

Written evidence from the Association of Prison Lawyers

Introduction

1. The Association of Prison Lawyers was formed in 2008 by a group of specialist lawyers, to provide a voice during the Legal Aid Agency's funding consultation process that led to the 2010 prison law contract. We continue to represent and train our members, comprising specialist barristers, solicitors and legal representatives across England & Wales, and endeavour to represent our members' views in policy development.
2. We welcome this inquiry, not least because of its clear grasp and attention to the singular unfairness of the IPP sentence and its aim to tackle the injustice head on. The majority of our members have been representing prisoners at every juncture of their sentence from their initial incarceration through to release and re-release. We are therefore uniquely placed, even more so since the cuts to legal aid narrowed our advocacy work to representation before the Parole Board, to advocate for the injustices that IPP prisoners live with.
3. For the purpose of this inquiry, we have turned to our members who have fed back their response to the briefing. We have attempted to focus our evidence on pragmatic resolutions to address the problem of IPP sentences, for both those still in prison as well as those in the community.

APL Members' Evidence

4. At the outset APL asserts the unanimous position that any changes to the IPP sentence for those already serving IPPs *should have been made in 2012* when the sentence was abolished.
5. There is not a single member who does not have a disproportionate number of IPP clients requesting initial release or re-release.
6. The main obstacle preventing release for IPP prisoners who have never been released is a lack of access to suitable offending behaviour programmes, the lack of rehabilitative treatment; in addition to that there a significant number of IPPs who need access to specialist support services such as mental health provisions. Also there is a lack adequate support for robust release planning. It needs to be appreciated that IPP prisoners who have not been released need to have the support of specialist services that

will help them demonstrate to the Parole Board that they meet the public protection test. Too often IPP prisoners who are considered difficult to manage are transferred from prison to prison and thereby lacking any continuity of support and/or transferred to establishments where they cannot access the courses they need. In most cases there is limited availability of psychological interventions. All these problems are exacerbated by delays in the parole board process and frequency in change of key personal be it Community Offender Manager and/or Prison Offender Mangers.

7. APL members have represented IPP prisoners seeking release since 2006; the huge numbers of clients who are serving IPP sentences and have never been released run in their hundreds. All our members agree there should be a change to the existing arrangements. The only just redress either lies in automatic conversion of IPPs to determinate sentences based on the notional determinate term for which they were initially given, or meaningful enhanced case management system whereby extra and specialist resources work with an IPP prisoner to help them get to a point where they can successfully be released. There needs to be a Multi-Agency approach to managing such cases with regular case conferences with all key agencies including the prisoner and their legal representatives. These cases need to be prioritised and commitment for COM's to hold and manage a case in the build up to release and thereafter for a significant period of time. The Parole Board should be able to case manage a case from review to release and, if need be, recall. This will create a clear and transparent process for the prisoner so they know what is expected. The Parole Board could be given greater powers to manage a case so that if they do not direct release then they can state what further work is needed and when they should review the case again rather than wait for the Secretary of State to re-refer the case as a time they have decided upon based on a written decision.
8. Members tell us again and again that there is a massive lack of support and resources focused on IPP sentenced prisoners who have never been released. The numbers speak for themselves. IPP must now be treated differently from others who have their cases reviewed by the Parole Board. Specialist members appointed to the board should be allocated these cases. There should be specialist psychologists appointed to assist an offender to access key interventions. There should be a constant in terms of the COM who knows the prisoner and will assist them navigate a path to release and support thereafter.

9. Furthermore, very few members said that the Enhanced Case Management System administered by PPCS has been effective. It would be more effective to have specialist parole board members assigned to reviews of IPP cases, perhaps with six monthly reviews to help reduce the current numbers. Careful management of a case with specialist members and specialist caseworkers from PPCS and the Parole Board can help move case along that are stuck and with regular reviews can help a prisoner to progress.
10. If and when in the community specialist community probation officers should be allocated outside OMIC and they should focus on release planning. It goes without question therefore that more support and resources is needed to help IPPs in the community. The availability of approved premises must be increased to reflect the urgent need facing IPPs seeking release.
11. Replacing the IPP sentence with a determinate sentence will risk some unwelcome consequences, but these are the same as for those released from EDSs. Replacing sentences now will lead to anger and resentment for those that have been stuck. This also will not be fair on those IPP's who have been released. Any unwelcome consequences would be exaggerated by certain areas of the media which will marginalise IPPs further.
12. The IPP licence should be changed so it operates in a different way by offering more support and resources to help those when in the community. This could include specialist AP provisions, specialist COM's and immediate access to interventions when required.
13. The usually the too swift recall of IPP prisoners in the community is well documented. They face particularly zealous oversight of their compliance in the community because of the nature of the sentence they have, and it is not uncommon that many recalls are found by the Parole Board to be unjustified. It can take months, and in some cases years, for a recalled IPP prisoner to achieve that determination from the Parole Board.
14. We propose that any recalls of IPP prisoners must first be agreed by the Parole Board, and not the MoJ, with specialist members appointed by the Parole Board to consider whether someone should be recalled unless there is an immediate direct increase in the risk of serious harm. All other potential breaches will have time for this to be considered in a meaningful manner. If an IPP in the community knows that his/her case is being sent to the Parole Board to consider release they must be allowed access to

legal representation. There should be a maximum period by when the Parole Board must consider an application for recall.

15. All IPP prisoners in the community should have their licences expire automatically after two years unless an application is made to the Parole Board by HMPPS to extend it. Again IPP prisoners in the community must be allowed representation for this review.
16. Current IPPs in the community ought to be allowed to apply for the licence to be cancelled or reduced if they have or are making good progress in the community. If successful this could reduce the specialist services support provided and place them, once settled, on a par with other licensees in the community.

Specific comments from members

Why so many IPPs still in prison

Lack of resources, very little progression within custody, becoming institutionalised, and a lack of assistance after many years served within prison. Access to risk reduction work and mental health support is a continuing challenge. There is only very limited availability of psychology interventions and assessments.

These individuals are institutionalised and usually have complex mental health needs. Their behaviour causes professionals to have concerns which are unrelated to the index offence and, if they had never been sent to prison, would probably also not result in criminal justice interventions in the community. Such people have lost hope and their behaviour has declined to the point that probation will not support release

Too high of a caseload for COM/POM meaning they often do not know the prisoner well enough or provide appropriate sentence planning targets and regular sentence planning review meetings.

The Probation Service is highly risk averse. The lack of relationships with COM in the community and sometimes absurdly frequent changes of COM mean that a prisoner cannot demonstrate a good supervisory relationship. The attitude towards IPP prisoners by probation officers assessing risk is that small acts of poor prison behaviour are described as offence paralleling or displaying an active risk factor. It can be insurmountable to change that perspective.

There should be a Multi Agency approach to managing these case with a Case Conference and clear sets of expectations about what needs to happen to be able to achieve release. There needs to be a prioritisation of these cases in the Probation Service and a commitment to have COMs that will hold onto the cases regardless of what happens to them professionally (within reason). There also needs to be less Regional Protectionism in the probation Service and proper thought needs to be given to the prospect that IPPs may now want to be released to areas that are not linked to

where the COM is based. The Parole Board should convene a Case Conference in each case to review exactly where each case is and what needs to happen.

November 2021