

## Written evidence from Prisoners' Advice Service

### Introduction

1. The **Prisoners' Advice Service**, a national registered charity founded in 1991 provides free legal advice, assistance and representation to adult serving prisoners in England and Wales on the application of the Prison Rules 1999. We discharge this obligation through the provision of a free telephone advice line, outreach in a number of prisons around the country, a Letters Clinic, casework partially funded through contracts with the Legal Aid Agency, and dissemination of educational material such as the quarterly prisoners' legal rights Bulletin. We receive from prisoners about 35,000 calls to the advice line each year, and respond to just over 3,000 letters seeking advice and information. We take on around 60 parole cases for prisoners each year.
2. The Prisoners' Advice Service holds prison law and public law contracts with the Legal Aid Agency whereby we undertake all prison and public law work that is in scope. This includes advising and representing prisoners at their Parole Board reviews. The Prisoners' Advice Service is also a member of the Parole Board Users' Group which meets quarterly with interested stakeholders.

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

3. There is currently only one existing mechanism, whereby an IPP prisoner can be released from prison on licence, which is by satisfying the Parole Board that they meet the public protection test. Given that the IPP sentence was abolished in 2012 it is both obscene and baffling that there still exist a significant number of prisoners who are serving those sentences today.
  4. In our view, the only *perceived* advantage of this statutory provision is that the public is ostensibly protected from an unmanageable risk of serious harm. But this flies in the face of current sentencing, which has seen post-2012 prisoners
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convicted of the same violent and sexual offences as IPP prisoners who are not subject to indefinite detention but extended licence periods instead.

5. Needless to say, the disadvantage of this release mechanism is suffered by the detained prisoner and their family, as these prisoners join the ranks of lifers whose crimes would once have attracted the death penalty. It is arguable that the public also loses out on the cost to the public purse of detaining year after year thousands of prisoners serving an abolished sentence.

The release mechanism operates on the basis that an IPP prisoner, like a lifer, can prove successful completion, in the main, of accredited rehabilitative treatment courses – for which waiting lists can be years and years long - to address and minimise their risk factors. Given the size of the prison population, and the lack of almost any priority given to the meaningful rehabilitation of prisoners, a significant portion of IPP prisoners have not been able to complete the courses to demonstrate their suitability for release. ‘Offending behaviour programmes’ are costly to provide, and have been cut back in recent years. This, together with the inflexibility of the statutory public protection test, means the IPP prison population will continue to decrease at the same rate as hitherto: it has taken 16 years for just over 4,000 IPP prisoners to achieve initial release, so another 7 years or so will see the remaining 1,700 IPP prisoners achieve their initial release. This is without beginning to factor in the revolving door of the recall process.

6. The easiest and most obvious way by which the government could reduce the IPP population is by legislating to convert all existing IPP sentences into Extended Determinate Sentences for Public Protection, thus bringing all those sentenced under the CJA 2003 to serve indefinite terms in line with those sentenced for the same offences under LASPO 2012.

Clearly, this would create a cohort of prisoners who will then shortly be released, in circumstances for which both they and the system are unprepared. To mitigate for this, all those who are already over tariff should be moved to reside in open

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prison conditions for a period of approximately three months whilst a specialist community offender manager prepares their release plan.

7. There are of course operational and resource implications for HMPPS should the government see fit to remove the power to indefinitely detain this group of people. However it costs far less to release 1,700 people to live in the community than it does to lock them up for years. The focus should be on making spaces in open prisons and approved premises (hostels), allocating resources to specialist community probation officers, tasking a dedicated group at PPCS to prepare licences and consider initial requests for recall, and increasing support in the community to these prisoners.
8. Those IPP prisoners already living in the community should have their licences immediately converted to expire in two months. Again the transition may require specialist support from probation, and this time should be spent by probation ensuring the prisoner has the correct support.

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?

9. The experience of people in prison whose release is dependent on the Parole Board is beset with difficulties, all of which are exacerbated for those serving IPP sentences as they are in effect forced to compete with lifers for access to rehabilitative treatment and progress. A significant portion of the indeterminate sentenced prisoners that PAS advises and represents are serving or recalled on IPP sentences- without exception every single one of them has expressed profound dismay at the unfairness of their detention and the hopelessness of seeing a licence-free life for themselves in the community. The unremitting repetition of this perception and feeling from such clients leads one to surmise that their mental anguish may be so severe and distinctive that it warrants its own psychiatric
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diagnosis. In particular it is noted that prisoners, even those who fully accept their conviction and punishment, view themselves as moving away from being perpetrators of crime against society to being victims of society who are locked up serving a sentence that is illegal: this clashes with the purpose of punishment and rehabilitation. Prisoners serving these sentences are expected to deal with an additional burden which the prison system does not cater to: being unjustly detained but treated as deserving of the punishment.

10. We routinely receive requests from IPP prisoners for assistance and guidance with asking the courts to convert their sentences to extended sentences for public protection (EPP). PAS does not do criminal law and can only advise in very general terms, and refer them to a criminal appeal solicitor. We are aware that only the tiniest handful of prisoners have been successful in having their IPP sentences replaced with determinate sentences. It remains the case, despite the fervent argument of these prisoners that the IPP sentence since 2012 is “illegal”, the court applied the applicable law at the time of sentencing. Given the limitations in prison of corresponding with the outside world, some huge cost and effort (mostly pointless) is regularly expended by IPP prisoners fervently seeking a resolution that is almost wholly out of their hands.

How is release and resettlement planned and managed for IPP prisoners given their unpredictable release date? How are people on IPP sentences managed within the community once released?

11. IPP prisoners are in the same position as other indeterminate sentenced prisoners as regards their release and resettlement, but for the fact that their index offence could be one that attracted a 4 month or 3 year period in custody. Lumping such prisoners into the system for releasing people usually convicted of murder or multiple rapes or armed robberies makes for a mockery of the risk assessment process.
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12. IPP prisoners in the community frequently complain of unrealistic or unhelpful risk management plans, which do not assist in the compliance of licence conditions. Given that the licence conditions are excessive compared to the actual risk extrapolated from the index offence, there is more scope for failure to comply with licence conditions. An IPP prisoner on licence is managed as intensely as someone convicted of the most grievous offence, such as murder, by dint of the type of sentence as opposed to their offence. IPP prisoners who have served many years over their tariff and watched extended sentenced prisoners released with fewer restrictions, leave prison with the mental turmoil of having indefinite detention hanging over them: the support needed to reintegrate into society is different to that of other lifers and those with fixed sentences, but HM Probation do not cater for this or make any allowances for the impact on the prisoner of the ingrained unfairness of the sentence.

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

13. The majority of the recalled IPP cases we deal with are lamentable. The reason for the recall is frequently only weakly related to an increase in risk. The rate, frequency and speed at which such prisoners are recalled is shocking- sometimes within only weeks of release, and on multiple occasions. It is the norm for PAS to have the same prisoner in their caseload recall after recall, sometimes within a short space of time. This is not because they have behaved in such a way that they no longer meet the 'life and limb' test, but because they might in the near future commit a serious offence though they may be a prisoner who last committed an act of violence 10 or 15 years ago.

14. A pertinent and routine example of this is an IPP prisoner convicted of committing instrumental violence to acquire the means to feed their substance addiction: he or she is routinely viewed as being in danger of committing further similar offences should they lapse into drug addiction- their recall is initiated ostensibly to prevent a crime before it can take place, even though many components of the index

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offence are missing. Once back in prison, it is difficult to understand what many of these prisoners are expected to achieve in custody at the cost of their liberty. Every caseworker at PAS will have several examples where the Parole Board has made a finding that the recall did not meet the guidance. PPCS sign off on these recalls, when they are supposed to act as a second review of the situation in order to ratify the removal of an individual's liberty – arguably a prisoner on licence therefore has no impartial oversight of their liberty if PPCS are rubber stamping these decisions by probation.

15. There is little for the government to lose, even when faced by its most ardent supporters, in now putting behind us what the Labour Party's creator of the pernicious law describes as "the greatest single stain on [the] justice system".

**22 November 2021**

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