment with 1,700 still in prison and 1,300 who have been recalled on licence, with the number being recalled on licence estimated to exceed within a very short period of time those who are still in prison on IPP, and that is extraordinarily different to get out of if we do not take urgent measures.

Q76 **Chair:** I get that. Coming back to Lord Thomas's point, can you recall, Lord Blunkett, if there was much discussion with the judiciary at the time that the IPP was being developed?

Lord Blunkett: All I can say is that the judiciary quite rightly took the view that their job was to implement the law, not make it. Harry Woolf, the Lord Chief Justice at the time, with whom I had really good relations, recalled on the Floor of the House of Lords that he thought he had advised me against it, and I had to say he had advised me against so many things that I could not remember whether he had or he had not.

Q77 **Chair:** I will not say if that proved that Lord Clarke of Nottingham, as he is now, was more willing to listen to the Lord Chief Justice or not. Who knows? We will look at the speech that Lord Woolf made with some interest.

Lord Thomas, there were quite a lot of sentences handed out on IPPs, perhaps a surprising number, particularly in the early days, in the first few years. Do you think that judges and advocates—people dealing with the cases in court, those advising the defence and the prosecution—fully understood the way the IPP system was working when it first came in?

Lord Thomas: I think they assumed that there was the backup that would make it work. It became apparent that that was not there for a number of complicated reasons. In the reform that was made in 2008, to pick up a point that Lord Blunkett has made, with which I agree, the threshold for the imposition was too low.

Q78 **Chair:** You think the 2008 reform—

Lord Thomas: It started to improve it, but that did not deal with it either.

Q79 **Chair:** It was not a complete resolution of the problem.

Lord Thomas: It was not. That is why they had to be abolished.

Q80 **Rob Butler:** If we move on to what the options are now, I wonder, Lord Thomas, if we could continue the theme of what you believe IPP sentences should be converted to. As a starter, do you think it should be a determinate sentence with a defined release date or something else?

Lord Thomas: You need to proceed in two stages. That is why I think, in the amendments that have been suggested by Lord Blunkett and others, that you need to fix the immediate problem quite quickly by some sort of rough and ready justice; first, to deal with those who are still in prison when you have gone beyond the maximum that they could have for a determinate sentence, and, secondly, to deal with those on licence, but you can only do rough and ready justice on that.

My view is that you need to start and look again. The difficulty that arises is that there are probably some fairly dangerous people, the reason being that when this sentence was brought in, guidance was given that it could be given to people who were dangerous, except the most dangerous. You cannot say immediately that everyone ought to be converted to a determinate sentence. There may be such people there.

On the other hand, I suspect that the majority, and I put in these words of caution, are nowhere in that ballpark, and there is probably fairly reasonable evidence that this kind of sentence has made people's position worse rather than better. I believe the only way out of this is for your Committee to examine it, or if your Committee feels it does not have the wherewithal and the resources to do it, for a commission to examine it, and say, "We need to re-sentence all these people," which is the almost inevitable conclusion, so that you can give them determinate sentences, save those who ought to have had life sentences.

Q81 **Rob Butler:** If that exercise were being undertaken, would they be sentenced according to the sentencing policies in force at the time of the commission of the offence, or now?

Lord Thomas: You would have to craft it so that you did not offend the bar against retrospectively increasing the penalty. I was surprised that as long ago as 11 years ago it was suggested to the Treasury that we should look at this again and start to re-sentence. I believe we ought to get on with it being an option. It is the only fair and just thing to do.

Q82 **Rob Butler:** I wonder what colleagues of yours or current members of the judiciary would think about the prospect of this re-sentencing exercise, in addition to the considerable backlog they already face.

Lord Thomas: I do not think you should be deterred by backlog. The judicial retirement age is about to be raised to 75. There are an awful lot

of active 70-year-old circuit judges who could easily help out on the task who are not back in court at the minute. I do not think judicial manpower is the problem. Resources might be a problem.

It seems to me that there is something wrong with the system. This is why I so greatly admire Lord Blunkett. We accept something went wrong. It affected a very small number of people who committed offences between 2005 and 2012 and were sentenced in that period. Those before and those after did not get a sentence of this kind. We ought to accept that, as something has gone wrong, justice requires that we look at them; we take into account the protection of the public, but we also look at the injustice that has been done to them, particularly if, as I believe to be the problem with some of the cases I saw, their imprisonment has made them worse and less susceptible to release than had they been given a determinate sentence.

Q83 **Rob Butler:** Lord Blunkett, I know that you have tabled an amendment and provided us with written evidence, but is there anything specific you want to say orally here on the record about your preferences for what should happen to those IPP sentences now?

Lord Blunkett: There is still quite a lot that could be done under the 2012 Act and other Acts. Lord Thomas drew attention, in his judgment in March 2016, to section 128 of the 2012 Act. Power to alter the test for release is one thing in one of the amendments that is being moved. We have complete cross-party support on these. This is not my endeavour; it is a joint venture across all the Benches in the House of Lords—from the Bishops Bench to the Government Benches, but not yet the Government—to ensure that we change the nature of what happens when people are on licence, reducing both the time, from 10 to five years, and the test to be applied. A lot of it could be done administratively if there was a will to do it. I was very strong on this myself all those years ago, and I understand that the prime concern of Ministers is to protect the public and to ensure that what they do does not come back to bite them.

Every time you get near to finding a solution to IPP, something happens, like the Pitchfork occurrence recently, that then sets teeth on edge. All I can say is that out there most people would think it was reasonable to deal with cases like the one I will pass on to the Clerks of the Committee, which has been drawn to my attention by Diane Bell, Wayne Bell's mother. He has been in for 17 years, and went in at the age of 17 under the youth provision, which I particularly regret that we brought in, for fairly obvious reasons, and the fact, as Lord Thomas has said, that the longer people are in on this sentence, the more hopeless they become and the more difficult they become to rehabilitate.

As well as the measures that Lord Thomas has spelt out, which are quite politically difficult to do—I do not underestimate that—it would be very sensible to take those administrative measures and spell them out very clearly. Nobody out there is going to suggest that this Government, under this Justice Secretary, have somehow gone soft.

Q84 **Rob Butler:** Indeed. What broader lessons might be learnt from the experience of the creation of IPP sentences for sentencing practice more widely?

Lord Blunkett: The first is to try to think ahead. It is easy, with hindsight, to see what went wrong. We did not spend enough time reflecting on what we were doing. I am trying to help an individual sentenced under entirely different legislation who has been in for 33 years on a seven-year sentence. He did not commit murder or rape. He was certainly not an individual you would want to meet on a dark night. But 33 years for a sentence of 7 years? We thought that with the appropriate therapies and action, we would be able to deal with that kind of situation, as well as the one I described in writing where people were coming out of prison declaring that they were going to continue doing what they had done before.

There were a number of instances that led up to the 2003 Act that demonstrated that, beyond peradventure, as Michael Heseltine used to say. The truth is that we did not see down the line, and we did not see what the impact would be on those who found themselves in this trap. I know that a whole group of clinical and criminal psychologists have been giving evidence, and will continue to provide evidence that they have come to these conclusions, as I did, too late.

Q85 **Rob Butler:** Do you think that politicians necessarily want to see down the line and hear from outside advisers, however expert they might be, if, potentially, they are going to come up with something Ministers might think they do not want to hear?

Lord Blunkett: Except, at the time, we had just reached agreement with Harry Woolf and the then Lord Chancellor, Derry Irvine, to try to ensure that we did a great deal more for those in prison to rehabilitate them, so that when they came out they were materially safer than when they went in. That got blown out of the window by not just this particular aspect of the Act but by some pronouncements off-piste that then reversed what we were trying to do. There was a common endeavour between the political, the judicial and the Lord Chancellor to bring about a change. This contradicted that endeavour.

Q86 **Rob Butler:** Lord Thomas, I think you have slightly touched on this already in one of your earlier responses, but what are the broader lessons for sentencing practice that can be learnt from the IPP experience?

Lord Thomas: There are three. I do not think we have revisited sufficiently the advances of the science of the mind. I do not mean necessarily by hearing from people who are forensic scientists, but from those who look much more broadly into it. There is a lot of new learning on that. Secondly, I am probably more sceptical about our ability to foresee and manage risk. There is a lot to be said for someone being punished, the punishment coming to an end, and the risk becoming more

the responsibility of the community, because I think it is so difficult to predict.

Thirdly, the point I have already made, is that, although it is ultimately and only for the politicians to make a decision, you really need to look objectively at the pluses and the minuses of each type of sentence you are going to think of passing to see what is affordable, because the Treasury are not always willing to spend money; for many years, they were tremendously against building more prisons. I do not know how Lord Blunkett managed to persuade them to build more. They are instinctively very cautious. Unless you have the resources and you have costed it out, it is very unwise to depart too radically. The final point is that we need to be very careful about mandatory sentences.

Rob Butler: Thank you.

Q87 **Chair:** That is helpful. Lord Thomas, I have looked at the relevant parts of the judgment in Roberts and Others in 2016 that Lord Blunkett referred to, in particular your comments in paragraph 46 of the judgment where you, essentially, say that it would appear that there is no likely solution other than significant extra resources, rather echoing what Lord Blunkett has said, or for Parliament to use the powers under section 128 of LASPO, or, thirdly, for those in custody to be re-sentenced on defined principles specially enacted by Parliament.

Lord Thomas: Yes.

Q88 **Chair:** We can make the argument about resource, and we are probably talking about that and arguing with the Treasury, as we have all said. Of the other two options, would using section 128 of LASPO be viable in achieving the objective, or is that only a partial solution?

Lord Thomas: It is probably a partial solution. I go back to what I said earlier. What I hope your Committee will be able to do is to have a proper analysis of who all the people are. Will we be able to deal justly with those who would, before the Act, have received a life sentence and therefore been truly sentenced under the regime we have always had? Secondly, are there others in the system we can deal with by use of that provision? I cannot help but feel that after this passage of time we need to look again, partly because of the effect, as I think we are all agreed, that this sentence has had on people.

Q89 **Chair:** I understand that. Lord Blunkett, one of the suggestions about section 128 being used would be to create a reverse presumption. In effect, the presumption is that the inmate should be released unless the Secretary of State can demonstrate on evidence that they are unsafe to be released and that they remain a continuing danger. What is your reaction to that as an idea that has been floated?

Lord Blunkett: The PCSC Bill enacted would give the Secretary of State the power to intervene on determinate sentences where two thirds of the sentence has been served. This power is now being asserted, and

therefore there is some logic in believing that the Secretary of State could use the reserve power—one of the amendments alludes to that—were it to be passed in the House of Lords.

I come back to the stark reality, which you all know, but let me repeat it on the record, that there are 570 people in prison serving an IPP sentence who are 10 years or more beyond their original tariff, and for 200 of them the tariff was less than two years. It is so staggering that even repeating it over and over again still upsets me.

Q90 **Chair:** I understand that.

Lord Thomas: Could I add one thing on the burden of proof?

Chair: Yes.

Lord Thomas: I am not a great believer in reversing burdens of proof. It is like saying, "Are you guilty on the balance of probabilities, guilty beyond reasonable doubt, or sure of your guilt?" It is philosophically explicable, but in the reality of the world I am not sure that it is quite as clearcut as that.

Q91 **Chair:** That is a helpful observation. It really comes back to, in the ideal world, the idea of a stand-alone piece of legislation.

Lord Thomas: Yes. I think I said in the judgment, so this is not me saying it now in a different guise, that there is no question that doing something of this kind is any interference with the judicial independence of sentencing. That is sometimes an argument made. I regret to say that I think it is totally misconceived.

Q92 **Chair:** You set that out very clearly in paragraph 47 of the judgment.

Lord Thomas: Yes.

Q93 **Chair:** Mr Buckland, when he was Lord Chancellor, described it as a hesitation rather than an obstacle, in that it would be potentially difficult for the sentencer, so many years on, to put themselves in the position that the original sentencer would have been in. How much of that is really an obstacle, as opposed to something to hesitate, think about and then overcome?

Lord Thomas: It is always difficult when you have to look back so many years and the records will not be as they should be. It is a question of doing justice, and we tend to forget about that.

Chair: Fair point.

Lord Thomas: You have to do the best you can in the circumstances in re-sentencing, and take into account what the trial judge has said. By this stage, judges were giving quite detailed reasons and you should have a lot of the case papers. Certainly, when we looked at the 13 cases in

2016, there was quite a lot of information available, so I do not think it should be too difficult.

Lord Blunkett: It is always useful to go back to basics. What is a sentence intended to achieve? Obviously, it is to take the individual out of the public sphere and therefore public harm. It is about punishment, but it is also about deterrent. In the end, it is also about rehabilitation of those who are not on life sentences because they have to come back in. Nobody could suggest, in any of the suggestions that are being weighed up at the moment, that the punishment has not taken place. No one could suggest that they have not been out of the public sphere and therefore out of risk. Nobody could suggest that it has not been a deterrent. What are we left with? Rehabilitation—and we are not doing it.

Q94 **Chair:** We have to be honest. You have referred to the reducing number of the cohort and that some are a greater risk than perhaps some of those remaining inside. I suppose the point might be made that in some cases, if we re-sentence, the reality is, on modern principles, that it would justify a life sentence.

Lord Thomas: You probably have to leave it as an IPP because you would be increasing it.

Q95 **Chair:** You would be increasing—

Lord Thomas: But you would be identifying those. There are a couple of judgments in the mid-2000s that are almost equivalent discretionary life sentences and IPPs. It would be unrealistic not to draw attention to that. There are likely to be a few—I do not know how many—who would on ordinary sentencing principles have received a life sentence, and they would have to be left with an IPP because the licence conditions make it less severe, but that would be a re-sentencing and identifying the true position.

Q96 **Chair:** Okay. There would be a proper re-sentencing hearing, and that would be the conclusion, so as not to offend against the principle.

Lord Thomas: You simply cannot ignore that. If you say that is not a possibility, you are handing a gift to people. They will say, "There are some dangerous people there, and we can't do anything." There are very few, but there are some.

Q97 **Chair:** That is very helpful. Lord Blunkett, do you have any observations on that?

Lord Blunkett: We should see this in the light of the White Paper published today. I have not had a chance to do anything other than a cursory examination. I am clear about one thing: you can offset the resource needed to put some of this right by the resource that you would then not have to use to implement part of the White Paper.

Q98 **Paul Maynard:** Lord Blunkett, you have made reference already to the growing recall population overtaking the non-recall population. How did

you envisage recall working originally? Is it a matter that the recall threshold is too low, and that the number of breaches needs to be narrowed in terms of the definition of risk? How would you now approach resolving that particular aspect?

Lord Blunkett: I refer back to the point that we had established a national probation service. Quite substantial resources were beginning to have an impact by 2003 when this part of the sentencing Act was incorporated, the CJS. We believed that by the time it was going to be implemented those resources would allow not only for the provision in the Prison Service for rehabilitation in preparation for release, but also for supervision in the community in a way that would allow people to get out of the licence conditions, which has clearly not happened. Minor breaches lead to recall, and recall then leads to an average of 20 months back in prison, which is the equivalent of three and a half years on a determinate sentence for what could easily be, but not always, a very minor infringement. Because of the dire straits that the probation service has seen itself in, although that has been recovered, it has not had the wherewithal to do the job that was originally envisaged.

Q99 **Paul Maynard:** Would you agree that that threshold for breaches needs to be reviewed?

Lord Blunkett: There needs to be very clear guidance because there is substantial evidence, and I am not blaming them for this, that the probation service does not even understand the existing regulations, including when an individual can apply for their licence to be set aside. In those circumstances, it is patently obvious that we need much greater clarity for all those who have to manage these offenders.

Q100 **Paul Maynard:** Thank you. Can I return to Lord Thomas? You were raising the likelihood of requiring a general approach to re-sentencing looking at each individual specifically. When I was reading your evidence, trying to get my non-legal mind around the legal judgments as best I could, I noticed that you raised an example of a gentleman who posed more risk now than he did at sentencing because his girlfriend had been unfaithful during his time inside. Does that give us any pause for thought in embracing a general re-sentencing? You would be sentencing him on the basis of what had happened after the original sentence had been handed down.

Lord Thomas: There are two aspects of that. One is whether, on ordinary principles, a person should have been given an indeterminate sentence in the circumstances. Secondly, when you come to balance future risk, I think justice also requires you to take into account what the state has done to you.

People talk about protection of the public, but I believe that the criminal justice system has something to do with justice as well. The public, I have found, are much more understanding of the difficulties. If you have locked someone up for a very long time and he has become worse as a

result, is it really fair to leave him there almost forever, or do you look for a way around it? These are very difficult problems, but I do not think one should run away from them. I do not think it would be right to ignore the problem. I hope you would come out with a circumstance. Details are needed. This is very difficult. Yes, this person would have received an indeterminate sentence. We leave him under an IPP. This person would have received a determinate sentence. There is additional risk. We can manage that in the community with proper resources. I would not like to see someone we made worse by imprisoning them under this system left perpetually at risk.

Chair: Okay, thank you.

Q101 **Angela Crawley:** Lord Blunkett, I know you have engaged considerably with campaigners and the families affected by IPP prisoners. What support should be offered to the families of IPPs?

Lord Blunkett: It is a really important question. Those who have gathered under the umbrella of UNGRIPP have been doing a tenacious job over a long period of time. The families suffer along with the individual who has been sentenced. The longer it goes on, the more distress to them. We owe them an obligation not just to provide the normal support you would expect to get for a family that is desperately trying to help someone in prison—we do not very often give that support, and we ought to think about that as a wider issue as well—but to offer whatever emotional support is required. Some of the close family of these individuals have been in touch with me, quite rightly, because of my position from 2003, and literally hundreds of them have made it clear to me that their distress affects the rest of their family as well as themselves.

Angela Crawley: Thank you.

Q102 **Chair:** Okay. Do you have any observations on that, Lord Thomas?

Lord Thomas: I agree with Lord Blunkett. One has to help the family. The other thing you have to do is explain to the complainant or victim of the crime why you are doing that. It is one of the very big problems with our system that we do not explain sentencing to the complainant or the victim. If we are to do this, we ought to say, "This is the truth of what has happened. You may be a bit uncomfortable, but this is the reasoning." Most people will accept that.

Lord Blunkett: Including, on release, the requirements in relation to the licence conditions and how they can be explained simply and easily, and how families can be supported in helping them. When I went to Red Hook in New York and saw the community court there, which Harry Woolf and Derry Irvine both went to at the same time, the court engaged with the family of the individual. They allowed me to sit on the bench. It is the only time and the last time I have ever sat on the bench. The family came before the judge, and the family agreed to a programme where

they would be helped in supporting their son, as it was in that particular case. If they can do it in Red Hook in New York, we can do it.

Chair: That is a good point.

Q103 **Rob Butler:** Lord Thomas, following on from what you were just saying, do you think there is a role for the Sentencing Council—as I declared, I was a magistrate member of that organisation—in various aspects of what you have been talking about today, both potentially working with politicians when they are contemplating legislation about the possible consequences down the line and in the way they explain to victims, families and the offender him or herself? Do you think there is greater scope there, or do you think that it should be fairly narrowly focused on producing guidelines and understanding their implications?

Lord Thomas: No. I think there are two things that have changed. First, the policy of most civil services across the world is to move people after a very short period of time. When I first became a judge, the people in the Home Office and the people in the Ministry of Justice had probably been in their respective roles for year after year after year, and they knew exactly how the system worked. I am afraid that is not true, by and large, any more, so there is a greater need now than there was in 2003.

Secondly, these are very difficult problems, and I do not agree with those who say, "Just leave it to the Ministry of Justice or the Home Office, and members of the Sentencing Council should not be involved." As long as you understand what your role is and decide, ultimately it is a political decision. I hope I am not being disrespectful, but I think sometimes people need more help than is available to them, and people should be more willing to do so.

You kindly referred to the decision in Roberts. I took what people would say was always the proper view of a judge. If Parliament had passed legislation and you thought it was wrong, you cannot, as a judge, just tear it up. It is very rare that judges depart from that. The corollary of that is that there ought to be more input in trying to work out the consequences. We do this in commercial law all the time, and there is room to do it in criminal justice as long as you are careful, ultimately, to pass the buck back to where it belongs, and that is to the politicians.

Q104 **Rob Butler:** Lord Blunkett, do you want to say anything on that?

Lord Blunkett: No.

Rob Butler: Thank you very much.

Chair: Gentlemen, that has been extremely helpful to us. I am very grateful to both of you for your time and your evidence. I think we have finished almost exactly bang on the time we had allotted.

Lord Thomas: Thank you. I am sorry, I have to be somewhere else. Thank you so much.

Chair: Thank you very much. We will briefly suspend until our next panel comes along. Thank you.

Examination of witnesses

Witnesses: Professor Hardwick, Professor Towl and Dr Bild.

Q105 **Chair:** Thank you very much for joining us to give evidence. Perhaps I can ask each of you very briefly to introduce yourselves for the record, and then we will get straight on to questions. Shall we start with Professor Hardwick?

Professor Hardwick: I am Professor Nick Hardwick. I am now a professor of criminal justice at Royal Holloway, which is part of the University of London. For these purposes, it may be helpful to know that I was a chair of the Parole Board.

Q106 **Chair:** Yes, indeed. Who would like to go next? Professor Towl?

Professor Towl: I am Professor Graham Towl. I am professor of forensic psychology at Durham University, and I was formerly chief psychologist at the Ministry of Justice.

Q107 **Chair:** Thanks. Dr Bild.

Dr Bild: I am Dr Jonathan Bild. I am deputy director of the Sentencing Academy. I apologise that I am not able to be with you in person this afternoon.

Chair: Thank you all, gentlemen, for the written evidence that you have submitted as well. Ms Crawley.

Q108 **Angela Crawley:** Thank you, Chair. My first question is to ask each of you how you balance any policy or legislative solutions on IPP against the need to protect the public from the risk of reoffending. I will start with Nick first of all.

Professor Hardwick: As I have been clear in my evidence, there is a risk to any solution for IPPs, and there is a balance to be struck. There are a number of ways in which you could reduce or minimise that risk. The risk is not just the risk of an individual IPP prisoner going on to commit a further offence, but the risk that that might do to confidence in the system overall, and both of those things have to be thought about.

Q109 **Angela Crawley:** Should the policy or legislative solutions apply universally across all of those serving IPPs, or do we need a more targeted approach?

Professor Hardwick: We need a more targeted approach. There are ways in which you could differentiate those who are likely to pose the greatest risk and those where that is not the case. I do not think predicting risk is a precise science, and I certainly do not believe that in any solution you can eliminate risk altogether, but you can significantly reduce it and manage it.

Q110 **Angela Crawley:** Thank you. Professor Graham, would you like to go next?

Professor Towl: There is a lot of work that can be done to reduce risk. One of the unfortunate consequences of the way the programmes industry is organised is that, for example, typically in custody, prisoners are given group work interventions when those interventions could just as readily be delivered one to one. That would give much greater flexibility in service delivery. It would mean that prisoners would not have to move from prison to prison for a particular programme. That would be a very straightforward solution to getting greater access to that and thus protecting the public more, on the assumption that it is effective and that it is working. That seems to me to a fairly straightforward change that could be made.

In my term of office, about a quarter of the psychologists in prisons were in the high-security estate. That does not serve the interests of public protection at all well to my mind. The reason is that the individuals—the prisoners—they are working with are highly unlikely to get out for a considerable period of time. My advice would be to move those resources to community settings. That would give the public and sentencers more confidence in community-based interventions, and it would give support to probation officers who may be struggling with decisions about whether or not they should recall individuals. There are some very practical changes that we could make very straightforwardly, not with additional resources but simply using existing resources differently, which could be very impactful indeed.

Q111 **Angela Crawley:** On that point, there was what was termed a short tariff. How would you define what a short tariff for an IPP sentence would look like if you were asked to build such a policy?

Professor Towl: It is an arbitrary thing at some level where we cut off what a short tariff would be. My perspective would be to take a look at the collection we have in front of us, the real-world cases, and to make a pragmatic decision about what constitutes short and what does not, and also where each of those individuals is in relation to that. For me, one of the key areas is getting services to people who are held in custody. It seems to me that the way that is set up at the moment—this is not a question of not enough resources; it is about how the existing resource is being used—makes it more difficult for people in custody to access them.

One of the unfortunate trends in the past 10 years or so has been an increase in the number of different programmes. I can see that the laudable aim of that is to have more specialist programmes, but in general they are cognitive behavioural programmes. If the generic cognitive behavioural programme was used instead of quite a number of the existing courses, because it would have the same underpinnings, it could be run in more places more of the time, and it would apply to more people more of the time.

Where there would be a real material benefit is where individual psychologists are simply working through a manual or a particular set of sessions that would traditionally have been used in a group work setting. It means that they are covering a level of detail where they are not going to have to repeat stuff. With the existing courses, there will be a replication of certain elements of the cognitive behavioural approaches in each of the courses. If they go to course 1 and then course 2, they will repeat elements. I do not think that is a good use of resources. It seems to me much better to work one to one. Professionally, the one-to-one relationship can be of higher quality. If you have two people facilitating a group of eight or 10 people in there, the level of rapport is qualitatively different from the rapport if it is one to one. You could extrapolate that into all sorts of other areas of life. If you have one-to-one coaching and support, that is different from being one of eight.

On the question of tariff, it is an arbitrary thing. I would take a pragmatic approach. What I want to focus on is that I think it is a heterogeneous group, and I would be looking at offence type as well as tariff, and what the implications are for reoffending.

Q112 **Angela Crawley:** Okay. Jonathan, do you wish to add anything?

Dr Bild: To me, there is one clear distinction within the IPP group from a sentencing perspective. It is the same distinction that Lord Thomas drew earlier: should some have got a life sentence or should they not? The difficulty we have with trying to disentangle the IPP cohort as a whole now, and trying to cherry-pick who does and does not get released, is that the injustice comes when someone has, in effect, been accidentally sentenced to life in prison by Parliament. At the time, there was not a realisation of how serious these sentences are. Giving someone an indeterminate sentence is a very binary issue. They are being sentenced to die in custody, absent an intervening event. For me, the issue comes not necessarily on tariff length or offence type; it is about whether that person, on justifiable grounds for the gravity of their offending, was suitable for life imprisonment. Where they are not suitable for life imprisonment, we are on very shaky ground potentially detaining that person for the rest of their life.

Unfortunately, we need a comprehensive solution, but we also have to acknowledge that any comprehensive solution carries some additional risk. We have reached the point with this process where we are choosing what we tolerate. We either tolerate the ongoing injustice of the IPP system or, as Peter Dawson intimated a couple of weeks ago in his evidence and Lord Thomas said earlier, we tolerate a little bit more risk in society. We do not normally lock someone away for the rest of their life because we think they are risky. We only normally do that because of the gravity of their offending. That is unfortunately where we are. It is about balancing those two risks.

Q113 **Angela Crawley:** I will ask Nick my final question, and if anyone else wishes to add to it, they can. Do you think that compassionate release

should be considered for those serving IPPs with short tariffs and for those who have served beyond the maximum sentence length for their index offence?

Professor Hardwick: There is a menu of options you could choose from that has been discussed. I do not think there is one thing that works for everybody. The IPP prisoners who have already served the maximum tariff—the maximum potential length of a sentence for that offence—are the most egregious cases, and there is a case for compassionate release for those prisoners. That would be a quick way of dealing with it. When Ministers make those decisions, they do so on the advice of the Parole Board if there is a case for compassionate release. For those particular prisoners, there is an argument for doing that.

Q114 **Angela Crawley:** Graham or Jonathan, do you want to add anything?

Professor Towl: I think it is a compelling case, too. If we know little else about this area of IPPs, it seems to me that it is an area of injustice, and it seems that compassion has a place when we know that there have been injustices. Why wouldn't we wish to be compassionate in such cases, albeit with the caveats that Nick has helpfully mentioned?

Q115 **Angela Crawley:** Jonathan, do you have anything further to add?

Dr Bild: It gives rise to some difficulty if you are leaving this as a discretionary decision in the hands of a member of the Executive. Going back to my earlier point about it being comprehensive, you worry about who is going to get left behind. We really want to avoid any more arbitrary distinctions. I would hesitate about compassionate release. I fully understand why we might pursue that, but that is slight desperation, to some degree, in just trying to do something. As I said, I would rather have a more comprehensive outcome.

Chair: Thank you very much.

Q116 **Paul Maynard:** Dr Bild, you have already mentioned your perception of risks in terms of a re-sentencing exercise. Can you say a bit more about what you think those risks might be and how they might be mitigated?

Dr Bild: The key to any re-sentencing exercise clearly is around managing the risk for those who will be released into the community, perhaps without the say-so of the Parole Board. I am not an expert in managing risk, I am afraid to say. I think others on the panel are much better suited to that than I am. We can build into a re-sentencing process a lead-in period. It would probably be more appropriate to have a sunset clause on the IPP rather than a re-sentencing process. Re-sentencing someone to a determinate or extended sentence runs the risk that they have served that many times over already, and therefore they become eligible for release that day. That is probably not in the prisoner's interest any more than it is in society's interest.

My favoured solution would be a process of review in which probably everyone is left on an IPP, but the ones who would have got a life sentence are left on the IPP indeterminately. They have not really been that adversely affected, other than probably their practical experience and having gone into the system at such a chaotic time. They are very much in the same situation they would have been otherwise, because they would have received a life sentence.

Those who would not have received a life sentence are the ones we really need to be concerned about. Mainly, those are the ones we need to think about a sunset clause for. Possibly for some, such as the people in the evidence you took a couple of weeks ago who are very mentally unwell now, perhaps there should be an exit out of the IPP on to a hospital order or something like that. You have to question why, when someone has served their punitive term many times over, we still need the backstop of an effective life sentence to treat that person.

Q117 **Paul Maynard:** You cite in your evidence a precedent for a larger reconsideration of IPP sentences back in the earlier part of the last decade. Can you set out in a bit more detail how that worked, how many applied, what the consequences were numerically and how large a group it was?

Dr Bild: Sorry, those were not the IPP sentences; they were mandatory life sentences.

Q118 **Paul Maynard:** But in terms of a precedent for having a larger re-sentencing exercise overall.

Dr Bild: Essentially, everyone who had been convicted of murder and who was still in custody in 2003 was eligible to have the tariff that the Home Secretary had set reset, essentially, by the High Court. To be clear, it was a much more straightforward process than any IPP sentence process would be, because the life sentence was staying in place. There was not a public protection aspect. It was done on paper. I appreciate the concerns, albeit that Lord Thomas does not think there is a huge manpower issue. There could be a High Court process on paper to review the cases, as the schedule 22 process was.

Essentially, the question of what we do with post-tariff IPP prisoners is a policy issue, not necessarily a sentencing issue now. In any review process, I think the judge would be looking to separate the life sentence cases from the rest, and it is probably for Parliament to decide what it wishes to do with the cohort who would not have received a life sentence.

Q119 **Paul Maynard:** Thank you. Professor Hardwick, you are in favour of a slightly narrower re-sentencing process, potentially. What impact do you think a wider re-sentencing process might have on the Prison Service, the Parole Board and the probation service?

Professor Hardwick: Partly why I suggested a narrower re-sentencing exercise was to question whether the resources would be available to do

it on a larger scale. Although Lord Thomas said there may be judges who are in a position to do that, there are other aspects of resources that are required. I am not against a wider exercise.

I try to make my evidence as practical as possible. It seems to me that the argument for a re-sentencing exercise for those IPPs who have not yet served their full tariff is that it is a manageable number—about 70 at the last count—and they are also likely to be the riskiest of the prisoners because the length of their tariff suggests that they committed the most serious offences. If you could deal with those, perhaps in the way that Lord Thomas suggested, either by giving them a life sentence or, if you found that they did not merit a life sentence, leaving them on the IPP sentence, you would remove some of the higher-risk prisoners from the process, which would then make it easier, I think, both politically and practically to take some of the other measures in respect of those who remained on the IPP sentence.

Partly, my suggestion was about making the overall risk more politically manageable. The problem with doing a re-sentencing exercise for all IPP prisoners is that inevitably you would probably get to a point where some, following that re-sentencing exercise, needed to be released immediately. The problem with that is whether it would be in their best interests because it would simply make it difficult to do even the limited preparatory work that might be appropriate and that they might need. You would also need to think about some licence period, so that they had some support after they left. You have to think about those issues.

My view, pragmatically, would probably be to re-sentence the most serious offenders because a lot of those would go into the life category. We know for a fact that judges were advised that, if there was a serious offence and there was a sentence available that was less than a life sentence, it was appropriate they should use it. We know that IPP sentences were used instead of life sentences. Shift the high-risk people out of the system, and that makes it easier to take some of the other measures I have described, and other people have described, in respect of the IPP prisoners who remain.

Q120 **Paul Maynard:** Thank you. Professor Towl, would you be able to compare and contrast those two approaches? Should it be a broad re-sentencing exercise or a much narrower one?

Professor Towl: It is not something I have particular expertise on, so I defer to my colleagues on that.

Q121 **Paul Maynard:** It is lovely to hear someone who says they do not know or would rather not comment, because politicians never do that.

Professor Towl: I really don't know, so I am sorry.

Q122 **Paul Maynard:** I will go back to Professor Hardwick. In your evidence, I saw the suggestion that strengthening the independence of the Parole Board would be one way to give greater validity to its decisions as it

reconsiders some of these issues. Is there ever a degree of independence for the Parole Board that will protect it from Ministers taking umbrage at a particular decision they may or may not make?

Professor Hardwick: I am sure that Ministers will continue to take umbrage with decisions that the Parole Board makes for time immemorial, and the Parole Board has to get used to that. As I understand it, one potential outcome of the root and branch review of the Parole Board that is taking place at the moment would be that you would put the Parole Board on a proper court footing, so that its decisions were seen to be independent. If you had a degree of political consensus on doing something about the IPP system, and if you had an independent body making those decisions, that would reduce the risk of damage to confidence in the justice system as a whole if something went wrong.

I try to be clear in my evidence. There is a risk that some people you release—IPPs—will commit serious further offences. I do not think the risk to be managed is simply one of harm to those individuals; it is also one of harm to the system. You have to think about how you protect the system from the fallout, as well as trying to reduce the individual risk. One of the ways you do that is by giving it to an independent body.

To some extent, the tensions we were just relating to are appropriate. The politicians can voice the concerns of their constituents and their communities about decisions that they do not like. On the other hand, the Parole Board can make its decisions on the basis of the evidence in front of it, as a court would. Sometimes, those tensions are not a problem; they are a good part of how a judicial system in a liberal democracy works.

Chair: Thank you very much.

Q123 **Rob Butler:** Professor Hardwick, let's follow on a little bit from what you have been talking about. If we are talking about the Parole Board in whatever form, current or any future form, having responsibility for some of these decisions, do you think that the release test should be amended to shift the burden of proof of risk from the individual prisoner to the state, to turn it on its head?

Professor Hardwick: I agree with what Lord Thomas said about this. Philosophically, that seems like an attractive proposition. I am doubtful whether in practice it would make much difference. When you are faced with a decision of that kind, I am not sure that it is as nuanced as a change in the risk test might suggest. However, I do not think it would not do any good at all. It would do some good; I just do not think it would solve the problem. There is a set of issues, a set of processes, that you could follow that would do some good for some IPPs. None of them would solve the problem completely. I would not be against changing the risk test. I just do not think it is a panacea for the problem as a whole.

Q124 **Rob Butler:** We are not at the stage, as a Committee, of making

conclusions yet, but it is fair to say that an awful lot of evidence suggests that there needs to be a variety of solutions, for want of a better word, according to the different types of prisoner and the different circumstances. Who do you believe should arbitrate on which is the right solution for which group at which time?

Professor Hardwick: Ultimately, that is a decision for Parliament and Ministers. These are policy decisions that have been made. The channel that somebody goes into would ultimately, I think, be a policy decision. It might in some cases be at Ministers' discretion. A Minister could decide. Ministers, as we have heard, have the powers to change the risk test. Ministers have powers to grant compassionate release. Other things might need legislative change as well. That is a political and policy decision for you.

Q125 **Rob Butler:** Thank you. Before I get involved in anything else batted back towards me, I will come to Professor Towl and a different aspect of this, if I may, in terms of what actually goes on in prison for prisoners who are serving IPP sentences. There are a couple of different aspects I would like to touch on with you first.

One of the things that really struck me when we were talking to people who had been on IPP sentences was the difficulty that arose from the absolute uncertainty about knowing when they might be freed. Several said, "I wouldn't have minded if it had been a very long period of time, longer than the tariff. At least, I would have known." Can you talk a little bit about that from your professional expertise? Do you believe that the programmes in place in prisons at the moment, be they explicitly offender behaviour programmes or offending personality disorder pathways, help?

Professor Towl: Thank you. On mental health, we know that if people do not have control over their lives, or have less control over their lives, that is associated with less good mental health outcomes in general terms. People function better when they have some controls over their lives. This is a group where we have systematically prevented that at a structural level. We anticipate that there would be difficulties with mental health.

One of my concerns about that is that sometimes risk and need get conflated. For example, to me, if someone self-harms, that is communicating to me a need that they have. You mentioned offender personality disorder. That is seen as an indicator potentially of personality disorder, which to me is ludicrous, frankly. One of the problems is that, once they are in that position, there is a danger that individuals will become pathologised for what in practice is a fairly normal reaction to a trauma-inducing situation. To have no prospect of when they will be leaving prison or not, all that uncertainty and managing that and so on, is bound to have a negative effect on mental health. That would be the case for any of us at some level. There might be different degrees of that; none the less, that would be a general point.

On the point about the programmes industry, the primary aim of that is to reduce the risk of reoffending, and the primary measure used for that tends to be reconviction levels. There have been mixed findings on that. Part of the problem has been secrecy. We saw that in the sex offender treatment programme, for example. There was evidence in 2003 and 2004 about that not having an effect on reducing sex offending. Then in 2012 the finding was that it was making people a bit worse, but that was sat on for five years. With OPD, there is some similar evidence that has been sat on, which, as I understand, has been looked at, but I do not know what the results of it are because it has been sat on.

There has been some other evidence, for example, with the violence programme just this year, where that has been shown not to work in reducing violence, but to have some positive indications in general offending. There is a mixed bag of results, but there is a culture of secrecy, and that is one of the real problems. It is difficult for people like me outside to have access to the details of those programmes or that information. All I can really get access to is lists about what they are. Because of my previous experience and knowledge in the area, I have a fair idea of what the programmes are about. They tend to be group work-based, although not all are group work-based; some are a combination of group and one-to-one sessions.

For that group of individuals, given what we know about the increased anxiety and depression among the group, I think we should set up a different aim, not just to address reducing reoffending, important though that is, but about their personal development and wellbeing. I would recommend from a professional point of view that each of them has counselling support. That seems to me to be fundamental.

Second to that is looking at things like education, particularly education linked to employment opportunities. We need to be working hard on that now because whenever down the line the person gets out, which is a hope and expectation in these cases, that is work that will be important, it seems to me, in ultimately helping that person thrive when they get out. If they are thriving when they get out, they are far less likely to commit offences. These things cannot just be siloed off as if they are different areas. If someone is feeling suspicious or untrusting of a system, they are less likely to engage. There are a number of response biases that we build in. For example, if someone does an accredited offending behaviour programme, they are asked afterwards whether the programme worked for them. What would we expect them to say? That is what I mean by response bias. They are biased to say, "Yes, it was effective for me."

Sometimes, there is a danger that all we are doing is training people in another language for talking about their offending. My concern about that is that unless we do the work that, as I would see it, is more fundamental, which is about supporting them as individuals—I am thinking of the counselling work—in recognition of damage that the

sentencing has done, and if we do not do work on giving them practical skills and practical help linked to employment and education, it is less likely that they will thrive in terms of not reoffending ultimately. It is more likely that they will engage more positively in work to reduce reoffending if we show that we have an interest in them too, if I may put it that way. Those are the sorts of things we need to do to address some of the mental health problems.

For example, when we are assessing risk of reoffending, we should routinely make a risk of suicide and risk of self-harm assessment because we know that the pattern of suicide among life sentence prisoners is different from determinate sentence prisoners. If we extrapolate from that that the difference is the determinacy or the indeterminacy, we predict that this group would have a higher risk of suicide. What we know about the pattern of suicides with indeterminate sentence prisoners in comparison with determinate sentence prisoners is that it will be more linked to when they are being reviewed. The review periods are really critical. That is what we see with a lot of life sentence prisoners, whereas determinate sentence prisoners tend to be very early on in their time in a particular prison when they are at much higher risk.

That pattern starts to change with indeterminate sentenced individuals. I have not looked at the data for that particular group, but that would be my prediction on the basis of everything that we know. We know that life sentence prisoners have a much higher risk of suicide than determinate sentence prisoners. From that, I would extrapolate that this group probably does too, and the same with the self-harm rates, for example.

Q126 **Rob Butler:** Professor Hardwick, what sort of programmes or services do you think need to be in place in prison to enable IPP prisoners to get to the Parole Board in a timely way, and that best equip them to present their case?

Professor Hardwick: I share some of Professor Towl's concerns about what people's expectations of programmes are. It is that there is almost some sort of magic treatment you apply. It simply does not work like that. We know that most programmes help some prisoners a bit. Working out precisely which prisoners have been helped and how much is very difficult to do.

This Committee has catalogued—I think you called it—an enduring crisis in prisons. That is certainly going to affect a prisoner's ability to make use of the programmes that are on offer. We know that for the last two years prisoners have been in lockdown. People have not been able to get to programmes. I would be cautious about seeing programmes as a solution to this. They could help a bit. Part of the reason we have got the numbers down as far as we have is the effectiveness of some of the programmes and approaches that have been applied. They can continue to drive the numbers down. In a sense, we have dealt with the low-hanging fruit. It is going to get more and more difficult, certainly with the

people who have not been released. Professor Towl is the expert, but I share his views on what he said about programmes.

Q127 **Rob Butler:** Thank you. That is very helpful from you both. Before I hand back to the Chair, Professor Hardwick, I know you are no longer chair of the Parole Board, but do you have a view about whether every Parole Board hearing member has the necessary expertise and experience that would be necessary to make the appropriate, proportionate decisions about IPPs?

Professor Hardwick: There may be an argument for specialising. Sometimes, they specialise in terrorism cases, for instance, or dealing with children. There is an argument for that. If part of what we are trying to achieve is to have confidence in an accelerated programme of release, in any of the options, it may be that you want to ensure that those panels are chaired by a judicial member. It is not that I think other members could not do it perfectly well, but it is a question of perception and public confidence in some of it. That is what I would look at. It would be true to say that sometimes it is in any case the most experienced Parole Board members who are often allocated to these cases as their numbers go down. You could always improve that process.

Rob Butler: Thank you very much.

Q128 **Chair:** That is very helpful. Professor Towl, perhaps I can come back to you. We have been talking about the management of risk and the fact that there will always inevitably be some risk and how much that is acceptable within the system. Do you think there is anything that could be done to change the way the probation service operates to manage that risk in the community better, to try to prevent, for example, unnecessary recalls? One of the real concerns that has been expressed is that the recall population will surpass those who are still serving the index offence, the way we are going. Is there anything that you could help us with on that?

Professor Towl: There are a few things. One of the things is less reliance on checklist-based approaches to risk assessment. That could be one key step forward. Giving people greater confidence in clinical decision making is important, while also being aware of the actuarial data. That is important too, but not defaulting simply to a checklist-based approach to risk assessment. That would be something very specific.

I mentioned earlier moving some staff from the high-security estate in particular because the question was about the public protection element. There is resource that could be moved over. Circles of support, for example, are used widely in the community with sex offenders. There could be something akin to that for our group of prisoners too, which would be quite practical. In terms of what we know about what is effective, mentoring programmes might be another area where we could literally get alongside the individuals once they were released, and that would be a more helpful way of managing risk.

The overall focus would be on driving down risk rather than focusing on continually assessing risk. We do a lot of risk assessment. It is the same with suicide. We focus on assessing people. We spend hours assessing people for risk. We spend less time reducing that risk. That seems to me to be absolutely fundamental.

Q129 **Chair:** Okay, thank you very much. Dr Bild, do you have any thoughts on that area?

Dr Bild: No, that is not my area, I am afraid.

Q130 **Chair:** Professor Hardwick.

Professor Hardwick: There are some things that could be done. We need to understand the different ways in which a breach of licence conditions can take place. Often, the public assume that a breach of licence conditions means that the former prisoner has committed a further offence. That is often not the case. Often, it is a question of them breaking one of the rules or having some behaviour that cumulatively causes concern to their supervising officer. Sometimes, the appropriate thing will be for the probation officer to make an immediate decision about recall. Sometimes, it is a more finely balanced decision. For the more finely balanced decisions where there is not an urgent need for recall, there would be an argument for going back to the Parole Board and discussing the need for a recall with a specialist panel there. Other people have suggested that you go to a magistrate before you make the recall decision. I would put in some of those checks and balances. I think the Parole Board has suggested it could do this, and that would be a sensible approach.

The second thing is that, once an IPP has been released, they ought to be released at that point on a fixed licence term.

Chair: Yes.

Professor Hardwick: That would be set by the panel that released them, having some relationship to the licence period that their tariff would suggest the index offence would have been. If they commit a further offence, they should be sentenced according to that further offence, rather than according to their previous IPP status. Once you have got somebody out, you need to call a halt and take them off the IPP train. I was aware, when I was at the Parole Board, that the recall numbers would get to the point where they overtook the numbers of people who had not been released, and we are definitely heading in that direction. It is inevitable at the moment. That seems to me to be unjust.

Q131 **Chair:** You have suggested that there should be a maximum licence period of two to five years, something of that kind.

Professor Hardwick: If you took all of these things together, I would link it to the tariff. You need some licence period. You need to make sure that people are supervised when they are initially released. I would not

have it too long, otherwise it would reduce. I would set some limits to it. I would have the licence period within those guidelines. That is where I would use a judicial member of the Parole Board to set the licence limits, but that would be an end to it. Whatever happened at the end of that period, the IPP sentence would be finished. If they reoffend, they should get sentenced taking into account previous convictions, as you would for any other sentence.

Chair: I think the Prison Reform Trust has done some work on it and suggested setting a licence period.

Professor Hardwick: I certainly think the recall thing you have there is an opportunity to bring things to an end in a way that the public would find acceptable.

Q132 **Chair:** Is there a place for a greater role for the Parole Board in relation to recall?

Professor Hardwick: There would be some argument about doing that. Because they will have been aware of the case and they will have the expertise, you could do that.

Q133 **Chair:** That is very helpful. We have discussed, particularly with Professor Towl in some detail, and with others, the mental health issues that impact on IPP prisoners. Professor Hardwick, you have suggested potentially in some circumstances that dealing with them by a mental health tribunal rather than the Parole Board might be the right way forward.

Professor Hardwick: If you accept that the consequence of the IPP sentence for some IPP prisoners—I think it is a relatively small number—has been so severe that it has had a detrimental effect on their mental health, and that therefore has limited their capacity to meet the requirements of the Parole Board, you might argue that it would be better to treat them at that point more as a mental health issue rather than a behaviour issue. If that was the case, you could make an argument that a mental health tribunal would be better placed to make decisions about release than the Parole Board. There are some IPP prisoners who need to be taken out of the justice system and seen much more as a health issue at this point.

Q134 **Chair:** Does that ring a bell with you, Professor Towl? Does it strike you as something worth considering?

Professor Towl: I think it is worth considering. It is not something I have thought through. Certainly, it is something to put on the table for consideration.

Q135 **Chair:** Fair enough. Dr Bild, do you have anything on that?

Dr Bild: Could I come back briefly on the length of licence?

Chair: Yes, please.

Dr Bild: We should remember that the 10-year licence period was set as part of the original legislation, when it was envisaged that these people were all going to be really serious offenders. Now that we acknowledge that they are not all really serious offenders, there is a real disproportionate aspect of a minimum of 10 years on licence post release.

Chair: I see everybody nodding agreement to that, and on that note, we have probably dealt with the issues that we wanted to raise with you. Gentlemen, thank you very much indeed for giving up your time to give evidence to us today. It has been most helpful, and we are very grateful indeed. It is good to see you all. Thank you again. The session is concluded.