

## Written evidence from Howard League for Penal Reform

### Summary

1. The Howard League welcomes the opportunity to respond to the Justice Committee's Call for Evidence about Imprisonment for Public Protection (IPP) sentences.
2. Since the introduction of the IPP sentence, the Howard League has opposed it as wrong in principle and unworkable in practice. Two years after the sentence came into force, the Howard League warned that it had created a bureaucratic nightmare which would haunt successive governments.
3. Though the IPP sentence was abolished almost a decade ago, over three thousand people serving the sentence are stuck in prison because they have either never been released or have been recalled. The number of IPP recalls has increased by fivefold since the sentence was abolished and by a third over the past five years.
4. Recall to prison is a draconian punishment for what are mostly administrative breaches of the IPP licence.
5. In recent years, people recalled on IPP sentences have spent an average of between a year and a half and two years in prison. During the pandemic, this extended period of imprisonment included months where they were locked up in a cell for 23 hours a day.
6. The cycle of recall and re-release does nothing to help people sentenced to IPPs, victims or the public.
7. The IPP licence should be reformed so that if someone is not recalled within two years of release, the licence will expire. There should be the option of executive re-release for people who have been recalled on IPP sentences.
8. Ninety-six per cent of the people who are still in prison on an IPP sentence are past their tariff period. This undermines the legitimacy of the criminal justice system.
9. People on IPP sentences who remain in prison because they are seriously unwell should be supported to explore a transfer to hospital.
10. People who are serving IPPs who have been transferred to hospital under the Mental Health Act 1983 should be invited to appeal their original IPP sentence, to explore whether they should have been sentenced to a hospital order in the first place. Those who remain in hospital under an IPP sentence should be guaranteed the right to apply for parole from hospital.
11. People who remain in prison on IPP sentences must be effectively supported to work towards release.
12. People on IPPs in custody should be supported by specialist community probation workers, with a focus on reintegration and resettlement. The Parole Board should prioritise people on IPPs, allocating specialist staff and members to oversee cases at least annually instead of up to every two years.

### **1. About the Howard League for Penal Reform and summary of response**

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with the United Nations. It is an independent charity and accepts no grant funding from the UK government.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public

concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.

- 1.3 The Howard League has drawn on its legal and policy work in responding to this consultation.
- 1.4 The Howard League has opposed the IPP sentence since its creation. It is an unjust and unworkable sentence which continues to disrupt the lives of thousands of people and those close to them. There are still almost 1,700 people who have never been released and thousands more are subject to recall for the indefinite future.
- 1.5 As the debate in the House of Lords on 15 November 2021 highlighted, there is a strong cross party consensus that the IPP sentence was a mistake that still needs to be remedied. In the words of Lord Blunkett, who introduced the IPP sentence as Home Secretary:

*"We have to do something for the sake of the individuals and their families, and for the safety of the community, because the longer they are in prison on a suspended animation sentence or on licence, the more likely they are to find themselves unable to rehabilitate and live a normal life. When that happens, they are more likely to commit a crime. I got it wrong. The Government now have the chance to get it right"* (Police, Crime, Sentencing and Courts Bill Debate, 15 November 2021, col 31).<sup>1</sup>

- 1.6 There are many ways that the current failings of the IPP sentence can be addressed:
  - Those who remain in prison on IPP sentences can and must be better supported to get out, through a range of practical measures building on the current IPP action plan;
  - The way the IPP licence operates can be reformed to increase the options for it to come to an end more quickly without risking public safety; and
  - Avenues for re-release following recall can be widened.
- 1.7 The Howard League would welcome the opportunity to provide further information about any of the points below.

## **2. The Howard League has always opposed IPP sentences, which are wrong in principle and unworkable in practice**

- 2.1 Ever since the sentence of imprisonment for public protection was proposed, the Howard League has opposed it as unjust and impracticable. Almost a decade after the sentence was abolished, it continues to wreak havoc on the lives of people who were sentenced to IPPs and remains an unnecessary additional problem for prisons and the Parole Board.
- 2.2 In 2007, the Howard League published a report which set out the reasons why the IPP sentence was both wrong in principle and unworkable in practice. In principle, it was unjust to sentence someone to an indeterminate period in prison based on concerns about how they might behave in the future. In practice, IPP sentences could not be administered in a system where prisons were overcrowded and under-resourced, and where risk reduction was measured by offending behaviour courses which many people on IPPs had no chance of accessing. In a foreword to the report, the Howard League's Chief Executive warned that: *"Because of the length of the sentence and the system's inability to process people, a bureaucratic nightmare is developing – one which will not simply haunt the current government, but also its successors"* (Howard League, 2007: 3).<sup>2</sup>

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<sup>1</sup> Available at <https://hansard.parliament.uk/lords/2021-11-15/debates/1EBF855A-81C2-4A9F-9A64-C923D4F90E93/PoliceCrimeSentencingAndCourtsBill>.

<sup>2</sup> Howard League (2007), *Indeterminate Sentences for Public Protection*, available at <https://howardleague.org/wp->

2.3 Four general elections later, successive governments have failed to resolve the bureaucratic nightmare which the Howard League warned about. In 2012, the European Court of Human Rights considered the case of three applicants who had been detained in prison after the end of their IPP tariff periods and who had not been able to access recommended courses. The Court found that “*following the expiry of the applicants’ tariff periods and until steps were taken to progress them through the prison system with a view to providing them with access to appropriate rehabilitative courses, their detention was arbitrary and therefore unlawful*” (*James, Wells and Lee v United Kingdom* [2012] ECHR 1706, §221).<sup>3</sup> The IPP sentence was abolished later that year, but not for people who were already in prison or on an IPP licence in the community (Legal Aid, Sentencing and Punishment of Offenders Act 2012, s123).

2.4 When the sentence was abolished, around six thousand people on IPPs had not yet been released from prison (Ministry of Justice, 2013: Table 1.4).<sup>4</sup> The number of people serving IPPs who were recalled to prison had begun to increase, doubling from 60 people recalled to prison in 2011 to 119 people recalled to prison in 2012 (Ministry of Justice, 2012: Table 5.4; Ministry of Justice, 2013: Table 5.4).<sup>5</sup>

### **3. A decade after the abolition of the IPP, more than three thousand people are still stuck in prison**

3.1 The criminal justice system is still facing the consequences of the IPP sentence. As of 30 September 2021, more than three thousand people were still stuck in prison because of the IPP. This included 1,661 people who had never been released and a further 1,357 people who had been recalled to prison on an IPP licence (Ministry of Justice, 2021a: Table 1.9a).<sup>6</sup>

3.2 The number of IPP recalls has gone up by fivefold since the abolition of the sentence. There were 683 recalls to prison in 2019 and 616 in 2020 (Ministry of Justice, 2020: Table 5.4; Ministry of Justice, 2021b: Table 5.4).<sup>7</sup> Until the exceptional circumstances of the Covid-19 pandemic, the number of recalls to prison on an IPP licence continued to rise each year. IPP recalls have increased by around a third over the past five years (Ministry of Justice, 2017: Table 5.4; Ministry of Justice, 2021b: Table 5.4).<sup>8</sup>

### **4. People on IPPs suffer draconian punishment for administrative breaches**

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content/uploads/2016/05/IPP-report.pdf.

<sup>3</sup> *James, Wells and Lee v United Kingdom* [2012] ECHR 1706, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-113127%22%7D>

<sup>4</sup> Ministry of Justice (2013), *Annual tables – Offender management caseload statistics 2012 tables*, available at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly--2>.

<sup>5</sup> Ministry of Justice (2013), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/192321/licence-recalls-q4-2012.xls](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192321/licence-recalls-q4-2012.xls); Ministry of Justice (2012), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218128/omsq-q2-2011-licence-recalls-tables.xls](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/218128/omsq-q2-2011-licence-recalls-tables.xls).

<sup>6</sup> Ministry of Justice (2021a), *Prison population: 30 September 2021*, available at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2021>.

<sup>7</sup> Ministry of Justice (2021b), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982032/Licence\\_Recalls\\_Q4\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982032/Licence_Recalls_Q4_2020.ods); Ministry of Justice (2020), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/882177/Licence\\_Recalls\\_Q42019.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882177/Licence_Recalls_Q42019.ods). This does not include the small number of people who were not returned to custody.

<sup>8</sup> Ministry of Justice (2017), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610976/licence-recalls-q4-2016.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610976/licence-recalls-q4-2016.xlsx); Ministry of Justice (2021b), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982032/Licence\\_Recalls\\_Q4\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982032/Licence_Recalls_Q4_2020.ods).

- 4.1 Recall to prison is a draconian punishment for non-compliance. Imprisonment is the most severe punishment available in England and Wales and – except for rare whole life orders – indeterminate sentences are the most punitive form of imprisonment. The harms of imprisonment are well documented, both in general and in the specific context of the countertherapeutic, unhealthy and unsafe UK prison estate (Howard League, 2018; Ismail, 2020).<sup>9</sup>
- 4.2 Most people who are recalled on an IPP licence have not committed any further offences. In 2020, six in ten recalls did not involve additional charges (Ministry of Justice, 2021b: Table 5.10).<sup>10</sup>
- 4.3 Recall decisions are made quickly and are often based on limited evidence. Yet there is no route to release for people who have been recalled on IPP sentences but who do not pose a risk of harm.
- 4.4 A typical example might involve an instance where a person who has been released to an Approved Premises hostel where other residents display challenging behaviour is recalled to prison following a disturbance at the hostel. It may be that the police investigation concludes that the person who was recalled did not play an active role – in fact, he may have been involved as a victim rather than as a perpetrator. Even if the supervising probation worker agrees that he can be managed safely in the community and supports release, the only way for him to be released is following a Parole Board review. This can take many months.

## **5. People who are recalled on IPP sentences have been subjected to months of solitary confinement during the Covid-19 pandemic**

- 5.1 In the first three months of 2020, immediately before the Covid-19 pandemic, people spent an average of 19 months in prison after being recalled on an IPP licence. This rose to an average of two years in early 2021 (Ministry of Justice, 2021b: Table 5.21).<sup>11</sup> During the pandemic, the experience of IPP recall has been especially harmful and has included months of solitary confinement.
- 5.2 The prison estate has operated a severely restricted regime since spring 2020. In January 2021, Her Majesty’s Inspectorate of Prisons published a thematic report on the experiences of people held in prison during the pandemic. In autumn 2020, when the inspectorate carried out its fieldwork, most adults in prison were still locked in their cells for an average of 22.5 hours each day. The report found that the “*most disturbing effect of the restrictions was the decline in prisoners’ emotional, psychological and physical well-being*”, that prisons remained unsafe places where physical violence had been displaced by verbal abuse and intimidation, and that interviewees had begun to view lockdown as a punishment rather than a public health measure (Her Majesty’s Inspectorate of Prisons, 2021: 4).<sup>12</sup>

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<sup>9</sup> Howard League (2020), *Howard League for Penal Reform response to the Health and Social Care Committee’s inquiry on prison healthcare*, available at <https://howardleague.org/wp-content/uploads/2018/06/Response-to-the-Health-and-Social-Care-Committee%E2%80%99s-inquiry-on-prison-healthcare.pdf>; Ismail, N. (2020), ‘Deterioration, drift, distraction, and denial: How the politics of austerity challenges the resilience of prison health governance and delivery in England’, *Health Policy* 124:12, 1368–1378.

<sup>10</sup> Ministry of Justice (2021b), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982032/Licence\\_Recalls\\_Q4\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982032/Licence_Recalls_Q4_2020.ods).

<sup>11</sup> Ministry of Justice (2021b), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982032/Licence\\_Recalls\\_Q4\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982032/Licence_Recalls_Q4_2020.ods).

<sup>12</sup> Her Majesty’s Inspectorate of Prisons (2021), *What happens to prisoners in a pandemic?*, available at <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>.

- 5.3 In the summer of 2020 and the spring and summer of 2021, restrictions were incrementally lifted in the community but either eased much more slowly or did not change at all in prison. Two recent Independent Monitoring Board reports for the year from 1 June 2020 to 31 May 2021 found that for most of this period, men had been locked in their cells for at least 23 hours a day (Independent Monitoring Board, 2021a; Independent Monitoring Board, 2021b).<sup>13</sup>
- 5.4 The severe psychological impact of the IPP sentence has been highlighted repeatedly, including by the recent Justice Committee inquiry into mental health in prison (Justice Committee, 2021).<sup>14</sup> Over the past eighteen months, the experience of people in prison on IPPs has been compounded by the restrictions in prison.
- 6. The cycle of recall and re-release does not help victims, the public or people on IPPs**
- 6.1 Over the past five years, IPPs have become characterised by a cycle of recall and re-release. There were 474 IPP recalls and 263 re-releases in 2016, compared to 576 first releases (Ministry of Justice, 2017: Tables 5.4, 5.11).<sup>15</sup> By 2020, the number of recalls and re-releases significantly outnumbered the number of first releases: there were 616 recalls and 458 re-releases, compared to 275 first releases (Ministry of Justice, 2021: Tables 5.4, 5.11).<sup>16</sup>
- 6.2 In 2017, the former Chair of the Parole Board observed that while the Parole Board were progressing or releasing 75 per cent of the IPP prisoners who came before them, half of the people who they released were then being recalled. When the Parole Board reviewed these cases, it re-released 60 per cent of those who had been recalled. The Chair concluded that this was “*not an effectively working system ... In my view, certainly on recalls, the test for getting recalled is too low*” (Hardwick, 2017).<sup>17</sup>
- 6.3 Unnecessary recalls do not protect victims or the public. Instead, they interrupt the desistance process and prevent people from building a new, positive life for themselves in the community. Research carried out by the Prison Reform Trust found that IPP recalls were prompted by a range of problems in the community, including conditions in approved premises, substance misuse, mental ill-health, unemployment, and the lack of a support network (Prison Reform Trust, 2020).<sup>18</sup>
- 6.4 Research on desistance suggests that people are most likely to stop offending if they have strong and supportive relationships, feel hopeful about their future and can access the same social and economic opportunities as the rest of the population (Graham and McNeill, 2017).<sup>19</sup>

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<sup>13</sup> Independent Monitoring Boards (2021), *Annual Report of the Independent Monitoring Board at HMP Wealstun*, available at <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2021/10/HMP-Wealstun-annual-report-2020-21-for-circulation-to-upload.pdf>; Independent Monitoring Boards (2021), *Annual Report of the Independent Monitoring Board at HMP Wandsworth*, available at <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2021/10/IMB-AR-Wandsworth-2020-21-for-circulation.pdf>.

<sup>14</sup> Justice Committee (2021), *Mental health in prison: Fifth Report of Session 2021–22*, available at <https://committees.parliament.uk/publications/7455/documents/78054/default/>.

<sup>15</sup> Ministry of Justice (2017), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610976/licence-recalls-q4-2016.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610976/licence-recalls-q4-2016.xlsx).

<sup>16</sup> Ministry of Justice (2021), *Licence recalls tables*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982032/Licence\\_Recalls\\_Q4\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982032/Licence_Recalls_Q4_2020.ods).

<sup>17</sup> Justice Committee (2017), *Oral evidence: Work of the Parole Board*, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/work-of-the-parole-board/oral/71647.pdf>.

<sup>18</sup> Prison Reform Trust (2020), *No life, no freedom, no future: The experiences of prisoners recalled under the sentence of Imprisonment for Public Protection*, available at [http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom\\_final\\_web.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf).

<sup>19</sup> Graham, H. & McNeill, F. (2017), ‘Desistance: Envisioning Futures’ (pages 433-451) in Carlen, P., & Ayres França, L. (eds.) *Alternative Criminologies*, available at

From this perspective, the IPP licence is a barrier to desistance: it circumscribes the life which someone is able to lead, disrupts their relationships and can keep them indefinitely within the reach of the criminal justice system.

6.5 The Howard League recently heard from a man who had been kept in prison for more than five years after the tariff period of his IPP sentence. When he was eventually released, he managed to turn his life around: he found secure employment, bought a house, entered into a new relationship and got engaged. Yet after years in the community, he lost the future which he had built for himself because of an administrative recall. The repercussions of the recall were immense, not only for him but for his fiancé. It does not have to be this way. Legislation could be changed to prevent people who have safely reintegrated into the communities for several years from being recalled. It could also be easily amended to create additional, simple but safe, avenues for release following recall.

## **7. The IPP licence should expire if someone is not recalled within two years of release and there should be the option of executive release after recall**

7.1 The Howard League recommends two immediate changes to the IPP sentence, to address the hopelessness which is built into the IPP licence and an anomaly which traps people in prison for months after an IPP recall.

7.2 The indefinite IPP licence poses practical and ethical problems. It should be reformed so that the licence automatically expires if someone is not recalled within two years of release. As a safeguard, the Secretary of State could have the option to refer someone to the Parole Board for a one-year extension of the licence. This could be used where the Secretary of State believed that continued licence conditions were necessary to protect the public.

7.3 On behalf of the Secretary of State, the Public Protection Casework Section has the power to executively release people on determinate sentences who have been recalled (Ministry of Justice, 2019).<sup>20</sup> There is no such power for people who have been recalled on an IPP, even if all professionals recommend release. This anomaly should be resolved by introducing an additional power of executive release for IPP recalls.

7.4 These two amendments were recently debated in the House of Lords (Police, Crime, Sentencing and Courts Bill Debate, 15 November 2021, cols 28–52).<sup>21</sup> The Howard League's briefing on the amendments is available at <https://howardleague.org/wp-content/uploads/2021/11/IPP-briefing-for-Lords.pdf>.

## **8. Practical changes to support the safe release of people stuck in prison on IPPs**

8.1 As of 30 September 2021, 96 per cent of the people who had never been released on an IPP sentence were past their tariff period. Over a thousand people were still in prison five or more years after their original tariff period had ended and 570 were still in prison ten or more years afterwards. Two hundred people had received a tariff of less than two years but remained in prison ten years after the tariff period (Ministry of Justice, 2021a, Table 1.9b).<sup>22</sup>

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<https://dspace.stir.ac.uk/bitstream/1893/25882/1/Graham%20and%20McNeill%20%28Carlen%20and%20Franca%209%20--%20Final%20Chapter%20for%20Routledge%20English%20edition.pdf>.

<sup>20</sup> Ministry of Justice (2019), *Recall, Review and Re-Release of Recalled Prisoners Policy Framework*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1022481/recall-pf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022481/recall-pf.pdf).

<sup>21</sup> Available at <https://hansard.parliament.uk/lords/2021-11-15/debates/1EBF855A-81C2-4A9F-9A64-C923D4F90E93/PoliceCrimeSentencingAndCourtsBill>.

<sup>22</sup> Ministry of Justice (2021a), *Prison population: 30 September 2021*, available at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2021>.

- 8.2 In its programme of work on justice and fairness in prison, the Howard League has highlighted the importance of just, fair and consistent standards and processes (Howard League, 2020).<sup>23</sup> The IPP sentence is a stark example of unfairness and undermines the legitimacy of the wider penal system. When the Howard League surveyed prison governors about IPPs in 2013, 43 per cent reported that the sentence reduced the credibility of prison staff because they were not seen as fair. Forty-two per cent were dissatisfied with their job because they could not adequately support prisoners on IPP sentences and 37 per cent felt that they had to deal with worse behaviour among prisoners because of the IPP (Howard League, 2013).<sup>24</sup>
- 8.3 It is clear from the debate in the House of Lords on 15 November 2021 that there is a strong cross party consensus that people stuck on IPP sentences need to be supported to progress. The Ministry of Justice has developed an action plan to this end (Ministry of Justice, 2017).<sup>25</sup>
- 8.4 While various options have been suggested to effectively bring all IPP sentences to an end, such as converting all IPP sentences to fixed-term sentences,<sup>26</sup> there is much more that can be done to help those still stuck in the system to progress.
- 8.5 There are a number of people serving IPP sentences who are seriously unwell and have either become stuck in hospital or should not be in prison, as well as those who have simply not had sufficient support in custody or in terms of release planning.
- 9. People who remain in prison because they are seriously unwell should be supported to explore a hospital transfer**
- 9.1 As the recent white paper on sentencing underlined, prison should not be used as “*a holding pen for people whose primary issue is related to mental health*”: they should instead be supported to explore a hospital transfer under s47/s49 of the Mental Health Act 1983 (Ministry of Justice, 2020: 58).<sup>27</sup>
- 9.2 People on IPPs are especially likely to experience mental ill-health. In surveys carried out by the prison inspectorate between 2013 and 2016, 20 per cent of IPP prisoners reported having mental health problems before coming to prison and 42 per cent reported emotional wellbeing or mental health problems at the time of the survey. When the National Offender Management Service (now Her Majesty’s Prison and Probation Service) reviewed IPP cases where people were not making progress on their sentence plans, it found that mental health problems were among the most common themes (Her Majesty’s Inspectorate of Prisons, 2016).<sup>28</sup>
- 9.3 People can also end up being recalled on IPP licences because of mental ill-health. A Prison Reform Trust report on IPP recalls found that the system treated unmet mental health needs as a risk factor. Interviewees who had been recalled spoke about the mental health problems which

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<sup>23</sup> Howard League for Penal Reform (2020), *Justice does not stop at the prison gate: Justice and fairness in prisons*, available at <https://howardleague.org/wp-content/uploads/2020/02/Justice-and-Fairness-in-Prison-breifing-one.pdf>

<sup>24</sup> Howard League for Penal Reform (2013), *The never-ending story: Indeterminate sentencing and the prison regime*, available at <https://howardleague.org/wp-content/uploads/2016/05/never-ending-story-IPP.pdf>.

<sup>25</sup> Ministry of Justice (2017), *Action Plan: HMCIP IPP Thematic Report*, available at <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2016/11/HMIP-IPP-thematic-action-plan-1-March-2017.pdf>.

<sup>26</sup> A fundamental change to the IPP sentence is complex and is not considered here further: the Committee will need evaluate the risks and benefits of such proposals if it wishes to recommend they are taken forward.

<sup>27</sup> Ministry of Justice (2020), *A Smarter Approach to Sentencing*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918187/a-smarter-approach-to-sentencing.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918187/a-smarter-approach-to-sentencing.pdf).

<sup>28</sup> Her Majesty’s Inspectorate of Prisons (2016), *Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection*, available at <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2016/11/Unintended-consequences-Web-2016.pdf>.

they had been experiencing at the time, while Parole Board members “expressed concern about the use of recall when people with serious mental health relapses were returned to prison instead of being provided with mainstream mental health treatment in hospitals” (Prison Reform Trust, 2020: 33).<sup>29</sup> In these cases, probation workers must consider hospital treatment as an alternative to recall.

## **10. Those who have been transferred to hospital should be invited to appeal their original IPP sentence**

- 10.1 A number of people serving IPPs are stuck in hospital having been transferred under sections 47 and 49 of the Mental Health Act 1983. Some of these people ought to have received a restricted hospital order, rather than an IPP sentence, at the point of sentence (Mental Health Act 1983, s37 and s41). A 2008 report by the Centre for Mental Health found that 18 per cent of people on IPPs had received psychiatric treatment in the past, compared to nine per cent of the general prison population. Similarly, people on IPPs were twice as likely to continue to receive psychiatric treatment in prison (Centre for Mental Health, 2008).<sup>30</sup>
- 10.2 People who are transferred to hospital during IPP sentences should be invited and supported where appropriate to appeal their sentence, to explore whether they should have received a restricted hospital order in accordance with the guidance set out by the Court of Appeal in *R v Vowles* [2015] EWCA Crim 45.<sup>31</sup> Those who remain on the IPP sentence in hospital should be guaranteed the right to apply for parole while they are in hospital.

## **11. People who remain in prison on IPP sentences must be supported to work towards release**

- 11.1 Ever since the IPP sentence came into force, prisons have failed to support people on IPPs to effectively work towards release. In the wake of a critical report by the prison inspectorate, the National Offender Management Service introduced an Enhanced Case Management Unit to progress indeterminate sentence cases (Ministry of Justice, 2017).<sup>32</sup> Building on this enhanced case management approach, Her Majesty’s Prison and Probation Service should provide specialist, tailored support which identifies and meets the needs of people on IPPs.

## **12. People on IPPs in custody should be supported by specialist community probation workers, with a focus on reintegration and resettlement**

- 12.1 The Offender Management in Custody (OMiC) model should be disapplied for people who are on IPP sentences. In the OMiC model, prison officers are responsible for supporting each prisoner through their custodial sentence and connecting them to community probation services. People on IPPs should instead be directly supported by specialist probation workers in the community, with a focus on reintegration and resettlement.
- 12.2 The Parole Board should prioritise people on IPPs, allocating specialist staff and members to oversee cases at least annually instead of up to every two years.

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<sup>29</sup> Prison Reform Trust (2020), *No life, no freedom, no future: The experiences of prisoners recalled under the sentence of Imprisonment for Public Protection*, available at [http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom\\_final\\_web.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf).

<sup>30</sup> Centre for Mental Health (2008), *In the dark: The mental health implications of Imprisonment for Public Protection*, available at [https://www.centreformentalhealth.org.uk/sites/default/files/in\\_the\\_dark.pdf](https://www.centreformentalhealth.org.uk/sites/default/files/in_the_dark.pdf).

<sup>31</sup> See for example, the following cases where the Court of Appeal substituted IPP sentences for restricted hospital orders: *R v Turner* [2015] EWCA Crim 1249; *R v Smith* [2015] EWCA Crim 1685; *R v Shemwell* [2015] EWCA Crim 2249; *R v Aitchison* [2016] EWCA Crim 739; *R v Smalley* [2016] EWCA Crim 1186; *R v Fuller* [2016] EWCA Crim 1867; *R v Stredwick* [2020] EWCA Crim 650.

<sup>32</sup> Ministry of Justice (2017), *Action Plan: HMCIP IPP Thematic Report*, available at <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/11/HMIP-IPP-thematic-action-plan-1-March-2017.pdf>.

### **13. Conclusion**

- 13.1 The IPP sentence has always been wrong in principle and unworkable in practice. The criminal justice system is now faced with the difficult task of retrospectively fixing a sentence which should never have been passed into law. The Howard League proposes several options for addressing the injustices of the IPP sentence.
- 13.2 The IPP licence should be reformed so that it automatically expires after two years. Probation should not recall people unless they pose an imminent risk of harm and the Secretary of State should have the power to executively release people who have been recalled on IPPs and meet the test for release.
- 13.3 The 1,700 people who have been stuck in prison since receiving their IPP sentence must be supported to work towards release. There should be a new approach which does not leave people trapped in prison because they have severe unmet mental health needs, or because they are unable to progress in their sentence without additional support.

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