

## **Prison Reform Trust response to the Law Commission consultation on criminal appeals — May 2025**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The PRT's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promoting equality and human rights in the criminal justice system.

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PRT welcomes the opportunity to respond to this consultation. PRT is not a legal charity and we do not intend to provide a detailed response. We restrict our response to two questions relating to the specific circumstances of people serving IPP sentences:

**7.188 We invite consultees' views on whether the current powers afforded to the Court of Appeal Criminal Division in relation to sentence appeals are sufficient to deal with a change of circumstance post-sentence? This includes a change in law (for example, the repeal of a type of sentence) or a change in the personal circumstances of the defendant.**

**7.189 We invite consultees' views specifically on whether those currently serving sentences of imprisonment for public protection ("IPP") should be entitled to challenge their IPP on an individual basis on appeal and, if so, what the test for quashing an IPP should be.**

Both the main governing and opposition parties have acknowledged that the IPP is a "stain" on our justice system. The cross-party justice committee has found the IPP sentence to be irredeemably flawed and has called for a comprehensive resentencing exercise for all people serving an IPP sentence. Therefore, we believe there is a strong case for the Court of Appeal to proactively review all IPP cases. At the very least, we would urge the Commission to recommend the introduction of an enhanced process for people on an IPP to challenge their sentence on an individual basis. Proposals which merit consideration include:

- An automatic right of appeal to an IPP sentence, including an automatic entitlement to legal aid.
- The removal of the time limit on submitting an appeal.
- The removal of the requirement to go through the Criminal Cases Review Commission (CCRC) to re-appeal following an unsuccessful attempt.

The test for quashing an IPP could include all standard reasons but also an adaption of the existing principle of manifest excessiveness – the length of the sentence served far exceeds the equivalent determinate sentence that would have been imposed for the equivalent offence. Justification for the adaption of this principle to the specific circumstances of people on IPPs can be made on the grounds that parliament has abolished the sentence but has not applied that abolition retrospectively. This creates an anomalous situation for people sentenced to an IPP who remain in prison or on release in the community on an abolished sentence. Two thirds (66%) of unreleased IPP prisoners have spent an additional 10 years or more in prison on top of their original tariff. More than one in seven (14%) have served an additional 15 years or more. If this cohort had received an equivalent standard determinate or extended determinate sentence for the offence they committed, the majority if not all of this cohort would already have been released.

Particular attention should be given to the cohort of IPPs sentenced prior to the reforms introduced in 2008. Prior to these reforms, an IPP had to be imposed if the court concluded there was a serious risk of harm to the public. However, they were directed to presume a serious risk of harm on the basis of a single previous conviction from a wide-ranging list of offences. Furthermore, an IPP could be imposed with a minimum tariff of less than two years. As of June 2024, there were 184 people on an IPP who had never been released from prison despite receiving a minimum tariff of less than two years. Every single one of these individuals has served an additional 10 years or more.

In any appeal, particular attention should be given to whether the test of dangerousness had been appropriately applied. The assessment of dangerousness outlined in s229 of the Criminal Justice Act 2003 (as originally enacted) bears very little relation to the scientific assessment and prediction of risk. The IPP sentence as originally enacted was particularly reliant on the application of this test. There have been a number of successful appeals against IPP sentences based upon the way in which the test was misapplied. The Commission may wish to consider how any bespoke test for quashing an IPP could take into consideration any systematic shortcomings in the accuracy of the legal test of dangerousness, in light of risk science.