

## **Written evidence from Professor Nick Hardwick, Professor of Criminal Justice at Royal Holloway University of London**

1. I am grateful for the opportunity to submit brief evidence to the Justice Committee's inquiry: 'Imprisonment for Public Protection (IPP) Sentences' I would be pleased to attend the committee to answer any questions they might have about this submission or any other matter, if it would assist the committee for me to do so.
2. I am currently Professor of Criminal Justice at Royal Holloway University of London and provide expert advice to prison monitoring systems in different jurisdictions. I was Chair of the Parole Board for England and Wales from March 2016 until March 2019. I was HM Chief Inspector of Prisons for England and Wales from 2010 to 2016.
3. The case for ending or reducing the number of those still serving IPP sentences, either because they have yet to be released or because they have been recalled has been persuasively made out in the recent House of Lords debate on the Police, Crime, Sentencing and Courts Bill (HL Deb 15 November 2021 vol 816 cc 28-52) and I have no doubt will be made effectively by others giving evidence to the inquiry so I will not repeat those arguments here.
4. There are two items in the inquiry's terms of reference where I hope I may be able to add something of use. First, on the current barriers to release and second on the issues of recalls.

### **Barriers to release**

5. As Chair of the Parole Board I was publicly and privately encouraged by three Justice Secretaries to ensure the Parole Board took what measures it could within the existing rules and policies to reduce the number of serving IPPs and to advise them on what other steps they could take to reduce those numbers further options.
6. Progress on the release of IPP prisoners depends on three variables. First, the efficiency of the Parole Board itself. Second, the ability of prison and probation services to ensure prisoners come before the Board in a timely way and as well prepared to progress as possible. Thirdly however, significant progress required Ministers to make policy changes and Ministers were given the following options for doing so:
7. Options included:
  - **CONVERSION:** Convert all or some IPP sentences to a fixed term sentence with a definite sentence end date.
  - **SUNSET CLAUSE:** Establish a provision to provide that all or some post tariff prisoners must be released no later than a certain date.
  - **RISK TEST:** Reverse the risk test for some or all IPPs so the Parole Board has to demonstrate the prisoner poses a serious risk rather than the prisoner needing to demonstrate that they do not. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) gives Ministers the powers to do this. So far it has not been used.
  - **COMPASSIONATE RELEASE:** Consider using existing powers to release IPP prisoners who have now served more than the current maximum tariff for their sentence. This might be combined with referring these cases to the Parole Board for advice as happens with other compassionate release cases if this would provide additional reassurance.

- **SHORT TARIFF IPPs:** Reverse the risk test for IPPs with an original tariff of less than two years. This might be combined with the enhanced GPS tracking now available.
  - **RECALLS:** Legislate to provide that after their initial release (or re-release) IPPs should serve a maximum licence period of no more than say 2-5 years but no more than would be currently be available be for their index offence if it were committed today. This would attempt to bring IPPs closer to the Extended Determinate Sentence Prisoners (who have a clear end date for their sentence). This would ensure that IPPs judged safe to release by the Parole Board would have an end in sight for their sentence. Any IPP who reoffended would receive a fresh custodial sentence. If an offender remains a problem after the supervision period there are options for the authorities such as violent offender orders or sex offender protection orders to assist in their management
8. I understood this advice to have been positively received at the time. Nonetheless, although the Parole Board has continued to improve its efficiency including through the pandemic, and although prison and probation services took action to ensure prisoners were prepared for parole hearings as effectively as possible, there has not been progress in implementing policy changes. I note too that other former ministers who have had responsibility for the parole system in the past expressed regret they had not done more to end the sentence in the House of Lords debate.
  9. I sympathise with the difficulty Ministers have in addressing this issue. In recent years between about 0.5% and 1% of those the Parole Board releases commit a serious further offence. Looked at as a percentage I would argue that this demonstrates good quality decision making. However these percentages obscure that between around 20 to 40 time a year there will be a victim of a serious offence committed by someone released by the Parole Board. It is reasonable to assume that the most straightforward IPP cases have already been released and so those that remain are the most complex whose risks are most difficult to manage. At the end of September 2021 there were 1,661 IPP prisoners who were yet to be released of whom 1,587 were over tariff (Offender Management Statistics quarterly: April to June 2021). In the event that the sort of policy decisions summarised above are taken, and if IPP prisoners are comparable to others released by the Board (which required further investigation), it suggests we might expect between 8 to 16 of released IPPs to commit a serious further offence. As discussed below, 1,357 IPP prisoners currently in prison have been recalled but we do not know how many of these have committed a serious further offence. I suggest it would be helpful for the committee to establish how many IPPs have committed a serious further offence as this would help quantify the risk of any policy changes designed to make it easier to release them.
  10. I am sure Ministers are rightly very conscious of the imperative to avoid creating future victims and may also wish to avoid the political risk of appearing to be 'soft' on crime and at time when crime and punishment is the subject of adversarial political debate.
  11. In these circumstances I have the following additional suggestions about how the risks of wider reform of the IPP system might be reduced and become easier to manage at both an individual and system level.
  12. **The Committee's report.** The Justice Committee has an admirable track-record of producing important reports and recommendations that have the unanimous support of members from all parties. On this issue, I believe the report of the committee will have a vital role to play in obtaining cross party support for tackling a complex ethical and

operational problem in a contested policy area and I hope that wise cross-party proposals may make it easier for the Justice Secretary to act on reform.

13. **Parole Board reform.** The results of the 'root and branch' reform of the Parole Board have not yet been published although media reports suggest that strengthening the independence of the Board might be one outcome. As authors such as Tom Guiney have described (see for example Guiney, T (2018) *Getting Out: Early Release in England and Wales, 1960–1995*. Oxford: Oxford University Press) there has been a long standing tension between Ministers' wish to control the early release of prisoners - and their desire to be distanced from it. If it is the case that the next stage of parole reform gives the Board more independence, that might make it easier to progress IPP policy changes as a greater part of the responsibility for any outcomes would fall on an independent body rather than a political office holder. For example, a Minister might find it easier to accept advice on compassionate releases from a body that was more clearly seen to have a judicial function and independence than the Board in its current form.
14. **Mental Health.** The Committee will have heard evidence I am sure about the damaging effects of their prolonged and uncertain imprisonment on IPP prisoners mental health. In some cases it might be that damage is so great that it becomes a major reason why those prisoners cannot demonstrate they are safe to release. If that is the case it might be better to address the needs of those individuals in a secure mental health setting rather than a prison with, possibly, release decisions being made by a Mental Health Tribunal rather than the Parole Board.
15. **Re-sentencing.** Re-sentencing has long been suggested as one of the ways in which the PP sentence can be brought to an end. The obvious difficulty with this is that with the current Crown Court backlog standing at around 61,000 (National Audit Office, 2021) IPP prisoners are unlikely to be a priority. However, there are 70 IPP prisoners whose tariff has not yet passed. These are likely to include those who have committed the most serious and notorious offences. Resentencing those prisoners, perhaps according today's sentencing guidelines, and in effect taking them out of the IPP equation, might result in some receiving life sentences and might make it easier to make decisions on policy changes to reduce the number of those who remained serving IPP sentences.

## **Recalls**

16. As noted above, at the end of 2021 there were 1,357 recalled IPP prisoners in prison representing 44% of the total. When I was Chair of the Parole Board I warned that in time the number of recalled IPP prisoners would surpass the number of those who had yet be released and this looks certain to be the case shortly.
17. It seems particularly egregious that IPP prisoners should still be subject to the provisions of that sentence even after release. I think it would be possible to provide a definite end to the sentence whilst still providing assurance any risks could be managed.
18. My proposals would be that IPP prisoners are subject to an extended period of licence with appropriate licence conditions set by a judicially chaired panel that releases them. It might be that minimum and maximum licence periods are set as part of any legislation (for example three and eight years). Prisoners would be recalled as at present for any breaches of licence conditions in that period and sentenced according to current guidelines for any new offence.

## **Conclusion**

19. It is necessary to acknowledge that all the policy proposals on this subject of which I am aware, some of which I have noted above, carry risks and it is right that Ministers are mindful of these. In this note I have tried to suggest some solutions that might mitigate the individual and systemic risks that policy changes to achieve the important objective of reducing the number of IPP prisoners might create.
20. I do not think there is one realistic overall solution but do think that the cumulative effect of small changes, such as suggested here, can safely achieve much.