

The Issues regarding the Indeterminate Imprisonment of ‘Dangerous Offenders’

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It also informed by an ESRC-funded research project on the politics and policy making dynamics of the IPP sentence,ⁱⁱ and a Southampton Law School-funded research project ‘Exploring the Secondary Pains of Indeterminate Imprisonment: The case of Imprisonment for Public Protection (IPP) families’, conducted with Professor Rachel Condryⁱⁱⁱ A list of relevant publications is provided at the end of this submission. I respond below to Terms of Reference 1, 3, 4, 6 and 7.

Context

In justifying its prospective abolition in 2012, by provisions in the Legal Aid, Sentencing and Punishment of Offenders Act, then-Justice Secretary Kenneth Clarke stated that

[IPP sentences are] unclear, inconsistent and have been used far more than was ever intended...That is unjust to the people in question and completely inconsistent with the policy of punishment, reform and rehabilitation.^{iv}

More recently, a number of peers have raised concerns with the ongoing legacy of the IPP sentence. This includes Lord Brown of Eaton-under-Heywood who criticised the IPP as constituting a ‘manifest injustice’.^v The Home Secretary who introduced the IPP sentence, Lord Blunkett, and his junior minister, Lord Falconer, have both publicly regretted the failings of the sentence.^{vi} Further, recent Justice Secretaries including Michael Gove, and David Lidington have publicly argued that further action should be taken.^{vii} The IPP is thus a vestigial embarrassment for the state, a relic from the ‘preventive turn’ in criminal justice seen in many Western nations at the turn of the century.

While there are a range of legislative and policy options available, firm action must therefore be taken. Further, a perspective is required that recognises the state’s obligation to be, in light of the history of the IPP sentence and its recognised failings, to ensure that people sentenced to IPP are supported in achieving successful resettlement, in many cases requiring significant support to overcome the institutionalisation and mental health harms caused by their indeterminate imprisonment in a context of state-recognised failings

ToR 1: Options Available to Reduce the Size of the IPP Prison Population

Legislation

1. Conversion of IPP sentences to determinate sentences (likely extended periods with an additional licence period).

This could be effected through a system of re-sentencing prisoners against current available sentencing provisions.

2. Introduction of a ‘sunset clause’. This would ensure that IPP prisoners cannot be imprisoned for longer than the maximum possible sentence length for the offence committed.
3. Reversal of the risk test.

Section 128 of LASPO enables the Justice Secretary to alter the release test for indeterminate-sentenced prisoners, but it has not currently been utilised.

4. Executive release of some IPP prisoners.

Most obviously, this could be applied to short tariff prisoners, that is, those serving tariffs of less than two years, who could not have received IPP sentences after the 2008 amendments.

5. Shorten licence periods.

There is a growing consensus that the automatic life licence for released IPP prisoners is inappropriate in principle and undesirable in practice. It has been suggested that licence periods of two to five years would be more appropriate.

6. End the IPP on release.

Breaches of licence conditions, or further offending, should be dealt with on their merits and not result in a return to prison on the indeterminate sentence.^{viii}

Legislative option	Advantages	Disadvantages
1. Conversion	Logically flows from 2012 abolition and associated public statements by government; Provides a role for judicial discretion; Aligns outcomes with current sentencing policy; Due to the above, limits associated political risks	Potentially labour intensive and difficult to achieve swiftly; Potential for variation in outcomes; May cause significant further uncertainty and stress for IPP prisoners and their families
2. Sunset clause	Addresses core criticism of the current situation regarding significantly post-tariff IPPs; Straightforward to apply; Likely to accord with a ‘person on the street’	Provides little assistance to those sentenced for offences whose maximum sentence is life imprisonment (robbery is a pertinent example). In such cases alternative principles would be required

	conception of fairness	in order to establish the appropriate maximum length of imprisonment; Maximum sentence not necessarily the appropriate reference point – average may be a fairer guide to judicial practice
3. Release test reversal	Addresses, on its face, a fundamental criticism that the IPP is experienced as a Kafka-esque process; Ensures continued role for the expert Parole Board	Potential for it to have little practical effect and thus increase feelings of injustice and illegitimacy; Dangers of unintended consequences, including that the state is incentivised to use lack of appropriate support as evidence of continued dangerousness; May cause significant political controversy notwithstanding the uncertainty of its practical effect
4. Executive release	Provides a pragmatic means of taking swift action in ‘easy cases’	Unless a significant departure is made on recent practice, will have only a very marginal effect on the affected population; Carries significant political risk which reaffirms that sufficient use will be unlikely
5. Shorten licence periods	Addresses a significant criticism of the IPP system; Increases hope for people released from IPP and their families, increasing likelihood of successful resettlement; If supported by existing measures including MAPPA and IOM, need not result in increased risk to the public; Reduces dangers of excessive use of recall	May carry some political risk; Probation may require guidance and support in relation to those who continue to cause considerable concern
6. End IPP on release	Addresses fundamental criticism of the nature and operation of the IPP sentence; If supported by existing	May carry some political risk; Probation may require guidance and support in relation to those who

	measures including MAPPA and IOM, need not result in increased risk to the public; Reduces dangers of excessive use of recall	continue to cause considerable concern
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Policy and practice

Reducing the size of the IPP prison population requires successful progression, release and resettlement. Current evidence suggests that people are more likely to achieve this ‘when they have strong ties to family and community, employment that fulfils them, recognition of their worth from others, feelings of hope and self-efficacy, and a sense of meaning and purpose in their lives.’^{ix}

Recommendations we first set out in ‘A Helping Hand’, which would improve support for families and therefore facilitate more successful progression, release and resettlement, include:

Prison Service

- Ensure that families are consistently and reliably able to be recognised and involved as advocates for their relative serving an IPP sentence, where appropriate.
- Ensure that those serving IPP are in establishments which can both support progress towards release and facilitate contact with family.
- Ensure swift and straightforward communication between IPP prisoners’ family members, the prisoner’s key worker, and other relevant staff.

Probation Service

- Ensure that families are consistently and reliably able to be recognised and involved as advocates for their relative serving an IPP sentence, where appropriate.
- Set clear expectations that Offender Managers and Supervisors will consider and pursue avenues of progression for IPP prisoners and provide support in a timely manner.
- Review the use of Approved Premises as release options, and appropriate alternatives.
- Ensure continuity and consistency in the allocation of, and communication with, dedicated Offender Managers.
- Ensure swift and straightforward communication between IPP prisoners’ family members – in particular those identified as advocates – and relevant staff.

HMPPS

- HMPPS to ensure IPP prisoners are provided access to relevant programmes within appropriate timescales.
- Progression and release plans to involve families where appropriate, and reflect on the positive role they may be able to play (and support that may be required to facilitate this).

- Improved training to ensure that all staff who come into contact with IPPs understand the specific issues relating to the IPP sentence, particularly in terms of the practical implications of the sentence and the ramifications of this for families of IPP prisoners.

ToR 3: What would be the options and implications of backdating the change to IPP legislation?

The legislative options that would address the ongoing issues and harms caused by the IPP sentence have been set out above. These are effectively prospective actions.

To the extent that they may be viewed as retrospective actions, the government has continued to argue, since the time of the abolition of the IPP in 2012, that:

We do not think that it is right or appropriate retrospectively to alter sentences that were lawfully imposed by the court simply because a policy decision has now been taken to repeal that sentence... Generally, sentences already imposed are not substantively altered by subsequent legislation.^x

However, there is no barrier – in law or in principle – to taking retrospective action that places an individual in a *more advantageous* position than which they currently occupy.

Further, while it may not be appropriate in every case, here we have a situation where the state has set out a damning indictment of its own sentencing policy and abolished it prospectively for that reason. To fail to take action that assists those already sentenced to the IPP brings with it significant negative consequences. These can be summarised as:

- Significant undermining of the perceived legitimacy of the IPP and broader criminal justice system
- Concomitant harms on those serving IPP sentences, their families and wider communities

ToR 4: What is the experience of people on IPP sentences in prison?

For our work published as ‘A Helping Hand’, families of people sentenced to IPP told us that problems included:

Prison

- The indeterminacy and uncertainty inherent in the IPP sentence made it difficult to maintain relationships, which could impact negatively both on progression towards release and the mental wellbeing of their relative in prison
- Families found it difficult to reach staff within prison
- Prison staff often knew little about the IPP sentence and did not understand the particular demands and pressures of the sentence on the prisoner

Probation

- Families often found it extremely difficult to communicate with probation staff
- There was often little continuity in probation-offender relationship both in prison and in the community, making it very difficult for progression and resettlement to be supported
- Resettlement services were experienced as often being threadbare, with significant demands on families to do the ‘heavy lifting’
- Probation staff often knew little about the IPP sentence and did not understand the particular demands and pressures of the sentence on the prisoner
- Approved Premises appeared to be treated as the default option for release, often without sufficient explanation
- Insufficient guidance and clarity about the nature and content of licence conditions was a common concern

HMPPS

- Families were concerned that expectations on their relative – including requirements to take certain offending behaviour programmes – often did not align with what could reasonably be achieved
- These expectations, coupled with the ongoing delays and perceived ‘moving of the goalposts’, led many IPP prisoners and their families to lose hope, making their struggles to achieve release a self-fulfilling prophecy

ToR 4: What additional mental health challenges do people serving IPP sentences face because of the nature of their indeterminate sentence?

The IPP is a sentence for both of us whether he is in prison or free. I am scared, angry, desperately unhappy and trapped... I will be a prisoner for the rest of my life also. (Family member of IPP prisoner)

Our research has focused on the experiences of families of people sentenced to IPP. Contributors to our research reported negative experiences of people sentenced to IPP, including frustration at repeated setbacks; feelings of powerlessness as factors outside of their control affected their ability to progress towards release; concerns about physical safety within the prison context; significant negative mental health impacts of the IPP sentence; and concerns about the ongoing uncertainty of release on licence.

Participants in our studies described a reverberation process whereby a prisoner's trials and tribulations – and the negative mental These can be understand as ‘symbiotic harms’ (Condry & Minson, 2020), presenting as ongoing, ‘severe negative effects that flow both ways through the interdependencies of intimate associations’ (Condry & Minson, 2020, p. 11).

Feelings of uncertainty, powerlessness, unpredictability, as well as feelings of loss caused by—what seemed to be indefinite—separation from a formerly close relationship were repeatedly named as impairing factors.

The stories shared by family members of IPP-prisoners in interviews and during workshops revealed a timeline of successive, cumulative damage, with (potentially) long-lasting effects. Talking about their current lives with a loved one serving an IPP sentence, participants often used terms such as *anxiety*, *depression* and *stress* to describe the mental health impacts they were experiencing. They described a continuous strain on their mental resources

Overall, one must recognise that the IPP itself is iatrogenic: it is an intervention that was asserted to be helpful (encourage and lead to rehabilitation for the ‘most dangerous’) that has in fact, in the majority of cases, proved to be harmful and counter-productive. It is thus crucial that relevant criminal justice practitioners understand that their role as regards achieving the successful release and resettlement of many sentenced to IPP is to help those individuals to overcome the institutionalisation, mental health deterioration and damaged faith in authority that have resulted from their uncertainty of their indeterminate imprisonment, within prison conditions that have been described as ‘deeply troubling’.^{xi} Put bluntly, to focus simply on ‘risk’ would be entirely to misunderstand the context of the IPP sentence and the experiences of the majority of those sentenced to it.

ToR 6: Experiences of how people on IPP sentences are managed within the community once released

Family respondents reported problems and obstacles in being able to communicate with probation. Participants thought that ‘families should ... be able to interact more with the probation officers because a lot of the times when you’re in prison [the prisoner] can’t get to a phone’ (Workshop participant), and the same could be said for people released from prison. This was seen as a major cause for concern, since good relationships with probation officers could either hinder and hold an IPP prisoner back or propel them forward.

Respondents further advocated for a more inclusive resettlement approach involving increased services and third parties, rather than relying only on family members to do the ‘heavy lifting’ in resettlement work. As much as families wanted to play an important role in their loved ones’ resettlement, they felt they were left with a disproportionate amount of emotional and economic labour imposed on them:

Not everyone’s got the resources to be able to do that ... or don’t want to do that. They’ve had a lifetime of managing very difficult stuff and maybe they don’t want it anymore. There’s an expectation that families can go on and on providing it – well, no, they can’t, because ... you’re depleted (Workshop participant).

Families commonly perceived Approved Premises (APs) as being treated as the default option upon an IPP prisoner’s release. Reasons for this were often not given, or poorly explained, and families perceived their own views on how best to support the IPP prisoner to be unheard.

ToR 7: What are the main reasons why people serving IPP sentences are recalled? Once recalled what support is given to prepare them for re-release?

The risk of recall brought families particular distress due to their powerlessness and anxiety about the uncertainty it caused. These feelings were mainly caused by a distinct lack of clarity and consistency around it. What were the guidelines concerning, and limitations upon, who could recall an IPP prisoner? For what reasons could recall take place? Under what circumstances? What would happen following recall? Families often felt left alone in the aftermath of the recall of loved ones, paying a high emotional price. One mother described herself as ‘a broken person when my son was recalled I think on the ... third occasion, I was desperate ... I didn’t know what to do with myself’ (Workshop participant).

Our respondents also reported a lack of clarity around recall, and the lack of any central contact point where concerns specifically about the recall of an individual could be directed. These concerns around recall reflect some of the findings set out in the Prison Reform Trust’s ‘No Life, No Freedom, No Future’ report on the experiences of people recalled under the IPP sentence; this excellent report provides far more detailed insights into the troubling issues relating specifically to recall.

Appendix: Relevant Publications

Reports

- Annison and Condry (2018) ‘The Pains of Indeterminate Imprisonment for Families of IPP Prisoners: Assessing harms and finding solutions’ Policy Briefing, Southampton: University of Southampton. Available at <https://eprints.soton.ac.uk/425364/>
- Annison and Straub (2019) ‘A Helping Hand’ London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/portals/0/documents/A%20helping%20hand.pdf>
- Annison and Straub (2020) ‘Offering a Helping Hand’ London: Spurgeons. Available at <https://www.spurgeons.org/wp-content/uploads/2020/06/Offering-a-helping-hand.pdf>

Books

- Annison (2015) *Dangerous Politics* Oxford: OUP

Journal Articles

- Annison (2018), Tracing the Gordian Knot: Indeterminate-Sentenced Prisoners and the Pathologies of English Penal Politics. *The Political Quarterly*, 89: 197-205 Open access at <https://doi.org/10.1111/1467-923X.12462>
- Annison and Condry (2019) ‘The pains of indeterminate imprisonment for family members’. *Prison Service Journal*, (241), 11-19 Open access at https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/PSJ%20241%20January%202019_0.pdf

- Straub and Annison (2020) ‘The mental health impact of parole on families of indeterminate-sentenced prisoners in England and Wales’ *Criminal Behaviour and Mental Health* 30(6) 341-349 Text available at <https://eprints.soton.ac.uk/445878/>
- Annison (2014) ‘Interpreting the politics of the judiciary: the British senior judicial tradition and the pre-emptive turn in criminal justice.’ *Journal of Law and Society*, 41 (3), 339-366 Text available at <https://eprints.soton.ac.uk/367129/>

ⁱ <https://www.southampton.ac.uk/law/research/impact/pains-of-indeterminate-imprisonment-for-families.page>

ⁱⁱ Economic and Social Research Council grant ES/G010307/1

ⁱⁱⁱ Annison and Condry (2018) ‘The Pains of Indeterminate Imprisonment for Families of IPP Prisoners: Assessing harms and finding solutions’

^{iv} Hansard: HC Deb 1 November 2011, col 785-787.

^v Hansard: HL Deb 14 September 2021, col 1307

^{vi} Including at Hansard: HL Deb 14 September 2021, col 1286; 1294

^{vii} *Derbyshire V. (2021) Imprisonment for Public Protection Jail Terms ‘A Death Sentence’.*

<https://www.bbc.co.uk/news/uk-56445407>

^{viii} See Edgar, Harris and Webster (2020) ‘No Life, No Freedom, No Future’ London: Prison Reform Trust

^{ix} Maruna and Mann (2019) ‘Reconciling Desistance and What Works’ London: HMIP

^x Lord McNally, HL Deb, 9 February 2012, col 443.

^{xi} HMIP (2019) ‘Annual Report 2018-19’ London: HMIP; and reiterated in HMIP (2021) ‘Annual Report 2020-21’ London: HMIP