

Justice Committee

Oral evidence: [Imprisonment for Public Protection \(IPP\) sentences](#), HC 678

Tuesday 14 December 2021

Ordered by the House of Commons to be published on 14 December 2021.

[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Maria Eagle; Laura Farris; Kate Hollern; Dr Kieran Mullan; Paul Maynard.

Questions 136 to 266

Witnesses

I: Caroline Corby, Chair, Parole Board; and Martin Jones, Chief Executive, Parole Board.

II: Kit Malthouse MP, Minister for Crime and Policing; Sonia Flynn, Executive Director, Chief Probation Officer & Women, Her Majesty's Prison and Probation Service; and Dr Jo Bailey OBE, National Lead Psychologist, Her Majesty's Prison and Probation Service.

Examination of witnesses

Witnesses: Caroline Corby and Martin Jones.

Chair: Welcome to this evidence session of the Justice Committee on IPP sentences. We are very grateful to both Martin Jones and Caroline Corby for coming to give evidence to us. Before I come to the witnesses, we have to go through the usual declarations of interest. I am a non-practising barrister and former consultant to a law firm.

Laura Farris: I am a practising barrister.

Maria Eagle: I am a non-practising solicitor.

Q136 **Chair:** I think that covers most of it. Martin and Caroline, would you introduce yourselves, please, for the record?

Caroline Corby: My name is Caroline Corby and I am chair of the Parole Board for England and Wales.

Martin Jones: I am Martin Jones, chief executive of the Parole Board.

Q137 **Chair:** Caroline, welcome. I think this is the first time you have given evidence to us as chair of the Parole Board.

Caroline Corby: Yes. I had a pre-commencement hearing.

Q138 **Chair:** That's right, yes. It seems a long time ago now, doesn't it?

Caroline Corby: Three years ago.

Chair: It flies by. We have not had the chance to pick up on the issues as much, but welcome.

Caroline Corby: Thank you.

Q139 **Chair:** May I kick off? We know that the primary purpose of the Parole Board is to protect the public. That is essentially what the statute says and what your remit says. Is there a danger that the way IPP sentences, which were intended to protect the public, have actually worked out in practice is that we have got to a stage where the length of incarceration has actually made some of those prisoners a greater danger to the public than they were when they started? Is that the harsh reality?

Caroline Corby: The IPP prisoners are made up of a very wide range of prisoners. At the moment, there are about 1,660 IPPs in the system who have never been released. Some of those prisoners have never come before the Parole Board as they are not eligible for parole because they have not yet served their period of punishment. There are 70 of those in the system.

Q140 **Chair:** It is a tiny minority though, isn't it?

Caroline Corby: It is a tiny minority. At the other end of the spectrum we have about 570 IPPs who are more than 10 years over tariff, and that means that they would have had six or seven parole hearings during the period of time over the last decade, so there is a very, very wide spectrum of IPPs.

It must be right; living with uncertainty about a release date is a difficult thing to do. Clearly, that is not unique to IPPs. Lifers have the same issue, but some IPPs had a very, very short sentence. I go and observe hearings, as does Martin, every six weeks or so. I observe IPP hearings, and you sometimes see people who are exhibiting loss of hope, and therefore they disengage from rehabilitation, and that does not help the parole process. That must be a feature in some cases, I am sure. Martin, is there anything you would like to add?

Chair: That is a fair point.

Martin Jones: Yes, my observation on these cases would be that there are lots of opportunities to make poor choices in prison, and that is what you see now, particularly with the people left in the system, people who have had repeated parole hearings. Quite often that is more about their behaviour in custody than their initial index offence. Somebody might have committed a robbery offence and got a two-year minimum period to be served as a result, but if they then come before a parole board many years later you might see improvements in the individual case, but you have to look at the signs of risk that individual is now displaying.

If they have very poor mental health, or they are taking drugs, or perhaps they are involved in violence in prison, that makes it very difficult indeed to meet the test for release. The job of the Parole Board of course is to make an honest assessment in relation to whether it is about loss of hope, or whether it is about trying to get that individual to a point where they can be safely released. They are looking for signs that the risk can be managed in the community. Obviously, we want to get those decisions right.

Q141 **Chair:** That perhaps requires a more targeted approach and you would counsel against a broad-brush approach.

Caroline Corby: I would say IPPs describe a very broad category of offenders. We undertake a personalised individual risk assessment of everybody who comes in front of us. We do not treat them as a category. We look at the individual risks they present.

Q142 **Chair:** Do you have the material in what is given to you by the prison or other relevant agencies satisfactorily to come to an assessment of these things?

Martin Jones: For most of the IPPs that we now see, particularly when they have had repeated parole reviews, we sometimes get 600 to 800 pages of information about that prisoner, and quite a lot of that information will not be about their initial index event. We have the judge's sentencing remarks, of course, but a lot of it will be about what has happened in the time that they have been in custody. Quite a lot will be, for example, about their psychiatric assessments and psychological assessments and what has been happening in prison, and quite a lot about their behaviour. We get quite a lot.

Part of the job of the Parole Board is to scrutinise whether the detention remains necessary for the protection of the public, and quite often we find that we need to ask for additional material, additional reports, as part of that, to ensure we can make the best possible decision. There are two sides to that. We are testing whether the person is safe to be released but also to ensure the continued lawfulness of detention. That is a really high bar, and I think it is particularly acute in an IPP case for somebody who is 10 to 12 years beyond their minimum term. You need to ensure that it is really justified in public protection terms.

Q143 **Chair:** Do you have any idea, Martin, as to what sort of percentage you may have to adjourn to get further evidence or information on the IPP cohort as opposed to others?

Martin Jones: There are issues certainly in relation to inefficiency in the system. One of the things the Parole Board has done over the last three years is encourage members to take ownership of the case. Traditionally, about 70% of our hearings result in a decision at the next hearing that is in place, but if you just send it back into the pot and another panel takes it up, there is a lack of continuity.

We have rolled out an approach that we describe as the compass approach in which, if you cannot make a decision today, you retain ownership of the case. What we have found from implementing that approach is that the majority of those hearings concluded at the next opportunity. In some of them you do not even need the next hearing. In some perhaps you are waiting for a final piece of evidence, the final assessment that you were waiting for, and then concluding the case on the papers in between reviews. That has really helped with purposeful reviews of the sentence.

Q144 **Chair:** The board is able to come to a provisional decision in effect, subject to a final decision.

Martin Jones: The board decides what it is minded to do. What you might need is a well-rounded risk management plan to work out whether the person is probably safe to be released, but they also need to be satisfied that there is appropriate mental health support in the community to ensure that the person can be managed. In some places, for example, you might want to look for approved premises that can meet the needs of the offender and you adjourn the case to ensure that you get that information before you make the final decision.

Q145 **Chair:** You can do that by a write-around among the members, in effect.

Martin Jones: Yes.

Caroline Corby: I think it is fair to say that there are still too many delays in the system. One of the areas that we are keen for the root-and-branch review to look at is delays in the system and possible solutions. I am sure you will be aware that we had a tailored review that completed in October 2020, and one of the recommendations that came out of that was a parole system oversight board to deal with systemic problems that cause delays that cross over into the Parole Board and into other parts of the system. We are very keen on that recommendation. We think it will be a helpful way of addressing delays in the system.

Q146 **Chair:** But we need the Ministry of Justice to action that.

Caroline Corby: Yes, and that recommendation has moved into our root- and-branch review and we hope that is an outcome of the root-and-branch review, because we think it will be a very, very helpful way of addressing delays, along with inspection of the parole system. We are very keen on inspection as well, not of our judicial decisions, because clearly that could undermine judicial decision making, but in terms of the system: are our dossiers of the right quality; do we have the right information; are we adhering to the timeframes that we should across the system? We think that shining a light on those things could be very helpful.

Q147 **Chair:** What is the likelihood, if we are successful, of getting those things in place, and when?

Caroline Corby: They were a recommendation that came out of the tailored review. As I say, they have now moved into the root-and-branch

review, but I think the case that was made was compelling, so I hope that would also come out of the root-and-branch review.

Q148 **Chair:** Do you have a sense of when the root-and-branch review is going to finish?

Caroline Corby: We are uncertain about it, but I know the Secretary of State appeared in front of you a couple of weeks ago and said that he preferred to get this right and not do it quickly, which we well understand, so we think it is likely to be in the summer, that sort of thing. Martin, is that what your indication would be?

Martin Jones: That sounds about right, actually. I would not expect there to be any real objections to the idea of a parole oversight board. For most of the people in the parole system, of course, it is more about what has happened to them in the last 10 to 20 years they have been in prison, and that is how we need to look at it; we look at it throughout the system. Parole reviews are only successful if you have the right information right from the start of the case.

Q149 **Chair:** I get that, yes. You make the point, both of you, that the remaining IPP prisoners are particularly complex cases in many ways, and some of this will be quite difficult. Is there a case for saying that with IPPs in particular you ought to have a judicial member chairing the panels?

Caroline Corby: I am not persuaded that that is the right way for us to go. That is for a number of reasons. First, I would not want to give the impression that our independent members are not fully capable of chairing hearings in a very effective way. When you look at the make-up of our members, we have around 330, and about 60 are judicial members. Then we have around 60 psychologists and psychiatrists, and the rest—over 200—are independent members, and they do an awful lot of the heavy lifting in our work, and they do it extremely well.

The other consideration would be that IPPs are a very important part of our work, but we also deal with terrorist offenders. There are often very complex legal issues associated with terrorist offenders and we use a lot of our judicial members to do that work. We are also dealing with lifers who can have complex legal issues, perhaps associated with allegations where they are not attached to a conviction, and those sorts of things. What we are much keener on doing is not ticketing people in that way, to say you can only do IPPs, but ensuring that we match the skillset among our members to the issues in the case.

The only exception where we ticket, if I can describe it as that, is for Terrorism Act offenders, where we think there are some quite different characteristics of those offenders; there are very different motivations for the offenders and there is a different scale of risk. There, we have a ticketing process and we have a lot of judges who do that work. Martin, what is your view on judges doing IPP cases?

Martin Jones: A percentage of IPP cases will have a judge chairing them. Every single case that arrives at the Parole Board is subject to an initial assessment to identify what the issues in that case would be, and some of them will clearly need a judge. I would be worried if we used only judges on those cases. It would lead to delays in the system and it would be deeply unfortunate if in the aim of trying to get the system to be more effective you created delays. There are no real delays in relation to how quickly we can list IPP cases now.

The other thing is that for somebody who is incredibly vulnerable in prison, perhaps with learning difficulties, we find that some of our independent members are sometimes the better members to deal with those issues because they are able to ensure that the person is at ease in the right way to get the right answers to the questions we need to ask.

Q150 **Chair:** Are there particular constraints on how many members you have and what the mix is? You have 60 judicial members and about 60-odd psychiatrists—

Caroline Corby: There is no mandate that says we have to have those numbers. We go to the Ministry of Justice when we think we would like to do another recruitment round. We are right now in the process of recruiting some more Terrorism Act specialists. They come in with a particular background and we hope they will be joining us early in the new year. We are likely to do another recruitment round for independent members in late 2022. The process is that we go to the Ministry of Justice and say we think this is our need. We are always gearing up, by the way, because our work is growing by about 10% per year and has been for many years.

Q151 **Chair:** The logic is that you have to expand the number.

Caroline Corby: Yes.

Martin Jones: Over the last six years, it has doubled. When I joined the board in 2015 we had about 160 members and it is now 330 members. It is one of the reasons we have managed to address the backlog.

Q152 **Chair:** It is quite a big increase.

Martin Jones: Certainly the interests of the system being efficient is a really good argument for saying that we need more Parole Board members of different types, and we will be successful in those arguments.

Q153 **Chair:** You talked about having to assess risk, as well as where they are at the moment and everything else. That must involve things like support in the community and so on, if they are released. What are the mechanisms a prisoner might have to say, "I'm not sure this has been investigated fully enough, this support in the community side"? Obviously when they are in prison, you have officers and specialists to deal with them. What would you do if an issue is raised about whether the assessment of community support they may have is insufficient?

Martin Jones: Again, it really comes into focus for us around the risk management plan that is put in place for a particular offender. If a panel does not believe that the risk management plan is robust enough to manage the risk in the community, they will test it pretty robustly to ensure that there are alternative plans.

Of course, throughout their career, most Parole Board members will have dealt with hundreds and hundreds of cases and will know what a good risk management plan looks like. They will say, "Have you thought about this, for example? Would there be drug testing available in the community?" That really comes through in relation to the licence conditions. Most of the IPPs in the system are legally represented; well over 95% are legally represented in their hearings, so they are able to ensure that their interests are properly represented at those hearings, and they can test the evidence of people as part of that.

Sometimes you need to use a bit of imagination in looking at the risk management plan. Sometimes you can question whether they actually need to go to approved premises. If you have the right supportive family background, releasing a prisoner to a home address, perhaps with a tag, might be a better approach than putting somebody in approved premises. It is about calibrating to the individual needs of the case.

We think that is particularly helpful, for example, for recall offenders, who have perhaps spent a year to 18 months in the community and have been brought back into prison, perhaps because of a breach of their licence conditions. Do you really need them to go back on that round of spending 16 weeks in an approved premises? Just get them back into their home but manage them proportionately to their risk.

Q154 **Dr Mullan:** Some of the evidence that we have had from victims talks about the assurance that they get from someone being on an IPP, and their concerns that that assurance might be lost in some kind of conversion of the sentences, or whatever it might be. How do you take into account the impact on victims of potential release for IPP prisoners? I assume it is no different from any of your other hearings, but it would be good if you could articulate how you give weight to victims.

Caroline Corby: We should start by saying that the Parole Board is mindful of how distressing the parole process can be for victims. Many of the people we deal with have caused immense harm to victims, and most victims, for reasons that we completely understand, are fearful of the prisoner being released and do not want the prisoner to be released. The parole process is inherently a really difficult process for victims.

Over the last few years, we have been working very closely with the Department and with the Victims' Commissioner to do everything we can to take the stress out of what is inherently a very stressful process for victims. Getting rid of delays would help victims, because it is very difficult for a victim who girds themselves for a hearing, and then it is adjourned for some reason and they have to come back again in three months' time. Sorting out delays is very important for victims as well.

We are aware that victims are not always clear about sentencing at the point of sentencing, so we are trying to do work there. They hear "life sentence" and do not realise that that person, unless they have a whole-life sentence, will be eligible for parole. These things can be very, very challenging for victims.

Some of the changes over the last couple of years have been extremely positive for victims. Summaries have come in, since May 2018, so victims can now understand the reasons for our decisions, which they could not before then. We issue over 2,000 summaries a year, which I think has been very helpful. We also have a reconsideration mechanism, which means that victims can go to the Secretary of State if they have serious concerns.

In taking into account the voice of victims, if I can put it that way, victims can come and give a victim statement to our hearings. If Martin gets an opportunity to talk about Covid later, he can tell you about some of the changes that we have made.

One impact of us going virtual is, I think, that the hurdle to giving a victim statement has come down. Obviously, going into a prison can be a very anxiety-making event. Often prisons are a very long way from the victims. We find that more people are giving victim statements. It is very important for our panels that they can hear some background about the impact and get more colour around the crime, if I can put it that way. We hear victims' voices in that way.

We are very mindful of victims' views on licence conditions. All our panellists are well aware of the fear that somebody might feel that they were going to bump into somebody, say, in their local high street if that person were released. That is very important in crafting licence conditions. Victims have an important role in that.

In terms of risk assessment, it would be the case that almost every victim would not have seen the perpetrator for years and years and years, so they do not give evidence on risk—that is not their role—but they can certainly be extremely helpful in terms of licence conditions. We are always thinking about ways that we can work better with victims and improve the experience. Martin, is there anything I have missed out with respect to victims?

Martin Jones: That was extremely comprehensive, Caroline. The only point I would pick out is around licence conditions, actually. It is pretty common for us to impose a non-contact prohibition, an exclusion zone. For the most part that is to reassure the victim that they will not come into accidental contact with somebody. There are a small number of cases in which the victim says, "I have information that potentially goes to risk."

The important point for us is that, if the information comes in through the victim personal statement, it needs to be fed in to the probation officer, who will say, "I am aware of this happening." Sometimes it comes

through, for example, in a domestic violence case where somebody is in prison for a serious domestic violence offence, and it might be that details of that need to come in through a formal evidence route. Quite a lot of our job is to redirect that.

The point about evidence during Covid is an incredibly important one for us. Ordinarily, we get about 200 victims wanting to read their victim personal statements. We help them by paying their costs to go to the prison, but it is much easier, and we find a much higher take-up, when they are able to do that remotely via video. In reality, most victims do not want to see the prisoner. They request at the start of the hearing, "I don't want him or her to be present when I'm reading out my statement," because they do not want that contact. Doing it remotely provides a much safer and more reassuring environment for them, and we would want to build on that.

Q155 **Dr Mullan:** There would be an intention to carry on that facility.

Martin Jones: Absolutely. We think it is a really good and effective way of ensuring that they are properly supported. The other thing we are really quite concerned about is that we know—I speak to many, many victims throughout the year—how distressing the experience is for them. For example, if you are giving evidence via a probation office, you probably need to speak to somebody after giving the evidence. At the moment, you leave the prison and get on the bus, and I worry about the impact on people of suddenly reliving it in their mind. It is much better to be able to do that and speak to your victim support officer at that point in time as well.

Caroline Corby: You asked whether we were going to carry on with this way of working. The Parole Board has used the Covid pandemic to completely change the way we work. Pre the pandemic, over 95% of our hearings were taking place face to face. Now that has flipped, and over 95% are taking place virtually. We have seen no change in our release statistics at all. We have seen no change in our serious further offence rate. We think it is a much, much more efficient way of working. I feel we have jumped a decade and we are going to carry on working in this way in the future.

Q156 **Dr Mullan:** May I pick up on licence conditions and exclusion zones? Would you say, if a victim asks for it, that it is almost a default? What is the reason why you would not grant an exclusion zone in a licence, for a victim?

Martin Jones: It has to be reasonable and proportionate to the risk. You need to look at the individual circumstances of the case. Part of it is also ensuring that you provide protection for the victim. If you are saying, for example, to a prisoner, "You cannot go to this tiny village over here," it is pretty obvious where the victim is now living. That is one thing to bear in mind. Generally speaking, it is about the extent of that.

For example, if you say, "You can't go to this area in Kent," the area around Maidstone where I live, that would be one thing. If you are

saying, "You can't go to the whole of the south-east of England or the whole of London," there is a question of proportionality if the person lives in Kensington. It is that sort of thing. It is the job of the panel to ensure that it is proportionate to the risk you are managing. In most cases, it is pretty much a done deal.

The only thing that occasionally you need to be sensitive to as a panel member is that most crime is local. I might have committed my crime in Hull but I come from Hull, and that is where my mum and dad and my family live. In reality, if you look at the data around reoffending, having supportive structures in place is part of it and we will not ban you from the whole of that area. It might be a particular part of that community that you cannot go to. That is the sort of thing the panel always bears in mind when it is deciding on the licence conditions. There is a pretty well-oiled process for that request to be made. The Parole Board needs to provide reasons where we are not granting that, and of course that can be challenged in due course.

Q157 **Dr Mullan:** You mentioned life sentences, and I agree with you about victims misunderstanding. There would not be a misunderstanding if there is any change because they would be correctly of the view that the person will not get out until the risk is deemed to be removed. We potentially might be bringing forward a situation where that absolute test is not there any more. Do we have to do anything in particular to support victims specifically because there is some transitional change to the sentencing and how it works?

Caroline Corby: You mean in the future, with IPPs, if we applied a different test?

Q158 **Dr Mullan:** Let's say a different test is applied as a re-sentencing exercise, or whatever it might be. If there is a change, does particular attention need to be paid to those victims?

Caroline Corby: I am sure that would be right yes.

Q159 **Laura Farris:** In the course of the evidence that we have taken on IPPs, we have heard about different types of offending that have led to an IPP; for example, it could be something as serious as a terrorist offence, or it could be something like robbery that might lead to an IPP. We have also heard about different requirements being set for prisoners. We heard from the sister of one prisoner who I think had killed himself in custody because he had been asked to complete various courses. He had been moved around the prison estate, and some of the courses were not available, so he was never successful.

Obviously, you are dealing with a really broad spectrum of people and lots of different requirements. What is your view of the way the criteria were applied by the Parole Board? Do you think they took fair consideration of some of those distinctions? What are the current barriers to the release of IPP prisoners?

Caroline Corby: As to whether I think our panel members are fair, yes, I think they fairly apply the statutory test. To give you a feeling of that, we

have released over 5,000 IPPs in the last 10 years; we released over 400 IPPs who had never been released last year, and I think about 440 have been recalled. We are continually releasing IPPs.

Q160 **Laura Farris:** Do you think there has been an improvement in the way that has been handled in recent years?

Caroline Corby: I think there was a big effort about six or seven years ago when there was a lot of concern about disproportionalities with the sentence. I think collectively the whole system has been much more focused on addressing the IPP issue. A lot of effort has gone into ensuring that people have the right courses and support and all those sorts of things. We have seen the numbers come down.

Inevitably, the easier cases have been dealt with and you are left with a very hard core of people who are going round and round the system and exhibiting the kind of risk that means that they will not meet our statutory test. There is still a lot of support being put in to try to assist people, but the underlying issue is that people are not able to convince our panellists that their risk can be managed in the community. Clearly, if they cannot convince our panels of that, they will not be released. Martin, is there anything you want to add?

Q161 **Laura Farris:** Before you do that, I want to pick up on something you said, which we have heard from previous witnesses. We have heard nightmare scenarios where the index offence has been reasonably low level and the person has had a very problematic experience of prison. They have developed a very serious mental health problem, and, in a sense, the effect of the sentence itself has made them a danger to society. To what extent do you recognise that description? How many people do you think it applies to? Is the parole system able to deal with that?

Martin Jones: I will answer that question in two parts if I can. First, I have heard the evidence that Shirley Debono and Donna Mooney gave the Committee. I have met both ladies and I think they are incredibly impressive in the way they advocate on behalf of the IPPs' families. I think it is an incredibly important part in ensuring that people are fair.

In relation to the numbers, I think there has been a sea change in the system. I checked the numbers yesterday. In the first five years of the IPP sentence there was a little bit of variability in the release rate but, in essence, the Parole Board released fewer than one in 10 of the people that we saw each year. Only 135 IPPs were released in those five years—an astonishing figure—and that stands in contrast to the fact that we have released more than 5,000 over the last 10 years. There has been a significant change of approach and much more realism around that.

It is probably true to say that in the past there was too much of a focus on a tick-box exercise: "Have you done all the right courses? Can we send you on another course? You need to go to this prison over here." In the cases that we are now seeing, almost every single person has done multiple courses and we have tried various different things, so that is not

really the obstacle in the way.

I think there is a hard core of people for whom the sentence itself has been a particularly toxic part of the journey for them. As you say, robbery is a serious offence if you are robbed at knife point, and that person clearly needs to go to prison, but does it really warrant 15 years in prison? It should only be where there is significant concern about your ongoing risk to the public. We have found that for some of these individuals actually getting them mental health treatment is the secret. There are some people who move into a hospital for their mental health and, once they have completed treatment and they are well, they are in a pretty good position to be released at the end of that.

The other thing the system has got much better at in recent years is for individuals who have completely lost all hope; their behaviour has deteriorated, and it is a question of how you restart the journey. There has been some exceptional work done. It started at HMP Warren Hill with what they describe as the progression regime. There were people they knew had repeatedly failed in their parole journey, had had two, three, four or five parole reviews and were making no progress, and they were sent to that prison. In the first two or three years that was operating we were seeing 75% of people emerging at the end of that progression regime being released back into the community. I think something can be done if you almost restart as part of that.

The difficulty is that the Parole Board has a statutory release test to apply that has been set by Parliament. We cannot release somebody because we feel sorry for them. We have to be emotionless in our decision making and ensure that we apply the correct legal test. If there are signs of live risk, it makes it extremely difficult for us to release that individual back into the community. I completely see the story. It is very difficult to estimate, but my suspicion is that there will be hundreds of people for whom it is the sentence that has become the problem rather than necessarily their initial index offence.

Q162 Laura Farris: It seems from what we have heard previously that there is some correlation between people for whom the index offence perhaps was not so serious; they were not a serious sex offender or a murderer or something like that. Is there any circumstance when an IPP for an offender of that nature is preferable to perhaps an extended determinate sentence, so that they know what they are working towards?

Caroline Corby: The IPP sentence has not been used since 2012 because of the concerns, and extended determinate sentences replaced them.

Q163 Laura Farris: Hypothetically, from when they were being used, do you think it would ever have been preferable to have that sense of a definite stretch when it could have been substituted for a longer sentence to reflect whatever the underlying concern about the risk factor of that person was?

Martin Jones: My observation would be that, if you look at the history of the sentence, the fact that it was implemented in 2005 and merely three years later Parliament was changing the parameters of the sentence because its impact was far greater would give you an idea in relation to setting a seriousness bar. I have seen Lord Blunkett's evidence around it being quite a good idea.

For the people who were in those first three years you really start to question the justice of that. There are still a fair few hundred people in the system who got the IPP in the early part of the sentence. I am absolutely of the view that an extended determinate sentence would have been suitable for most of them, but I can see that doing it retrospectively is incredibly difficult. It is very hard to do, other than with a re-sentencing exercise.

Q164 **Kate Hollern:** You have mentioned the statutory test a few times. Do you think that statutory test should be amended?

Martin Jones: I think it is very difficult. I guess what I would talk about is my experience of leading the Parole Board over the last six years. It is helpful for members to have a consistent test to apply in relation to whether it continues to be necessary for the protection of the public that a person be confined. If you start to alter the test, it gets very difficult to ensure that there is consistency of approach. Certainly a number of years ago, I think in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Government took the power to change the release test, almost to slant it in different ways if you wanted to do that, and of course it is an option.

My own feeling is that it probably would not make any practical difference now, whereas in 2012 it might have done. Now, given the entrenched nature of the cases, I do not see how changing the release test would help, other than perhaps requiring lots of retraining for Parole Board members.

Q165 **Kate Hollern:** Could you explain to me some of the lines that are actually in that statutory test because I am struggling to understand? You spoke earlier about tick-boxes. Can you give me some examples?

Caroline Corby: Do you mean how we apply the test?

Q166 **Kate Hollern:** What is in the test?

Caroline Corby: I can read the test: "The Parole Board will direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined." That is the statutory test that we apply in all cases.

Q167 **Kate Hollern:** How does someone demonstrate that? Should there be a presumption that they will?

Caroline Corby: The way the process works is that a case is referred to us automatically and will go through a paper assessment. That will go to a member of the Parole Board, who will decide whether that person can

be released on the papers, whether they need more information, whether it ought to go forward to an oral hearing, or whether they get a knock-back on the papers. That is what is decided. At the paper stage, roughly half of cases are turned down.

Overall, if you look at our release statistics, one in four people are successful in a year. The other half are sent forward to an oral hearing where the panel members, made up of three people matched to the issues in the case, receive a dossier that is several hundred pages long, sometimes up to 1,000 pages long. They also hear from witnesses. They question the witnesses about the various bits of information they have received, including questioning the prisoner. The prisoner is represented and obviously their representative can also question the witnesses. Panels make their decisions based on the evidence that they read and hear at oral hearings.

Martin Jones: Perhaps an easy way to explain it, and to move away from the formulaic tick-box approach, is that our guidance to parole review members is to look at things in three distinct phases, to ensure that they look at all of the evidence rather than whether they have done courses. We ask members first to look at the past. What was the index offence and what was happening with that prisoner at the point at which they committed the offence that may have led to them committing the crime? What was their lifestyle? Who were their peer groups? What were their emotional difficulties at that point?

Then we move on to look at the present. What do we know about their behaviour in custody? What positive and negative behaviour are they presenting? What is their risk now and how is it different from what it was when they committed the offence? Finally, we look to the future and say, "If you were to be released, what do we know about what your life will be like? Do you have a job to go to? Do you have accommodation? Do you have the appropriate support?"

By looking at those phases you do not simply look at one tiny part, which is, "What work have you done in custody?" What you are looking for is the contrast between what happened 10 or 15 years ago and now. In some parole cases we see that someone may have committed an offence 40 years ago. What we are looking at is, "We understand why you went to prison, but who are you now? How are you different, if at all, from the person who committed that offence?" By doing that, they can get all sorts of credit for positive behaviour in custody, and if somebody has been tested in open conditions you can get a feeling for how accurately they would react to greater freedoms, and that is critical to our decision making.

While at the moment the number of people released by the Parole Board for IPPs is probably about 45% or 50% at oral hearing, a significant number will have progressed to open conditions to test their readiness. Actually, if they do well, they will have a very good chance of being released at the parole hearing, but of course, again, you have to look at all the evidence to ensure that you make the right decision.

Q168 **Kate Hollern:** That is a bit clearer, thank you. What effect has the pandemic had on assessing the prisoners?

Caroline Corby: Martin, would you like to talk through the changes that we have made?

Martin Jones: I think it has been really interesting. Certainly, if you had asked me 18 months ago what was going to happen, I was really worried about the potential for a huge backlog to be growing in the parole system, and the impact that would have on people. We had to move completely to a position where all of our hearings were taking place remotely and looking at cases on the papers as part of that.

We found that we have actually accelerated our work. We held more hearings last year than we have ever held before. We held 9,202 parole hearings. Some 20 years ago when I was a much younger man, the Parole Board held just 272 hearings. It has increased thirtyfold over the last 20 years and I think people have noticed. Certainly I have noticed in the time that I have been there. There is a huge scale of business and we have maintained that despite the pandemic.

Of course there are challenges. For example, if you have been sent to an open prison and you were sent there early in 2020 when the pandemic hit, lockdown has impacted on your chances of getting community release to test your readiness for release. Again, the decision making is about looking at all the evidence we receive, so what have they done during that extremely challenging period that we all faced? If they have responded to that in a positive way there is still some evidence we can get. If the answer is that when lockdown came they decided to abscond, that is a different piece of evidence compared with somebody who has actually knuckled down.

There has been some really good work done by psychologists and probation officers and others in open prisons. Last year, we released more prisoners than we have in the time I have been at the Parole Board. We are maintaining the consistent release rate but have made more decisions than we ever have before, and we are looking to build on that. It is certainly not true to say that the Parole Board has slowed its release rate. The number of people waiting for a parole hearing is down about 25% on the number at the start of the pandemic. I think that is incredibly positive and we just have to ensure that we keep it up.

Kate Hollern: Thank you.

Q169 **Paul Maynard:** We know that the number of prisoners who have been recalled is on the verge of overtaking the number who have not been released yet. You can set licence conditions that you regard as proportionate. At the same time, you cannot decide the reasons for a recall and they might not be proportionate in the way you set the licence conditions. Does that suggest that you need to have more powers either over the probation service or over the recall decision directly to try to ensure that the two are perhaps more in proportion?

Caroline Corby: I mentioned the root-and-branch review earlier. There are a number of workstreams going into that root-and-branch review. We are very keen that recalls be looked at. We think it will be extremely helpful to look at the threshold for recalls and whether it was always set in the right place, whether Executive release is used sufficiently following a recall and the role of the Parole Board. There is a very broad piece of work that could be done very helpfully in that area. Martin, you know about some alternative ways of dealing with recalls. Do you want to cover those?

Martin Jones: It is important to say that recalls are a really important part of managing risk in the community and I think they can be preventive if you see somebody is going off the rails. Essentially, what the probation officer is doing is applying all the information that you collect through the parole process and asking what are the signs that risk has increased. If, for example, you know that the person has committed an index offence because of drugs or alcohol, and they are taking drugs and alcohol in the community, you can see why the probation officer has concerns around that. It is really important though that you focus on the information that sits behind that. You need to take the time to get the decision making right.

If you look at the outcomes of the parole hearings that take place following recall, in 75% of cases we re-release the offender back into the community. That is not necessarily saying that the initial recall decision was wrong, but it suggests that in the majority of cases the recall can precipitate somebody coming back into the community.

I am a member of an international parole forum, including many of the Commonwealth countries—Australia, Canada, New Zealand and the States; indeed Scotland is an example of another parole jurisdiction. If you look internationally, they have applications made to the parole board to recall an offender. Oddly enough, the number of people recalled to custody is lower than we see in England and Wales where it is an Executive decision and the case must be referred to the Parole Board thereafter. I do not know if that is a better answer, but certainly it is a different answer that deserves some consideration.

On recalls more generally, I am worried about the number of people on the continued merry-go-round of being released and recalled back into custody. It is 10 years before you can apply to have your licence period brought to a close. What would be the problem in potentially allowing somebody to make application earlier than that? There are many, many IPPs who have turned their lives around and are living successful family lives, and have held down a job in the community. If they have made good progress, why not allow them to bring their licence period to an end after five years? I can see considerable merit in doing that. The Parole Board has to be wary of criticising probation officers for the decisions they are making on the frontline when they are trying to judge whether perhaps somebody who has gone missing overnight from their approved premises is an indication of risk or not.

The other thing that might be a good idea is looking at potentially allowing somebody to be subject to a fixed-term recall, rather than at the moment, where the second you recall an IPP offender they have to be referred to the Parole Board. If the answer is that they have gone missing but then you discover their dad died yesterday so they went off the rails a little bit, what would be the problem in allowing them to be re-released rather than waiting six months for a parole hearing?

Over the last four years, we have had the power to re-release IPPs on the papers. We have released about 130 people in that way. A lot of those are cases where you discover that you might understand the recall, but when you get down to the nitty-gritty it is not really necessary for the protection of the public that the person continues to be detained. People perhaps have made a mistake; they have gone out and had some alcohol, but actually that risk can still be managed in the community.

Q170 **Kate Hollern:** In another evidence session, we saw examples where someone was recalled because he did not have a job. Another was recalled because the probation department could not get him accommodation. It seems a bit unfair, doesn't it, that he is recalled for circumstances way beyond his control, rather than for anything he has actually done?

Martin Jones: I would certainly say that any recall to custody of an IPP offender has to be about increased risk. It should be about their behaviour rather than the system making it difficult to manage them in the community. Of course, I am not responsible for probation; I am responsible for parole, and we see them when they are recalled to custody.

One thing we have suggested, which happens in some cases, is that if there are problems with accommodation where, for example, you have moved somebody on, they get accommodation and they are doing well in the community but after six months that breaks down, in some cases you can bring them back into an approved premises so that they get steady accommodation. It gets very difficult if you are managing somebody who is homeless, but it seems dreadful that if they have lost their accommodation we send people back to prison. That seems to be rather a weird situation.

Q171 **Paul Maynard:** There seems to be one potential unintended consequence in the divide between the Parole Board and the probation service. You have set the licence conditions but may find that probation officers use the licence conditions to access forms of help that may be beneficial to the offender who is about to be released. Is that not a problem, because surely the individual should be able to access the services they need without it having to be in some way structured as part of a licence condition? Should they not be kept separate? Is it not adding to the chances of them being recalled?

Caroline Corby: May I start on licence conditions? Licence conditions fulfil a number of different roles, if I can put it that way. They are partly

there to protect the victim. Martin described earlier ensuring, for instance, that a victim is not worried about bumping into somebody in their local high street. They are also very good at being clear to the prisoner about what the expectations are. They help to manage offenders, and part of that is support in the community. They enable the people who are managing offenders to see if risk is escalating. They fulfil a number of different roles, and that forms part of the risk management plan when a Parole Board panel is determining whether somebody should be released or not.

Sometimes our Parole Board members change the conditions. Normally, there will be a suite of recommendations in licence conditions, but it is not at all unusual for our Parole Board members either to take some away or add some. I think it is a practical and pragmatic process, and on the whole I would say it works pretty well.

Martin Jones: I would agree with that. Certainly if a prisoner is concerned that the licence conditions are too onerous and actually set them up to fail, having a legal representative means they have an opportunity to make representations. It is always part of the discussion at a parole hearing to ask, "Do you have any objections to these conditions?" It is relatively common for us to get a request to change a licence condition thereafter if something comes up. Certainly, it would be inappropriate in my view to recall them for something that is beyond their control. If you say they have to go to a particular support service or drug service but it is not available in the community, that would be deeply unfair.

What we try do in the licence conditions is to say that they have to comply with the reasonable requests of their probation officer. If the probation officer says they have set up an appointment for them, we would expect them to go along to that, but simply not going to the appointment would not be enough to recall them to custody. It has to be about an indication that their risk is not manageable in the community. That would be the way it worked.

Q172 **Paul Maynard:** One final quick question. We have been hearing that for a range of reasons the system outside does not always help the released offender to stay outside. One of them is around access to approved premises. Would you be in any way favourable to the idea to partly address the IPP problem that they get preferential access to approved premises?

Caroline Corby: I believe Sonia Flynn is coming in later this afternoon, so she will be able to talk to the challenges around approved premises. We are aware that the system is under a certain amount of pressure and that it is expanding. I would be a bit nervous about saying that IPPs should have preference over another category of offenders. We deal with a very serious range of offenders, including lifers and Terrorism Act offenders, and I would not want us to get into a position where, because IPPs were always jumping ahead of the queue, panellists started thinking that approved premises were not available for those cohorts of prisoners.

I think there would be some challenges in that. The best solution is to have an approved premises service that can cope with the demand.

Martin Jones: It is really important, and I am sure Sonia will speak about this when she comes in as part of the next evidence session. There is a lot of work going on at the moment to improve the number of approved premises beds available.

My understanding is that they are providing 200 new beds and looking at expanding that more generally. Speaking for myself, there is an approved premises in the centre of Maidstone. I walk past it every day. It provides a very good service for the reintegration of offenders back into the community in a very safe way. It is a really important part of the programme and I wish them every success. Ultimately, if the Parole Board directs that somebody must go to an approved premises, they must go to an approved premises. I guess the bottom line is that, where we are satisfied it is necessary, it must happen, and that therefore makes them a priority.

Q173 **Maria Eagle:** Am I right, Mr Jones, in understanding what you said to my colleague about reducing licence conditions after five years, rather than 10, and that you saw no problem with that?

Martin Jones: I don't. Providing it is an application and each case is then determined on its merits, with reports from the probation officer as part of that, it seems entirely appropriate, and is in line indeed with what happens with extended determinate sentence prisoners, where they serve two thirds of their determinate term in custody and about a third thereafter potentially on licence in the community. Of course, there are some offenders where long-term supervision may be necessary, but it is worth looking at in relation to stopping the continual merry-go-round of recall for some offenders if they have reset their lives.

Recently, I saw a case in which somebody had been doing successfully in the community for nine years and was recalled to custody at nine and a half years. You start to question that. If you look at the reasons behind that, it does not really go to the heart of public protection. In reality, if they commit a further offence of course they would be charged with that, and obviously go through due process, but recalling them to custody does not seem to me to be proportionate in many cases if they have spent quite a long time doing well in the community.

Q174 **Maria Eagle:** That is helpful. I was interested to see that your data shows, I think, 700 individuals who are eligible to apply for termination of the licence because they have gone for 10 years without being recalled and without reoffending, and that perhaps another 500 next year will become eligible, but only a handful, around 20, have applied to terminate their licence. Why on earth, with that threat hanging over you, would you not apply to terminate your licence after 10 years? Do you have any insight into why that might be?

Martin Jones: I have some insight and I have some ideas about how it could be improved, potentially. One problem of course is that the number

of people eligible has doubled in the last year. As I said earlier, in the first five years, only about 135 IPPs were released, so there were fewer people eligible at that point, but now the numbers will start to increase dramatically.

There is a question of awareness for the IPP offender. If you have been keeping your head down in the community, are you really up to date with the bit of the Parole Board website that tells you that you can apply? Probably not. You are not going to be seeing your probation officer every week.

There is a piece of work currently being led by the Prison and Probation Service to review every single person who is eligible and, rather than the prisoner asking for the review, the probation service will ask for the review of those offenders and, if there are no concerns, bring to a head those cases. I suspect part of it is probably that if you have been well behaved in the community, you have a job and you have a new relationship, your new partner may not even know that you went to prison 10 or 12 years ago. Do you really want to be reactivating what for you is probably a difficult memory, if you have been well behaved in that period? I think you could reactivate it in a way to try to drive people and bring those licence conditions to an end.

Q175 **Maria Eagle:** If you were being proactive about it though, that person would suddenly get a letter, which their new partner might open, saying, "We are now setting about getting rid of your life licence." Isn't that a problem too?

Caroline Corby: If somebody is being supervised in the community by their probation officer, they will have some contact. I used to be chair of the London Probation Trust so I am very familiar with the service. Over time, probation officers make judgments about how often they need to see someone, particularly somebody who is exhibiting very good behaviour. You might end up having a phone call every six months or so with some people who are still on licence.

Q176 **Maria Eagle:** Within that window.

Caroline Corby: In that window, you could proactively draw this to people's attention, but relying on people in the community to be aware of that right is not working well. We can see that only 20 people have come forward and therefore I think we can do more.

Q177 **Maria Eagle:** You think that the reason for it is that people just do not know about it. It is not that they think, "I've got to keep my head down, I don't want to draw attention to myself. I'm not going to be making any applications because I might end up back in jail." Could that be one of the reasons why so very few eligible people have applied?

Martin Jones: It certainly could be a risk. The other thing is confusion about how it works. There was some early thinking that suggested you had to have 10 years' immaculate behaviour in the community. It is not that. The legal position is that 10 years after your initial release you can

apply to have your licence rescinded. If you were released 12 years ago, and a year after your release you were recalled for a relatively short period, you might think the clock restarts and you are not now eligible.

We have been doing some work and last year published a blog on the right, to bring it to the attention of prison lawyers and those who represent prisoner groups, to ensure that they are aware of it. We have been working with prisoners' families as well to ensure there is widespread awareness. I am certain part of it is the fear factor: "I'm doing relatively well. I'm keeping my head down. Why would I go and knock on the door of the probation office to say, 'Can I do this?', because they might suddenly start looking at what is going on and suddenly I might end up back in custody?"

Q178 **Maria Eagle:** We might be in a situation soon—this is something Lord Blunkett said to the Committee—where the number of people recalled is higher than the number of people who are still serving the initial tariff part of their sentence before being released.

Certainly dealing with this issue, along with perhaps looking at reducing the time within which you might apply, would be one way of trying to tackle the recall merry-go-round. I am not saying there are not some people who need to be recalled and should be recalled. There are; but there are clearly some who end up back in prison until the Parole Board can get around to hearing them who have had relatively minor infractions, and perhaps it is not the best thing for them to get them back in jail. Do you think that would make a difference to the numbers of people who, say, in five or 10 years are still on these sentences if nothing further is done by Parliament about dealing with these sentences?

Martin Jones: I am absolutely certain that, unless some action is taken, within two to three years we will have more IPP recalls back into custody than there are serving the original sentence who have never been released. It is almost mathematically inevitable what the outcome would be. This would be a proportionate and a wise but risk-based approach to enable us to cut that off. Without that, I suspect that by 2030 we will end up with 2,500 recalled IPPs back in custody. Is that really necessary if those people have not committed a further serious offence? I do not think that would be right.

Q179 **Maria Eagle:** Actually, it could be done without legislation or without the prospect of having to re-sentence already sentenced people, could it not? I realise it is not you who will decide this, but you could certainly see it as a potential solution to the recall end of the problem.

Martin Jones: I think looking at the licence period would be a really sensible and proportionate way, without some of the more intricate details around re-sentencing people for an offence that they committed 15 years ago. This seems to be a sensible calibrated approach.

Caroline Corby: I absolutely agree with that, but of course the people who are likely to be successful in asking for their licence to be terminated are people who are successfully reintegrated back into the community.

Therefore, the recall rates, although there are some examples, are relatively low. The problematic group are people who are circulating in and out of the system, who get out of the system, exhibit risk and very quickly come back in. It will address that a little bit.

Q180 **Maria Eagle:** It might not make much of a difference.

Caroline Corby: I think it will help and I am in favour of it, but what I am saying is that the people who will be successful in terms of applications are not going to be the people who are frequently getting recalled back to prison. They will be people who have successfully reintegrated back into society.

Maria Eagle: Thank you very much.

Q181 **Chair:** Is there any risk perhaps that the very fact of being on this life licence impedes their reintegration to some degree?

Caroline Corby: I am sure that for some people that might well be true.

Q182 **Chair:** How do you think that might manifest itself?

Caroline Corby: It is probably going beyond our area of expertise and is better addressed by psychologists or people who are running the probation service. It must be the case, I would have thought, that having that kind of licence hanging over you for a long period of time is a burden, and burdens stress people.

Q183 **Chair:** It can have that impact.

Caroline Corby: Yes.

Q184 **Dr Mullan:** I have a couple of quick questions around that. To have one of these petitions, is that something where typically you would expect someone to have legal advice from a solicitor, or could you do it as a lay person not legally aided?

Caroline Corby: Is this asking for your licence to be terminated?

Dr Mullan: Yes.

Caroline Corby: I think you do that by applying to us. I do not think you need a lawyer, Martin, do you?

Martin Jones: I don't think you need a lawyer. You could seek legal advice, but I think it is a relatively straightforward process. The applications we have had so far have primarily been from a prisoner who writes a letter in to say, "This is what's happening. I no longer need it." You then ask for the probation officer's view, and if they have no objections most of those applications would be granted, and it should be a relatively simple process.

Q185 **Dr Mullan:** Touching on the evidence that my colleague mentioned, Lord Blunkett described it as a perverse situation to have people on recall in greater numbers than originally sentenced, but thinking it through now as we are talking, rather than perverse, it is almost exactly what would

happen in a situation where over time the well-behaved people get out. By definition, the ones who are being recalled are going to be the ones who are left. No one else will be left. If we are making a genuine effort to get people out of prison, but it is not always guaranteed, it is probably inevitable that we will end up in that situation, if there is a genuine effort to get people back out off licence in the community and not in prison any more, I assume. How else could it have turned out, unless everyone was actually well behaved? The whole point of these sentences is that we did not think these people were well behaved.

Martin Jones: I am sure that is right. Ultimately, every single one of those cases is a different individual, and if somebody is released back into the community and they are still showing very chaotic behaviour, it is inevitable that you will be stuck on this path.

Q186 **Dr Mullan:** The point I am making is that, when we brought in those sentences, the whole point was that they were for those people, so by definition, across a cohort we are using them on people who are more likely to be in that group than other prisoners, and therefore the fact that there are quite a few of them actually makes sense, does it not?

Martin Jones: I think that's absolutely right. If those people are demonstrating signs of risk, absolutely the life licence needs to remain in place. The only thing I would slightly challenge would be if somebody is almost unable to comply with their supervision, which perhaps is different from risk. For example, if you miss your probation appointments and that sort of thing, clearly that is a serious matter and there need to be implications from that. I guess my view is that what you cannot have is a position where you expect these people to be of absolutely perfect behaviour, by our definition, as part of that. A lot of these people will have problems in their lives. That does not necessarily exhibit as high risk in relation to them committing a serious offence thereafter.

For people of high risk I have no problem at all, and I am absolutely certain, despite the fact that I have considerable sympathy with some of the IPP cases, that there will be some IPPs who are too dangerous to ever release, and I do not think the system should apologise for that. The whole point of having a parole system is to ensure that those people can be lawfully detained in custody for as long as they remain a risk.

Q187 **Dr Mullan:** I guess the counter-argument would be that we release people all the time who have had fixed sentences who we might objectively believe are still a risk and they still get let out. Being a further risk is not ordinarily a barrier to someone's release. That is where people argue the injustice is. Even if you can argue from a public safety point of view that for that group it is the right thing to do, other people are not subjected to that same public good test.

Caroline Corby: And it ceased being used in 2012, so you could make an argument for people pre-2012 that legislators have decided that the risk proportionality is not right.

Q188 **Dr Mullan:** I want to pick up a theme you have heard about—how

mental health challenges, potentially provoked by the experience of being on an IPP, are perhaps moving prisoners to a point where, if they were sentenced tomorrow around their risk, they might have been on a mental health pathway rather than an offender pathway. Nick Hardwick said he thinks in some instances these people would be better heard by a mental health tribunal in terms of decision making about their release, rather than an IPP parole board-type scenario. I wouldn't mind your feedback on that, both of you.

Caroline Corby: Obviously, people come into our system through the criminal justice system and sometimes those people are moved into the mental health services because of the difficulties that they exhibit. The mental health services have a different release test from our test, but those people can sometimes be released from the mental health services back into prison, and provided their period of punishment has been served, because nobody gets released until their period of punishment has been served, they come quite swiftly to the parole process.

In the past, there have been great delays between those two processes and sometimes that has been very poor for somebody's mental health. They got well in hospital, they go back into prison and their mental health is exacerbated and they are not perhaps successful at the parole hearing. We have been working very closely with the services to try to ensure that the gap between the two processes narrows, but I do not think they should be the same because there are two different tests. The test for the mental health tribunal test is different from the parole process test, and it does not involve victims at all. We think that victims ought to be involved. I think they are slightly different. Martin, do you want to add more because you have given evidence on this before?

Martin Jones: Absolutely. I think the victim point is a really important one. We have 200 or 300 victims a year reading out their victim personal statement and we have thousands submitting a written statement ahead of the hearing, and we have to ensure we take that into account. We also calibrate licence conditions around that. I would not want to lose that.

Ultimately, the person has often committed originally a serious offence to get the IPP sentence to end up in prison, and of course if they become unwell during their sentence it is right that they get treatment, and that may be the pathway to release, but it is right that we have an objective assessment of their ongoing risk. I would certainly want the systems to work better together. I do not think it would be a good idea to replace the Parole Board part of the process simply with a tribunal.

Q189 **Dr Mullan:** Apologies, I should probably know this, but do you know the difference between the tests for the mental health tribunal and yourselves?

Caroline Corby: I read out our test earlier; it is about public protection. The mental health tribunal test is whether you are a risk to yourself or others and whether you can be treated. It is similar, but it is not exactly the same, and it does not involve victims. The figure you gave me,

Martin, was that if somebody has served their period of punishment but is unwell, and then becomes well from a mental health tribunal point of view and comes back into the system, over 90% of the time their parole panel will release them. What we are worried about is the gap between those two processes and we are trying to bring it down.

Q190 **Dr Mullan:** A final point from me. We have heard from relatives of people who are serving these sentences and they give their honestly held views about the experiences and the reasons why people are being held. Would it be correct to say that, as relatives of someone on a sentence, they are not actually party to the detailed information that the Parole Board will get about how their relative has behaved in prison and all the other stuff that you would see?

Martin Jones: The dossier of information is provided to the prisoner, the parole panel and the other people involved. The family are not party to that. Of course, the prisoner may share all or some of that information with their family. A prisoner's family can ask for a summary of the reasons for our decision. That is another good positive thing about their progress.

For example, if sometimes perhaps you have not told your mum in full the details of what you have been up to in custody, of course some of that will be in the summary to explain that you got an adjudication six months ago for having a fight. It is important that you take that into account because that is what the parole panel will be doing. We think that another good thing about transparency is to shine a light on the process. We think that could be incredibly positive for IPP cases where you would see more of the detail, provided you have the right safeguards in place to safeguard vulnerable people.

Chair: Thank you very much. That has been very helpful. We are very grateful to you both, Caroline and Martin. Thank for your time and for your evidence. We will swap round to the next panel with the Minister and officials.

Examination of witnesses

Witnesses: Kit Malthouse, Sonia Flynn and Dr Bailey.

Q191 **Chair:** Minister, thank you very much for coming. We very much appreciate it and we are grateful to you. Ms Flynn and Dr Bailey, it is very good to see you both. Thank you very much for coming to help us in this session.

Minister, perhaps I can start from the big perspective. I am sure you are aware that Lord Brown of Eaton-under-Heywood, or Simon Brown as we all knew him when he was a judge, has been pretty stark; he talks about IPP sentences as "the greatest single stain on the criminal justice system". It is certainly pretty untenable, isn't it, that something we abolished 12 years ago because it was not working should still have this legacy hanging over it? In that sense, is it an accurate characterisation?

Kit Malthouse: Obviously, the Government of the time recognised that there was an issue with IPPs and that was why they were abolished. I think the question we now have to ask ourselves, and presumably it is a question that will sit at the heart of your inquiry, is: what is the best way to move forward if your primary aim is public safety and your secondary aim is to try to resolve the issue over time? I would like to think that over the past few years my team and my predecessors have done exactly that.

In all our work in the criminal justice system at the MOJ and Home Office, our primary objective is to protect the public. Within that framework there has been an action plan on IPP to try to move as many offenders as possible on to a pathway to release, and that has been successful in driving down the numbers. While I understand the injustices felt by families, individuals and indeed Lord Brown, it is the case that we are now left with a population whose pattern of offending is more concerning, if you like, from a public safety point of view and we have to bear that in mind.

I know there have been calls for retrospective re-sentencing. You will know, as an esteemed lawyer yourself, that that is not really a principle we have applied, and certainly the Government at the time did not decide to do that. I think the situation as it stands, where, as I say, we are trying to put everybody on a pathway to release, bearing in mind the impact on public safety, seems to me a good balance.

Q192 **Chair:** The reality is that some people may never be safe to be released. It may be a small minority, but they are still in custody. Is that the reality?

Kit Malthouse: That may well be the reality over time, but that is yet to be proven. I believe that we now have 73 who are yet to come to the end of their tariff. The bulk are post-tariff. As you know, a large number have been released over the last few years. A number of those will be in open conditions and moving towards that pathway. We are certainly putting in place fairly intensive resources around the whole group, with that kind of aspiration, but as with most serious offending, particularly in this case some serious sexual offending, it may be that there are a very small number who can never satisfy the public safety test, but that is yet to be seen, and we continue to try.

Q193 **Chair:** Do we have an assessment of the economic cost of keeping this particular cohort in prison, as opposed to more generally? I do not know whether that has been bottomed-out by the Department.

Kit Malthouse: We have not looked specifically at that. Obviously, we recognise that generally incarceration is quite expensive, but it is hard to put a price on the safety of the public, as you know, Sir Robert. We are happy to write you about what the costings might look like.

Q194 **Chair:** It might be interesting. If you have something, it might be useful.

Kit Malthouse: It is certainly the case that these individuals get intensive work and assistance, which comes at a cost.

Q195 **Chair:** It would be a proper thing to do.

Kit Malthouse: Exactly. It may well be that that assistance is over and above what we would give other, standard, offenders, if I may put it that way. We recognise that this is a particularly difficult and complex situation. We are trying to move as many as possible on to a pathway to release. Significant resources, psychological and otherwise, are going in to help people on that way, and for all of them our aspiration is that they achieve their freedom.

Q196 **Chair:** Particularly when you get such a disparity between the tariff and the length of time they have been in. We have talked about the 200-plus who had a tariff of two years and, from when they were abolished, that means we are 10 years down the track. On the face of it, are you saying that cannot be right?

Kit Malthouse: Yes, although for some of the offenders—one of my colleagues might like to come in—that does not give the full picture, because that is the offence they were imprisoned for at the time. There may well have been a pattern of offending prior to that which gives cause for concern, so when you look at the whole picture you will see that. Probably a good indicator of our desire to get these people on to a decent pathway is the number who are recalled once they are released on licence and are recalled several times. We have a number who go out and are recalled more than once. That is because we are trying and trying to make sure that they get as much of a shot as possible at getting into the free world.

Q197 **Chair:** We will come back to recall in a moment, but you make a fair point. You posit fairly the dilemma that any Government would face, Minister. I understand that. If you were starting afresh and we had never had IPP sentences, if they had never been, what do you think would be the appropriate sentence for some of this cohort? Would we be looking at life sentences for some, or would we be looking at determinate sentences?

Kit Malthouse: That is a very big question. We would have to look at some of the offences. The thinking behind IPP was that there were offenders who, notwithstanding their offence, would be of ongoing cause for concern, and the burden of proof was that there had to be a test to prove they could be managed in the community in a safe way. It is probably beyond my pay grade to decide that kind of policy issue here and now.

Q198 **Chair:** Lord Thomas of Cwmgiedd, the former Lord Chief Justice, has suggested the answer is to re-sentence everybody to a determinate sentence. I take your point about retrospection.

Kit Malthouse: But for quite a number that would involve immediate release and that would present a public safety issue in our view, so we

are not sure that is necessarily appropriate at the moment. I thought you were asking what we would do if we could go back all those years ago.

Q199 **Chair:** Yes; if we went back as well. There are two separate points.

Kit Malthouse: We have determinate sentences now, other than for murder. That was then and this is now. We find ourselves in the position of having to balance two things: primarily, the safety of the public and, secondly, the process of trying to get these individuals into a position where they are able to be released. Jo, do you want to add anything?

Q200 **Chair:** Do you have any observations, Dr Bailey?

Dr Bailey: I think that balance is one of the key bits for this group of prisoners. There is a lot of activity we can do and that we have brought in over recent years, but fundamentally the question is still whether the Parole Board judges them safe to be released.

To pick up a point raised earlier, we think there would be some within the group who may have received discretionary life sentences at the time, if that is helpful.

Q201 **Chair:** I understand. Ms Flynn, do you want to add anything?

Sonia Flynn: What we saw after the 2003 Act, certainly from 2005, was that the number of discretionary life sentences went down. I think some of them would undoubtedly have received a discretionary life sentence.

Chair: That is fair enough.

Q202 **Maria Eagle:** I understand the dilemma the Minister has referred to between these two things, but there is perhaps one thing we could all agree on. At the 10-year point following first release, if there has not been recall or further offending, the prisoner concerned can apply to have their licence terminated. I understand that there are 700 individuals potentially eligible to apply, with 500 more becoming eligible next year, but only a handful have actually applied—about 20. All of those people are at risk in future of being recalled, even though they have gone 10 years without further offending or causing concern.

Is there anything that would stop the Government clarifying and reissuing guidance to the probation service on making sure that people in that position apply? You could at least get rid of the issue of people being recalled after 10 years. If they do not apply to have their licence terminated, there is always a continuing risk. Those people have shown over many years that they are not continuing to offend, so is there something the Government are considering doing about that?

Kit Malthouse: Not at the moment, although as you know, there is no barrier to it should we decide to do so. I guess it is a question of balancing risk. If they applied, they would have to be assessed in order to do so. It is perfectly possible for us to prompt them to apply, if we think that is appropriate.

Q203 **Maria Eagle:** Don't you think it is strange that only 20—a very small

handful—have applied? Doesn't that suggest there is some kind of problem?

Sonia Flynn: From September 2020, we started proactively to encourage those who have reached the 10-year point to make that application and we support them in the process. We must remember that significant numbers only became eligible for that 10-year rule from 2020 because we needed that lapse of time. In 2020, for example, 96 became eligible; in 2021, there are 308; and in 2022 there will be 477. That process has commenced, so we expect to see more terminations coming through the system.

Q204 **Maria Eagle:** In dealing with the remaining block of IPP-sentenced prisoners, do you think you might consider reducing the length of time from, say, 10 years to five years, after which, with an unblemished record in the community, they might apply to have that indefinite licence terminated? Is that something you are considering?

Kit Malthouse: We are not. At the five-year point, there is a review as to whether they still require supervision for the second five years of the licence period, but beyond that we do not have any proposals at the moment.

Q205 **Maria Eagle:** Thank you. Do you consider that those serving IPP sentences are a homogeneous group, given that there is a very wide range of index offences, and when the sentences were first given there was a wide range of tariffs, from very low ones to quite high ones? Do you see the people who were sentenced to IPP sentences as a homogeneous block, or are there noticeable differences for which you could have different policy approaches to deal with them?

Kit Malthouse: There are definitely different policy approaches for dealing with them, although, as the numbers narrow, the type of offender we are dealing with becomes more and more noticeable. Jo has more interaction with them than anybody.

Dr Bailey: In terms of the policies and practices we apply within custody, we take an entirely different approach depending on how far over tariff they are and what the offence was. We do not look at them as a homogeneous group. You might hear us talk sometimes about cohorts and groups, but that is to make planning assumptions rather than to put everyone in the same spot. The work we do from a psychology point of view would be very much a formulation approach based on that individual's bespoke characteristics, and then we would try to identify what sorts of things we could assist the prisoner with in order to move forward.

Q206 **Maria Eagle:** Do you think there is any justification for holding somebody who, say, had a short tariff IPP sentence many years ago in prison longer than someone who subsequently received a determinate sentence for a more serious offence? Do you make comparisons like that and think there is an issue about justice there?

Kit Malthouse: Obviously, the Government of the time thought there was an issue, which was why they abolished the sentence. As I said earlier, we do not think it is appropriate to go back and re-sentence, in the same way that, for example, if we were to extend the sentence for an offence, we would not go back and re-sentence prisoners who were inside, having previously been convicted to a longer period.

Q207 **Maria Eagle:** I was not asking you whether you would go back and re-sentence, because you have made your view on that very clear. I was asking whether or not you think there is an issue of justice where somebody with a very short tariff IPP sentence, when those sentences were available, has served a longer time in prison than sometimes the maximum sentence for the initial offence, and longer than somebody who subsequently received a determinate sentence for a much more serious offence.

Kit Malthouse: I understand people's perceptions about justice, but the primary lens through which I look at these things is the public safety lens. I am sure that in centuries to come people will look back and think this was an anomaly that was removed. Now it has been metabolised and digested by the system, and as we try to move everyone out of IPP if we possibly can, our primary objective has to be public safety.

Q208 **Maria Eagle:** How many IPP-sentence prisoners do you think you will have in jail in, say, five years and 10 years?

Kit Malthouse: That is hard to forecast. We have seen big reductions recently, but I imagine the tail becomes harder because we are dealing now with a smaller number of offenders who, I guess, have committed more serious offences and have more complicated problems.

Dr Bailey: I think thus far two thirds of the parole hearings have been progressive and that has held fairly steady. What we do not know, as the numbers reduce, is whether or not we will continue with that proportion of progression. Some modelling was done some time ago but, as with any modelling, it does not always track.

Kit Malthouse: No, it's hard.

Q209 **Maria Eagle:** I would certainly be interested to see the model.

Kit Malthouse: If you look at the original numbers, since 2016, the start of the action plan, I think there have been 1,679 reviews. During that time, 440 achieved release and 474 had a progressive move to open conditions. That gives you a scale and sense of the activity over the years in what is happening, so you can see where we might go over the next five or 10 years. It depends very much on the individuals and how they respond to the therapeutic interventions given to them, and very often how they respond to release. I know that you want to talk about recall, but recall is as much a test as a reward, if you like, so there are lot of imponderables.

Q210 **Paul Maynard:** When the Government abolished IPPs in 2012, do you believe they had public safety uppermost in their mind?

Kit Malthouse: I think they had public safety uppermost in their mind in terms of not re-sentencing and not putting all of the prisoners on an IPP on a determinate sentence, but they had to balance that against their perception of the injustice IPP sentences presented.

Q211 **Paul Maynard:** Do you think that sense of injustice still exists today, or was that resolved back in 2012?

Kit Malthouse: Undoubtedly, of course it does, and there is a very vociferous campaign by families and by prisoners themselves on this particular sentence. I am sure that perception persists, but I was not around at the time. You might have to ask Ministers at the time what was in their mind. We have to balance the two. It is definitely the case that from a public protection point of view we think the process we are on at the moment is probably the best balance.

Q212 **Paul Maynard:** I note you describe it as a perception rather than a reality, which is an interesting insight.

As you can imagine, the Committee has had many suggestions as to how to resolve this perception of injustice. You very clearly ruled out re-sentencing. Under section 128 of LASPO you have the ability to amend the tests applied by the Parole Board when considering a release. Is that something that either you or the MOJ more widely have looked at as one potential mechanism, or does the protection of public safety rule that out also?

Kit Malthouse: Public safety has to be paramount. We have obviously looked at the arguments. The reason I say "perception" is that it is easy for us to forget that each of these offenders had a victim or victims. That victim or victims may have a different perception of what justice may or may not have been in their case, particularly for some of the most severe crimes that were committed. We often need to bear that in mind, which is why I use the word perception, because that can be different between different participants in the crime, unwitting or otherwise.

We look at the arguments around the issues, but at the moment we are content with the process that is under way. We think that progress is being made under the action plan. The numbers have diminished quite significantly. As I say, we now have a group that is more complicated and difficult and that we will have to work hard with to make sure that they can secure their release.

Q213 **Chair:** In a civilised society, is it satisfactory simply to be content with this large number of people who are serving much longer than the tariff ever indicated?

Kit Malthouse: I am not content with that necessarily; I am content with the process, Sir Robert. If public safety is the primary lens through which you look at these things, given what we know about these individuals, we want to make sure that we progress them out into the public and a new life in a way that both protects the public and makes sure that they are able to do so in a settled way. It is about striking that balance.

The action plan has been working since 2016, and significant numbers have been released. The numbers have fallen by two thirds. It would perhaps be quite interesting for the Committee to look at the mixture of offenders who are left and some of the patterns of offending there to satisfy themselves about the balance of public safety.

Q214 **Chair:** There must be data that sets out exactly what the offences are for the remaining prisoners, given that we are down to such a comparatively small cohort. We must be able to individualise that. If we could have that, it would be helpful.

Kit Malthouse: We can provide you with that.

Chair: Thank you.

Q215 **Dr Mullan:** I think the Government have said that there are no barriers to someone being released. That is the Government's wording. Do you think that, if we can find examples of people who may have been waiting a year perhaps to access a course that the Parole Board has advised it would be sensible for them to follow to get their release, that would count as a barrier?

Dr Bailey: Access to courses used to be a significant issue. What we have done over the years is work extremely hard at prioritising IPPs and increasing the provision of courses that were causing the problems. HSP, which is the healthy sex programme, is the one we had the most problem with because it is one-to-one provision. We have sought to prioritise IPPs, deliver more and look at other ways to remove any barriers, such as delivering it in more prisons and things like that.

We keep identifying anything that might be a blocker; we try to remove or mitigate that blocker as much as we can. Access to programmes was definitely an issue. Another issue with the programmes is that we tend to overestimate the need for them, and some people, instead of doing an accredited programme, would be much better off doing a bespoke bit of therapy, which we also provide. We have tried to reduce waiting lists. It is not perfect, but it is significantly less of a problem than it used to be.

Q216 **Dr Mullan:** That is a fair and honest assessment that highlights progress but recognises that we are not all the way there. Minister, do you think it is helpful in that context, accepting that there is more to do, for the MOJ to say there are no barriers to release? I am not sure that, from the perspective of a family who knows their relative is on a waiting list, to have the Government say that there are no barriers is particularly helpful.

Kit Malthouse: I assumed when the question was asked it was about whether there were any technical or legislative barriers. No. In theory, if everything goes well and you can access the right courses, there is no barrier. There is nobody in there who we are saying could not in the future satisfy the requirements of the Parole Board and be released. There is no barrier in those terms from a legislative point of view.

Q217 **Dr Mullan:** But from a lay perspective you probably accept that there are

barriers in reality.

Kit Malthouse: There might have been logistical barriers in the past, but we are doing our best to try to iron them out. As I say, IPP prisoners are generally prioritised, whether that is within the estate or on release for accommodation and some other issues. We generally prioritise them, recognising the issue.

The other barrier it is perhaps worth dwelling on for a moment is the psychological one. We have sometimes found that when a prisoner is over tariff their sense of energy and hope starts to diminish. That is what was behind the reinvigoration of the sentence plans; we would give a path, a kind of workplan for the future that would help both the prisoner and the family to see the possibility of a better future.

Dr Bailey: Using case file reviews also means that we can properly address whether somebody is on the right list, because sometimes they are not. We can address that by moving them somewhere else, bringing services to them, or whatever it is that needs to happen.

Q218 **Dr Mullan:** Accepting your point about the difficulty of projecting exact numbers, the flip side to that is that a plan or programme without any kinds of targets or goals to measure success is usually at risk of not doing particularly well. What are your measures and metrics for deciding whether or not the programme is working and doing a good job? You have pointed to broad figures, and that is helpful and shows success for now, but over the next few years how will you decide whether or not you think the programme is successful?

Kit Malthouse: The success of the programme will depend on the number who are successfully resettled in the community. What we are saying is that it is very hard for us to predict where and how those numbers may land, but from my point of view one of the key indicators I would like to see is the number of recalls falling. We have a small number of individuals who have been recalled five times. That is indicative of us constantly trying.

If recalls are falling, it means that the work Jo and her team are doing inside is working; the case reviews are giving a sense of hope; those individuals recognise what they need to do to be able to secure their release; and Sonia's teams outside are managing them in a way that is keeping the public safe and allowing them to build a life for themselves. That is very hard, given the small numbers, to predict and given the nature of the people we are dealing with, some of whom have quite serious psychological issues that need to be dealt with. I wish it were that predictable.

Q219 **Dr Mullan:** Perhaps it is more about the process in terms of how often people have a case review. Are there process metrics involved?

Dr Bailey: The action plan is iterative, so it is reviewed continually; the solution we had six months ago might not be the solution we need today. It is kept under constant review. In terms of metrics, we have the people

who have had case file reviews and what their outcomes have been, but we can also have a look at a number of other things, such as who has gone on to what services and at what speed. I am sorry; I have forgotten the question.

Q220 **Dr Mullan:** It was about the metrics. You answered it correctly.

Kit Malthouse: The reviews are ongoing. An IPP working group meets regularly with the psychologists and all the other team members to review the plan and make sure it is working. It looks at the evidence of what is working and whether there is something we need to do differently. We are constantly trimming the sails. I suppose the evidence of that working is that over the last few years hundreds have been released every year. We are down from 6,000-odd to 1,600 who have never been released, and another 1,300 and something who have been released and recalled. We are constantly working at it.

Q221 **Dr Mullan:** Do you think we could have transparency around some of the metrics you talked about earlier, which are very helpful? Can we see those figures and how they trend over time?

Kit Malthouse: Which figures would you like to see?

Q222 **Dr Mullan:** The outcomes when people have case reviews; the speed at which outcomes are delivered from the case reviews. Those are the types of things that make it a real programme of delivery, don't they?

Dr Bailey: With some of the metrics, it is work in action—for example, the waiting times for programmes and things like that. We have never had a central data source for a lot of that, but it has improved quite a lot over Covid. I guess my answer to that is that we could probably be more transparent about some of them, but some of them are still works in progress.

Q223 **Dr Mullan:** Minister, you mentioned the priority that is given to IPP prisoners—for example with courses. Some of the evidence we have heard is that it is the opposite. If someone is due for release and they get something done, they have a higher chance of leaving; they might be prioritised over IPP prisoners because from a prison system perspective they are planning for these people to be around anyway, a bit like lifers.

Kit Malthouse: It is fair to say that it is not a hard and fast rule, but we generally try to prioritise.

Dr Bailey: IPPs are a core priority group, but we have some individuals at very high risk of reoffending and causing serious harm going into the community, so some difficult decisions have to be taken. But there is an absolute drive to get services for IPPs, and, if you are going to prioritise the other cases, you need to work out what you are going to do for the IPPs. That is quite a clear message to the teams.

Q224 **Dr Mullan:** Another thing you mentioned that I was going to ask about is the view that, if you put someone on a course, that's it; they have done the course and therefore they will get released. Do we need to have a

more sophisticated understanding of what it means to evidence someone's safety for release?

Dr Bailey: One of the issues with courses is that they become a bit of a tick-box, and the individual being asked to do the course sees it as something they have to pass or fail and they just have to do it, which from the point of view of effectiveness is probably not going to help somebody gain what they could from the course. I think a level of nuance needs bringing in for the courses.

I am pleased to say that sometimes when we say that a person should not do a course but would be better off doing X, whatever X is, the Parole Board understands that. I would say that at one point in time there was a real push to say, "No; we want the course." We have spent a lot of time with the Parole Board very proactively discussing the need to focus on the behaviour rather than the vehicle for getting there. That seems to have been quite effective.

Q225 **Dr Mullan:** In some of the evidence we had from the former head of HMPPS psychology services, he described these programmes, and offender management programmes, as a culture of secrecy, with no transparency or scrutiny and no third-party review of the courses and how effective they are. Do you think that is a fair assessment? Why do you think he might think that?

Dr Bailey: The courses are developed through external providers. I think we have seven—it might not be seven—accredited programmes provided by external providers. Others are developed in-house. They are evaluated by a team separate from the developers. I believe there have been worries about the Correctional Services Advice and Accreditation Panel, CSAAP—I have to get my As the right way round.

There was a worry that because the names were not published anywhere that was a form of secrecy. I think they have been released via FOI several times, and there is new recruitment under way at the moment. I guess that when you are in the system sometimes you think things are more transparent than they may feel when you are outside the system.

Q226 **Dr Mullan:** If I can ask about a specific study, I understand that Professor Paul Moran was asked to conduct a review of the OPD pathway in reducing offending, and there have been calls for that evaluation to be published. I understand that it has still not been published.

Kit Malthouse: It is going through the process and it is our intention to publish it.

Q227 **Dr Mullan:** When do you think we might see it?

Kit Malthouse: At some point in the new year, hopefully. As I say, it is going through the various approvals we need to go through; it has to find its way and, as you might know, it has to get a grid slot and those sorts of things, but it is our intention to publish it. If there was anything in it that was alarming I would have expected my officials to alert me to it already, and they have not.

Q228 **Dr Mullan:** There is public reporting to show that people are more likely to offend than if they hadn't been on the course. Do you think that is not true? Can you say now that that is not true?

Kit Malthouse: That counts as something alarming, and I would have been told; I would have heard.

Dr Bailey: We are quite clear that, if there were any worries the teams were aware of, we would review the approach.

Kit Malthouse: As you probably know, Dr Mullan, there was a previous celebrated case in the MOJ involving a course for sexual offenders which seemed to have that kind of result. If you are interested, there is a very good Radio 4 documentary about it, which I listened to before I got this job.

Dr Mullan: I will listen to it.

Kit Malthouse: I understand that there is a natural concern that we might be in that situation again, but I have no reason to believe that we are.

Q229 **Dr Mullan:** I understand that another bit of research has been commissioned which is described as "Understanding the experience of imprisonment for public protection sentence and prisoner progression".

Kit Malthouse: This is a member of Jo's staff who is doing a PhD.

Dr Bailey: It is.

Q230 **Dr Mullan:** Do you know what the aims of the study are and whether we might expect it to be published?

Dr Bailey: It is not completed yet. We are hoping for completion in 2024, which is now on record, so she will have to work to that. It does what it says on the tin; it is looking at some of the issues around progression. I think the Parole Board interviews have been carried out. She was hoping to publish as she goes, so we might start seeing publication next year, which is now also on record.

Q231 **Dr Mullan:** Minister, taking the points you have made about public safety, which I understand, if you are on one of these sentences and there are things the state could do to enable you to be released that it is not doing, that is an extreme injustice from my perspective. Do you think we can go any further as a Government to reduce even further any possible barriers, some of which we have talked about, so that that is not the case?

Kit Malthouse: We are, I hope. As you might have seen, we are putting extra money into the system around resettlement, homes, approved premises, which we are expanding, around employment opportunities and the courses people can go on that have been prioritised for prisoner education. There is now a big thrust to try to make sure that prison is as much about rehabilitation as it is about punishment, and these prisoners will benefit from that along with everybody else.

The key thing from our point of view is to give those individuals a sense that they can be on a pathway that, hopefully, will eventually, if everything goes well, lead to their release. There are hundreds who have done that over the last few years. It has come down from 6,000-odd to 1,600, so it has been successful for many. For the remaining population, who are complicated and sometimes difficult to deal with, with more severe offending than we have seen in the past, it is even more important that we give them a sense of hope for the future. That is what we are trying to put together and are committed to.

Dr Mullan: Thank you.

Q232 **Chair:** One of the particular concerns, which was highlighted by Lord Blunkett, who to some measure was the author of these sentences, is the way that recalls have increased; they have more than doubled in five years. I think we are now at the stage where about 44% of the IPP population are recalled prisoners rather than people who have not yet been released. At this rate, we are going to get to a position in the next couple of years where the majority of IPP prisoners are people who have been let out and then recalled. Something is going wrong, isn't it, if we have got to that situation?

Kit Malthouse: It depends. A very significant number are recalled for committing a further offence. That is hard for us to ignore. If they are committing an offence, we cannot really do that. A number are recalled for non-compliance with conditions.

It is also worth pointing out—we were discussing this earlier—that, while people think that often recall is a negative, in many ways it can be a positive because quite a large number are recalled and then successfully re-released post their first recall. They had obviously been presented with the reality of outside and it did not go terribly well. Being recalled for a period and then re-released may mean that the second release is all the more successful for the lessons learned on the first. It is not necessarily the case that we should always see it as a negative, although we would much rather they were not recalled at all.

Q233 **Chair:** Quite, because at the end of the day it is pretty sub-optimal, isn't it, to say, "We let somebody out. It didn't quite work out, but never mind, we'll have them back and try again"? That is a pretty ham-fisted way to deal with it.

Kit Malthouse: It is not necessarily that. When you look at the reasons for recall, they are not necessarily things we can ignore.

Q234 **Chair:** For reoffending, we can understand it.

Kit Malthouse: If somebody commits a further offence, you can understand why they would be recalled. If I look at the recall numbers between January 2010 and June this year, 1,805 were recalled because they were facing a further charge.

Q235 **Chair:** I understand that bit, but what about things where, it has been suggested to us, the conditions themselves are so vague or impractical

that you are setting people up to fail?

Kit Malthouse: Like what?

Q236 **Chair:** For example, conditions of a licence which mean that effectively you cannot find work because of the reporting requirements, or it is very difficult to maintain family ties. These are obviously individual cases and it will vary from case to case, but are we perhaps, as has been suggested to us in some of the evidence, in a culture where we have become so risk averse that even quite minor non-compliance would lead to recall, as opposed to committing offences, which most people will understand? What can we do to pick that up?

Sonia Flynn: Her Majesty's Inspectorate of Probation conducted a review of recall culture in 2020, and overwhelmingly their finding was that we used recall appropriately in managing risk. They did not find examples of trigger-happy probation officers. Anyone who has been made subject to recall has a right of appeal, and it is then for the Parole Board to make a judgment as to whether we acted appropriately. From that point of view, I am confident that we use recall appropriately.

As regards the requirements, or the licence conditions set down, there are seven standard conditions that can be attached to a licence, and there are additional licence conditions, which for IPP prisoners have to be approved by the Parole Board. In my professional experience, yes, we want people to secure employment on release, but we would not pursue recall action if someone was unable to find a job. Clearly, if they pursued work that was inappropriate, in that they had a licence condition not to work with children and we discovered they were pursuing employment where they might work with children, that would certainly be grounds for recall because they were not pursuing the licence requirements as set out.

Q237 **Chair:** Let me quote from a bit of evidence we have received. I put it for you to comment on rather than asserting it one way or the other. This is evidence from someone with long experience of the probation service. He said in terms, "My assessment is that..Community Offender Managers...are very wary of allowing too much latitude and recall is triggered quicker because of the established profile of IPP prisoners"; in other words, it is a bit of a knee-jerk reaction. Isn't that a real risk in the system, almost inevitably?

Sonia Flynn: I can only restate the findings of the inspectorate, which were very thorough and said that the culture was correct. People were sufficiently vigilant and ensured that people complied with their licence conditions, as we are required to do by the Parole Board.

Q238 **Chair:** When you are assigning a probation officer to supervise the licence of an IPP prisoner, do you have a particular cadre of officers, perhaps more experienced, to deal with them, or could a completely newly qualified person end up doing it?

Sonia Flynn: We would expect it to be a more experienced officer. We have a tiering system in our case load.

Q239 **Chair:** That's what I wondered. How does that work?

Sonia Flynn: The IPPs would typically fall into the higher tier, so they would have to be assigned to a qualified probation officer—certainly the more complex—and not someone who was in their first year of service.

Q240 **Chair:** Would you expect recall, for example, for non-reporting?

Sonia Flynn: It depends. Reporting is a requirement of the licence, and if non-reporting is linked to risk escalation, yes.

Q241 **Chair:** It has to be the two together, doesn't it?

Sonia Flynn: Yes. It is a clear breach of licence, because people have to report; that is one of their requirements.

Kit Malthouse: Sonia knows more than me about this, but effectively what might seem like quite minor non-compliances might point towards an escalating pattern of behaviour that is of concern from a public safety point of view. While the incident itself might seem minor, it is the pattern of behaviour that is of concern.

Sonia Flynn: If they are out of touch and we do not know where they are, that is clearly a major concern and recall would be pursued. If someone missed only one appointment in a period of six months, we would just issue a warning; we would not recall. Looking at the data that the Minister referenced earlier—obviously, we keep good records—failure to keep in touch is at the lower end of reasons for recall, but people are recalled for not complying with that requirement of their licence.

Q242 **Chair:** But you would expect that to be with other factors.

Sonia Flynn: Potentially other factors, but if we simply do not know where someone is and the police do not know where they are, that is risky. Many of these individuals are subject to multi-agency public protection arrangements, so we have very close working relationships with the police.

Kit Malthouse: There are geographical exclusions.

Sonia Flynn: There are very rigid requirements in terms of non-contact with past victims, so not being in contact is a really risky situation.

Q243 **Chair:** Ms Flynn, do you have any idea what percentage of these individuals would be under multi-agency protection arrangements? Is it a majority or minority?

Sonia Flynn: I would say a majority, but I would not want to give you a figure.

Q244 **Chair:** If you have figures available, it would help the Committee.

Sonia Flynn: Sex and violence lead to people being subject to MAPPAs. On the basis of the data that I have here, a very high proportion would be subject to multi-agency public protection arrangements.

Q245 **Dr Mullan:** I do not know whether you were able to listen to the evidence of the previous panel.

Sonia Flynn: Automatically, yes.

Q246 **Dr Mullan:** The chief executive of the Parole Board gave the example of occasions when they sit in on hearings. He gave quite a clear account of someone who was recalled because they were not contactable for 24 hours. In his view, it was not reasonable and proportionate.

I accept that you are right to say that the inspectorate does not identify a general cultural issue, but I imagine that the inspectorate probably looks at the whole work of probation. Would we expect the inspectorate to pick out particular issues to do with IPPs among all the work it does? I am not sure. He gave a very clear account of cases where he felt that the Parole Board did not need to be asked to decide to let the person back out and they had been recalled unnecessarily. I am very mindful that we hear a lot of evidence to the effect, "X happened to me and I was recalled." I imagine that a lot of the time it is not the full picture, but these individuals, who go and listen to whole hearings, get the full picture.

Sonia Flynn: It is very difficult for me to comment on an individual case. There is an appeals process that prisoners can bring post recall. I have to go on the evidence I have available to me, and in general terms we act appropriately.

Q247 **Dr Mullan:** Because we are talking about a cohort that we agree, perhaps for good reason, is suffering an injustice to some extent, I do not know whether there would be room within the system to pay particular attention to those cases and be absolutely sure. Should there be another layer of check so that, as might be expected, high-profile cases are subjected to a higher level of discourse about recall?

Dr Bailey: There are IPP progression panels throughout.

Q248 **Dr Mullan:** But for the probation service, when deciding to recall people, it would be an ordinary process.

Dr Bailey: The IPP progression panel is chaired by the community offender manager and will look at cases in custody, but will also, I believe—I look to Sonia to correct me—look at people who are at risk of recall as well as recalls. I do not know how long it has been happening, but there is a bit of a check there when we are getting concerned about someone, if it is not an emergency recall.

Sonia Flynn: That is correct.

Kit Malthouse: By the way, the inspector looks at a representative sample of cases in detail.

Dr Mullan: I agree, but, as you said, it is a small number and the question is whether they will get to see enough cases to make a judgment about IPP as a whole. I am not sure.

Sonia Flynn: Could I correct something I said to the Committee?

Chair: Yes of course.

Sonia Flynn: All IPPs are subject to MAPPA; it is automatic. I knew that it was a very large proportion, but it is all. I did not want to say something that was incorrect.

Q249 **Chair:** It has been put to us by some witnesses that you have a perverse situation where you want to try to enable people to be released if possible, and you therefore load up the conditions, which gets them released, but because the conditions are so loaded up you are setting them up to fail. Maybe sometimes too many conditions are put on, which then leads to a recall. Perhaps it would be better to have a system of waiving some of the conditions, if a review can take place, and stop short of a recall, rather than taking off some of the conditions, because it may make it almost impossible for them to achieve.

Sonia Flynn: We can make application back to the Parole Board to vary conditions if progress is shown over time.

Q250 **Chair:** How often does that happen?

Sonia Flynn: I do not have the figures with me.

Q251 **Chair:** The suggestion is that it is quite infrequent.

Sonia Flynn: Potentially, but I do not have the data.

Q252 **Chair:** There will be data kept, I am sure.

Sonia Flynn: Yes.

Q253 **Chair:** Can you provide us with that data, please?

Sonia Flynn: Yes; we can look at applications back to the Parole Board.

Q254 **Chair:** Ms Flynn, is there perhaps a greater role for the Parole Board in looking at issues around recall? Perhaps it should be put to them to decide in some cases whether or not there should be a recall.

Sonia Flynn: I do not think time would be on our side. When you are protecting the public, you have to make decisions in hours, in consultation—

Q255 **Chair:** Perhaps there could be an immediate review after that. You do the immediate getting them back to protect the public, and then perhaps put it in front of the board.

Sonia Flynn: That process is already in existence, so once the individual has been recalled to prison the Parole Board has an opportunity to review the record and the prisoner can make representations.

Q256 **Chair:** What is the normal lag time between recall and review?

Kit Malthouse: I think it is 28 days.

Chair: Do the statistics show that that is met in most cases? Perhaps you could help us on that.

Q257 **Paul Maynard:** Is that review automatic?

Kit Malthouse: It is a statutory 28-day review.

Q258 **Dr Mullan:** I do not know whether you heard the evidence. I do not fully understand the system, but the suggestion was that sometimes the Parole Board feels it would not be necessary to go to them. They called it an Executive decision and there could be more room, I assume for probation, to say, "We agree and you can do it right now."

Chair: You can do it yourselves.

Sonia Flynn: There is discretion for Executive review and we have pushed that very hard in recent years.

Q259 **Chair:** A point was made to us about the shortage of approved premises.

Kit Malthouse: Hold on a minute. Not for IPPs.

Sonia Flynn: Not for IPPs.

Q260 **Dr Mullan:** There is not an Executive decision for IPPs. That is the point the Parole Board is making. Would you have an appetite for that? How would we change that?

Kit Malthouse: It would require primary legislation. I am sorry; Gordon is trying to get the answer, but it would be primary legislation.

Q261 **Chair:** That is helpful. A point raised by the earlier panel was the difficulty that sometimes you would like to release, but there are not enough approved premises for people to go to. Is there a plan? We want to try to deal with this difficult cohort, which I accept is a legacy and is complicated. Are the Government proposing to increase the provision?

Kit Malthouse: First, APs are prioritised and, secondly, yes, we are.

Q262 **Chair:** What do you think will be the increase in numbers?

Kit Malthouse: We are spending—Sorry. Sonia, remind me what the numbers are. It's quite a lot of money.

Sonia Flynn: We are expanding the AP estate by an additional 200 beds by 2024. Currently, we have on average 2,000 beds available every day. The average length of stay in approved premises is 12 weeks, so we turn over that 2,000 through the year. More importantly, we have also, through the spending review, received additional moneys to invest in move-on accommodation because APs are only one part of the picture. Given the extended period of time people will be on licence, what we also need is really good move-on accommodation and the additional support to wrap around that.

Q263 **Paul Maynard:** I am very conscious of time. We have had enough empty ministerial chairs in recent weeks and I do not want another one.

I have one final quickfire question. We have heard a range of evidence that so many IPP prisoners have significant mental health problems that they ought to be, and may well be, in secure hospitals. Would it not be

better for a mental health tribunal to look at their cases rather than the Parole Board?

Kit Malthouse: We do not think so because they are doing two different things. Obviously, the mental health tribunal is deciding, I guess, on the individual's mental health, whereas the Parole Board is deciding on public safety. Whether the two have commensurate skills, we would doubt. I gather it was an idea suggested by Nick Hardwick. I understand where he is pushing it, but we do not think that would be appropriate at the moment if the primary lens you are looking through is a public safety lens.

Paul Maynard: We will not recycle that again.

Q264 **Chair:** Basically, it is a policy decision. The Government have said, "We're not going to lance this boil. We will just let it run its course."

Kit Malthouse: We believe that the action plan has made significant progress and it can make more progress yet. There are now significant resources going into the steps required for those individuals to achieve freedom and settle in the community, whether that is housing, employment or other matters, but our primary objective is the safety of the public.

Q265 **Chair:** And if there is a bit of rough justice to people along the way that does not matter.

Kit Malthouse: I do not think it is necessarily rough justice, Sir Bob. I do not know whether as part of your inquiry you have met any victims—

Chair: Yes.

Dr Mullan: We have their statements.

Kit Malthouse: —and whether you know what their view of this might be.

Q266 **Chair:** We understand that too.

Kit Malthouse: A number of victims may not share your view.

Chair: I posit it as an observation.

Minister, thank you very much; that is very helpful. We are very grateful to you and your officials.