

Written evidence from Progressing Prisoners Maintaining Innocence (PPMI)

PPMI attempts to campaign for progression for those maintaining innocence, but putting that to one side, for the moment, please consider our comments about the very slow release of all IPP prisoners.

Introduction: How did Indeterminate for Public Protection become *Indefinite* for Public Protection? The excellent Briefing document prepared in 2019 gives a comprehensive overview of the IPP disaster. Since abolition in 2012 the numbers have dropped, but so slowly. All IPPs were promised urgent review, and this is indefensible. Far too many were 'caught in the net' and are still struggling for release. The IPP was intended for offences where the seriousness of the offence did not merit a life sentence. Many of the convicted have served much more.

Several Justice Ministers and other senior politicians, Prison Inspectors, the Parole Board, all say the IPP system was flawed, and is still ruining lives of prisoners and their families, yet NOTHING IS DONE. It appears that the resulting misery inflicted on thousands of human lives is not important enough to warrant any actions.

We are grateful to the Justice Committee for the opportunity to give a voice to those affected.

1. What options are available to reduce the size of the IPP prison population? What are the advantages and disadvantages of the different options?

It is a finite number, so any reduction is effective, but the slow rate means a lot of suffering continues for over a thousand prisoners but many thousands of family members and friends. We note that there is an HMPPS Progression Regime Policy Framework, implemented April 2018, and active in 4 UK prisons, for indeterminate prisoners who are: excluded from open conditions, serving the recall period of their licence in custody, or having difficulty progressing through their sentence via the usual routes. 'The purpose of a PR is to re-introduce the responsibilities, tasks and routines associated with daily life in the community, to test prisoners' readiness to respond appropriately to the trust placed in them, and to actively pursue activities and relations which support rehabilitation'. This has gained approval of the prison inspectorate and the IMB, and sounds worthy of consideration.

2. What are the current barriers preventing release? What measures would need to be taken to overcome these barriers, and what would be the operational and resource implications for HMPPS?

In our experience at PPMI, based on many years of feed-back from IPP sentence prisoners, aside from the special problems faced by those who maintain innocence, there are three principal barriers to release.

The first results from the Board's adopting the same approach to decisions for IPP prisoners as it does for lifers. In doing so, the Board overlooks an important difference between the two types of sentence. Continued detention, after the tariff or punishment part of the sentence has been completed, must be justified by 'considerations of risk and dangerousness' ("Parole Board Hearings: law and practice", 1.26, Arnott and Creighton. 2010 ed.), two

measures which need to be considered together. The point is a familiar one in the context of wider sentencing policy. For example, a woman who has been convicted of theft may be given a non-custodial sentence, even though she is a repeat offender and her risk of re-offending is high, if the danger to the public is low. On the other hand, all life sentence prisoners will have been considered dangerous at the time of their conviction, on the grounds that they have committed a serious offence (Arnott and Creighton, 9.6). So it is understandable that the Board requires evidence that the risk of a repeat offence is very low. In the absence of this, the Board will not be able to satisfy itself that continued detention is no longer required for the protection of the public (the statutory test for release). But an IPP prisoner will have been convicted of an offence with a lower, often a much lower, degree of seriousness than that which would have attracted a life-sentence. So the level of harm that would result from a repeat of the IPP prisoner's offence is correspondingly reduced. Given that the potential danger to the community is less in these cases, the level of risk that is acceptable should be correspondingly higher. Or, to put this another way, the amount and strength of evidence of risk reduction required by the Board should be lower.

To make this point is not to suggest that the test for release should be changed but to argue that the guidelines provided by the Secretary of State on matters to be taken into account in reaching a decision (see Arnold and Creighton 9.9) need amplification and clarification. The guidance states that 'the Board shall consider primarily the risk to the public of a further offence ... and whether any such risk is acceptable.' (Arnold and Creighton, Appendix F). In judging whether the risk of a further offence is acceptable, common sense suggests that it is not only the risk of the event occurring but also the degree of harm that would result that must be taken into account.

A second barrier is the difficulty that IPP prisoners often experience when trying to get their security category reduced to D. A decision by the Prison Service to re-classify an IPP prisoner as a D Cat, and hence eligible for transfer to an open prison, relies on a recommendation by the Board; and the test for open conditions currently used by the Board is that the prisoner has made 'significant progress' in closed conditions. This matters because the Board is reluctant to order release before the prisoner has been tested in an open prison. The result is a paradox: indeterminate prisoners must show a significant reduction in risk before they can be transferred to open conditions, but it is this less secure environment that provides, in many cases, the best opportunity for a prisoner to evidence reduced risk. There can be no doubt that this is a major factor in delaying progress for post-tariff IPP prisoners.

There is room, at least in the case of IPP prisoners, for a less risk-averse approach. In his classic work, "Taking Rights Seriously", Dworkin argued that the detention of a person for preventative (as opposed to punitive) reasons should only be lawful where the danger they present is 'vivid'. An example would be a case where there is a high probability of serious re-offending if the person is released. There seems little or no prospect that this proposal will form the basis of a change of the 'test' for release. However, when recommending transfer to open conditions, the statutory test does not apply. Instead, the Board relies on directions from the Secretary of State (Arnott and Creighton 8.39ff.). These directions, since they have been issued by the executive, could also be changed by the executive in such a way as to indicate that, for post-tariff IPP prisoners, there is a presumption in favour of open conditions, unless there is evidence of a 'vivid' danger should the prisoner be permitted access to the community.

A third barrier is the emphasis that the Board places on the need for evidence of risk reduction, achieved through the successful completion of programmes and other interventions while in custody. The best currently available evidence indicates that there are 'modest effects at best from psychological interventions delivered in prison' (*Effectiveness of Psychological Interventions in prison to reduce recidivism: a systematic review*. Beaudry et al., *The Lancet Psychiatry*. 2021). The Board has, to date, failed to give adequate attention to these and similar research findings and a useful start could be made if the Board's guidelines indicated that, for IPP prisoners, greater weight should be given to the prisoner's post-release management plan rather than, as at present, to evidence of risk-reduction achieved through pre-release interventions.

None of the changes suggested would have major operational or resource implications for HMPPS.

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

After nine additional years of retaining prisoners on an unsuitable law, this might be seen as an insult to many, but it would be a way to restore justice. Would it swamp Probation and re-settlement? Probably. Another option is to replace with the new sentencing system of due tariff plus EDS. This could spread the load a little, though with approximately 1700 IPPs and with 96% beyond tariff, it would still create a mass release.

Instead, HMP targets for review and release could be introduced.

4. What is the experience of people on IPP sentences in prison? What additional mental health challenges do people serving IPP sentences face because of the nature of their indeterminate sentence?

ISPs in general, and IPPs in particular, suffer from a lack of hope, which undermines their mental health. They can approach tariff point, and feel optimistic, then suffer repeated knock backs that extinguish the hope completely.

The use of the IPP has gone way beyond the intention, and is leading to no-hope-of-release situations, because prisons and the Parole Board are risk averse. Many of the prisoners do not progress to Cat D, which is their only chance to show they can be trusted in the community.

Prisoners are told that good behaviour helps them progress. It seems not enough, and long delays occur due to the wait to be moved or accepted for Behaviour Programmes that have been shown to be ineffective, at best.

Although behaviour inside prison can be exemplary, and protective factors like family support and somewhere to live are in place, the risk of release is often overestimated, and viewed as the risk of consequences if reoffending occurs, rather than the likelihood of any re-offending.

This observation from an IDS prisoner in HMP The Mount: *‘requesting help was a new black mark on their record, and either more courses to fix the persons mental state, one to one counselling, a referral to the GP for medication, anti-depressants etc . I and many others perceived the response to the requests for help, even the counselling yet another factor that impacted on how long the person would be spending in prison. The answer to ‘what is the cause of the persons mental deterioration?’ is clear, the prolonged detention and for many this includes being over tariff, is for sure one of the largest contributors to a decline in a person’s mental capacity to cope, add to this the loss of all hope! A profound mistrust of Probation officers, Psychology et al this inculcation of negativity destroys the persons, self-worth, they no longer know who they are. I have witnessed residents undergo a profound change in their interactions with others as the years dripped by! A change in who they are, and who they perceive themselves to be! All prisoners are treated as being irrelevant, we have no credibility.’*

5. How is release and resettlement planned and managed for IPP prisoners given their unpredictable release date?

The management is indeed difficult, and this is another problem with the sentence and the over-use of it. Release Tags seem to be increasingly popular with Probation, less so with Probation Service Users. From PPMI’s reported experience they have frequent technical issues, risking unnecessary Recall for the wearer, and require many hours charging time.

6. How are people on IPP sentences managed within the community once released?

As the Parole Board has stated: ‘The longer prisoners are kept incarcerated the less likely they are to retain any family contacts, or to be able to qualify for a job’. This becomes a self-fulfilling prophecy of not being able to cope on release. Additional licence conditions are sometimes imposed, making recall more likely. PPMI’s experience is that IPPS maintaining innocence are often labelled Low Risk, but are encouraged to do Programmes with a high-risk interpretation, which can be quite damaging, and even create an increased risk where there was none. The emphasis on re-offending and risk continues on release, instead of positive support and help to integrate with the community.

Outside Probation is severely stretched with excessive case-loads, so most releases get insufficient support. Instead, they seem to be constantly reminded of their crime and Risk, which is often mis-calculated.

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?

IPPs being recalled are the fastest growing area, according to Parole Board stats. This is an important problem. As Nick Hardwick said – the recall criteria are too strict, and support is poor. There is substantial evidence to show that lack of support on release with no resettlement plan is a cause of recidivism and Recall.

Reasons for recall seem to start at the simple omission of missing an appointment, or being slightly late. This could occur through over-sleeping, poor public transport service, residing in an unfamiliar area, and is bound to cause unnecessary recalls by creating an unnecessarily low bar. As Martin Jones stated: *'We know that many people leaving prison lead chaotic lives. Many struggle to cope when they leave prison; and we need to be careful that their struggles to cope are not misinterpreted.'*

One suggestion is to follow the process of the Northern Ireland Parole board, which we believe is as follows:

Parole Commissioners in NI are the equivalent of the Parole Board. A single Commissioner determines whether there is sufficient evidence on which to recall, based on papers submitted. The Commissioner has to make the decision on the papers within 24 hours and, if recalled, a fresh Commissioner will consider on paper (with a lot more information) whether the person should be re-released. It seems to us that this would save a lot of expense and resource, as well as the effect of unwarranted recalls on prisoners and their families.

From PPMI correspondence, the support given on release is minimal, just as it is at first release, and not in line with written policy.

Some of our prisoner correspondents who are way over tariff would like to tell you their own story; see below. Despite the implication from the Briefing doc that short-sentence people have already been released, this is not supported by our data.

HMP IoW, our ref. 118. **3.5 yr tariff. served 11:** 'They can't come now and ask /tell me (to do further programmes) when they keep moving the goal posts.'

HMP Frankland, our ref. 155. **2yr tariff. served 11:** 'The ethos is: he's in denial, he gets nothing until he admits guilt.'

HMP Whatton, our ref. 194. **4 yr tariff. served 14** (current age 47): 'they said at my last parole hearing that if I don't admit guilt they won't ever recommend release until I am in my 70's.'

HMP Coldingley our ref. 198. **4 yr tariff. served 14:** 'I have been left for years in no-man's land. My risks are now increasing as I can't trust authority.'

HMP Oakwood, our ref. 216. **4.5 yr tariff. served 10:** 'I have been told many times I will die (in prison) if I don't change my stance. It has all led to self-harm and suicide attempts.'

HMP Garth, our ref. 347. **14 yr tariff. served 12.** I was told on many occasions that if I do not change my stance I will never get out of prison. It's been years since I was asked to do any work on my progression, even programmes say there was nothing for me to do because my scores are too low.

Finishing with the thoughts of a mother whose son is in HMP Oakwood:

'every day is a nightmare knowing my youngest son, my baby, has been away from me for 20 years and that I haven't seen him for 14 of those years due to medical reasons, I now battle with anxiety, depression and PTSD. My son has already done 14 years over his tariff which

goes to prove that it doesn't pay to say that you are not guilty, if you do they will say that you are not sorry and that you show no remorse. My son is still in a C cat: and they say that he has got to do a 4 year course before they will even think about a D cat: when they decide to, so it will be getting on for 30 years by the time he get gets out'.

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