

Prison Reform Trust written evidence to the Justice Committee inquiry on IPP sentences – November 2021

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 Prison Reform Trust's main objectives are:

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

www.prisonreformtrust.org.uk

Introduction

1. We welcome the opportunity to respond to this important inquiry. The IPP sentence has been described by the former Supreme Court Justice Lord Brown as “the greatest single stain on our criminal justice system”.¹ A total of 8,711 IPP sentences were issued. On 30 June 2021 there were still 1,722 people in prison serving an IPP.² Almost all (96%) people still in prison serving an IPP sentence have passed their tariff expiry date—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence. 269 people are still in prison despite being given a tariff of less than two years—most of these (207 people) are still in prison over a decade after their original tariff expired.³
2. There remains a growing problem of IPP recall. On 30 June 2021 there were 1,332 people back in prison having previously been released—an increase of 213% in the past six years.⁴ Recalled IPP prisoners who were re-released between July 2019 and June 2020 had spent on average 18 and a quarter months in prison post-recall.⁵

¹ Grierson, J. (2020, December 3). Indefinite sentences ‘the greatest single stain on justice system’. *The Guardian*. <https://www.theguardian.com/law/2020/dec/03/indefinite-sentences-the-greatest-single-stain-on-justice-system>

² Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>

³ Table 1.9b. Ibid.

⁴ Table 1.9a. Ibid.; and Table 1.9a, Ministry of Justice. (2016). *Offender management statistics quarterly: January to March 2016*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2016>

⁵ Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf

3. The Prison Reform Trust has a long history of engagement on the IPP sentence. We have published three research reports on the sentence:
 - [No, life, no freedom, no future](#)
 - [A helping hand](#)
 - [Unjust deserts](#)
4. Natural justice would dictate that parliament grasp the nettle and legislate to bring all existing IPP sentences to an end. We see no prospect of that happening and regret the continued failure of legislators to face up to the appalling human consequences of their failure to do so. But in the expectation that that failure will continue, we urge the government to devote far greater energy and resource to ensuring that IPP prisoners who do secure their release are enabled to live successful lives thereafter, avoiding recall to prison. The current incidence of recall, which in our view reflects a failure of support in the community, will soon lead to a situation in which the number of people serving the IPP sentence in prison may start to grow rather than decrease. The hopelessness and despair which that engenders is described in our most recent report on the issue. Far from protecting the public, current practice is creating a substantial body of people whose ability to lead a law abiding and useful life is being destroyed by the very system supposed to promote it.

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

5. Our preferred option would be to make the abolition of the IPP sentence apply retrospectively. This is likely to require a process of judge-led reviews of individual cases to identify those in which, but for the IPP sentence being available, a discretionary life sentence would have been imposed. The advantage of this approach is that it would restore justice and proportionality while also meeting public protection concerns. The disadvantage lies in the significant resource implications involved and the strain it could place on the judiciary and criminal justice agencies. Therefore, it might be necessary to prioritise consideration of cases, perhaps starting with those in prison who had received original tariffs of less than two years. Releases for those who have served their 'deserved' number of years would need to be carefully planned, to avoid overwhelming the Probation Service. There would need to be a phased programme of releases, with properly resourced preparation, and post release support for all those affected.
6. A second more modest option would be to reform the process for the review and termination of IPP licences. Currently, someone on an IPP is entitled to a review of their licence by the Parole Board 10 years after their first release. Furthermore, it is up to the prisoner to refer themselves to the Board for a review. We would support amendments to section 31 of the Crime (Sentences) Act 1997 to (i) reduce the qualifying period from 10 to five years for the consideration of licence termination by the Parole Board; and (ii) require the Secretary of State to automatically refer the prisoner to the Parole Board after the end of the qualifying period, and on an annual basis thereafter.
7. This second option would not address the situation faced by unreleased IPP prisoners. It would also only likely make a modest dent in the numbers of IPPs being recalled, as the majority are recalled within the first two years of release. However, it would increase the opportunity for people on IPPs who have successfully resettled in the community to have their licence terminated at an earlier point in the sentence. It would also address several technical issues with the current process of self-referral. Evidence suggests that reducing the qualifying period to five years would present minimal risk in terms of recall,⁶ and no risk

⁶ Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf

in terms of serious further offences.⁷ The decision whether to terminate a licence would remain with the Parole Board, based on an assessment of risk. Below we make further recommendations for how the supervision of people serving IPPs on licence could be improved.

8. There are several other options for reform of the IPP. UNGRIPP has provided a list of these options including examination of their advantages and disadvantages.⁸

What are the current barriers preventing release? What measures would need to be taken to overcome these barriers, and what would be the operational and resource implications for HMPPS?

9. Over the past several years the prison service and Parole Board have increased cooperation and efficiency in the consideration of IPP cases, introduced reforms to improve readiness for release and release planning and made improvements to the assessment of risk.⁹ These changes contributed to a welcome increase in the number of IPP prisoners being released. From 30 September 2015 to 30 June 2021) the number of never-released IPP prisoners has fallen by 61% from 4,431 to 1,722.¹⁰
10. In more recent years, however, the number of first releases has declined. In 2018, 506 people serving an IPP sentence were released from prison for the first time—by 2020 this number had fallen to 275.¹¹ This downward trend suggests that the system is reaching the limit at which improvement to the release rate can be made without statutory intervention. Furthermore, there remains a significant problem of IPP recalls. In June 2021 there were 1,332 people back in prison having previously been released – more than double the number of five years ago.¹² Recalled IPP prisoners who were re-released during 2020 had spent on average a further 20 months in prison before re-release.¹³
11. There may be operational improvements which could be made to increase the rate at which IPP prisoners are being released. This could include consideration of:
 - Whether there are sufficient places available for IPP prisoners on offending behaviour programmes.

⁷ Ministry of Justice. (2021c, August 5). *Freedom of Information request 210721007*. Prison Reform Trust.

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/FOI%20210721007%20IPP%20SFOs.pdf>

⁸ UNGRIPP. (n.d.). *Options for changing the IPP sentence*. Retrieved 17 November 2021, from

<https://www.ungripp.com/options-for-change>

⁹ Jones, M. (2016). *Written advice to Nick Hardwick on the IPP*. Prison Reform Trust.

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/MJ%20IPP%20paper%20July%202016.pdf>

¹⁰ Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>; and Ministry of Justice. (2016). *Offender management statistics quarterly: April to June 2016*.

¹¹ Table A3.3. Ministry of Justice. (2021). *Offender management statistics quarterly: October to December 2020*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2020>

¹² Table 1.9a. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>; and Ministry of Justice. (2016). *Offender management statistics quarterly: April to June 2016*.

¹³ Table 5.11. Ministry of Justice. (2021). *Offender management statistics quarterly: January to March 2021*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2021>

- Whether IPP prisoners are able to complete offending behaviour programmes in appropriate time to aid progression milestones such as parole or recategorisation.
- Whether there are sufficient places available for IPP prisoners in prisons providing progression regimes.
- The availability of other opportunities for IPP prisoners to enable them to progress and demonstrate reduced risk, particular for those who have completed opportunities afforded to them by offending behaviour programmes and progression regimes.
- Improvements in the availability and effectiveness of support in the community to enable IPP prisoners to be safely released.
- Improvements which could be made in the efficiency and effectiveness of the parole system, and arrangements for coordination and cooperation between the Parole Board and HM Prison and Probation Service.

12. A key issue preventing better scrutiny of these matters is a lack of data published by the Ministry of Justice on sentence progression. We would support the routine publication of data by the Ministry of Justice on the following:

- the proportion of prisoners subject to parole-authorized release who are released at the first, second, third and subsequent times of asking.
- the waiting times experienced by prisoners who are assessed as suitable for offending behaviour interventions but then cannot begin them immediately.
- the timeliness and regularity of OASys assessments and sentence plans, and the quality of the progression objectives they contain.
- the proportion of prisoners who have new objectives added to their sentence plans after their parole eligibility date or between then and the pre-tariff sift (for those subject to one).
- the availability of offending behaviour interventions in prisons of different types and in different locations.
- the timeliness of reports, assessments, and other documents which play an important role in progression decisions.

13. These figures should be broken down by sentence type, gender, age and race, but also by the prisoner's assessed level of risk, to facilitate scrutiny. It is reasonable to expect most people subject to discretionary release to achieve that release by their parole eligibility date, and the absence of data suggests that the system is disinterested about whether that occurs or not. The result is punishment that exceeds what a court deemed appropriate and a significant waste of resource, as people are held in prison for longer than they would be if the system used the many years leading up their parole eligibility date more effectively.

What would be the options and implications of backdating the change to IPP legislation?

14. One argument put forward against introducing reforms to address the situation faced by existing IPP prisoners is a convention that sentencing legislation should not apply retrospectively. This is an important safeguard in our system which ensures that individuals are subject to the law in force at the time of their offence. Nonetheless, we believe that the unique injustice and difficulties faced by those subject to the IPP would justify the breaking of this convention in this one instance. Furthermore, there have been times where the government has felt justified in legislating in breach of the convention. For instance, the

Terrorist Offenders (Restrictions on Early Release) Act 2020 applied retrospectively to individuals already serving a sentence for a terrorist offence.

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?

15. People given IPPs are disproportionately likely to have pre-existing mental health problems and research documents the negative mental health implications of IPP imprisonment.¹⁴ The indeterminacy of imprisonment can leave people feeling hopeless and helpless yet afraid of seeking support which might prolong their imprisonment. It can also make it difficult for families to avoid relationship breakdown and estrangement from their relative serving the indeterminate sentence.¹⁵ Mental ill-health can limit progress towards release. Serving an abolished sentence can make people feel 'disenfranchised, frustrated and distressed'.¹⁶ Research indicates IPP prisoners' fears about life post-release; of recall for minor incidents or false allegations and being unable to avoid trouble given life circumstances.¹⁷

How is release and resettlement planned and managed for IPP prisoners given their unpredictable release date?

16. To meet the test for release set by the Parole Board, HMPPS needs to be able to show that it has a plan for how an individual can be safely managed in the community. In practice, we know that a lack of timeliness in the delivery of assessments and reports to the Parole Board by HMPPS, and the variable quality of resettlement provision regionally (for instance a lack of approved premises in some areas), have contributed to delays in the release of IPP prisoners. As highlighted above, we would support greater scrutiny of arrangements for sentence progression, including resettlement and release planning, so that any weaknesses or inefficiencies in the system can be identified and remedied.

How are people on IPP sentences managed within the community once released?

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

17. We have chosen to answer the questions on resettlement, supervision and recall by highlighting the key findings and recommendations of our research report No Life, No

¹⁴ Sainsbury Centre for Mental Health. (2008). *In the dark: The mental health implications of Imprisonment for Public Protection*.

https://www.centreformentalhealth.org.uk/sites/default/files/in_the_dark.pdf

¹⁵ Anison, H., & Straub, C. (2019). *A helping hand: Supporting families in the resettlement of people serving IPPs*. Prison Reform Trust.

<http://www.prisonreformtrust.org.uk/portals/0/documents/A%20helping%20hand.pdf>

¹⁶ Smart, S. (2018). *Too many bends in the tunnel? Women serving indeterminate sentences of Imprisonment for Public Protection – what are the barriers to risk reduction, release and resettlement?* The Griffins Society.

https://www.thegriffinsociety.org/system/files/papers/fullreport/griffins_research_paper_2018-02_updated_21.03.2019.pdf

¹⁷ Harris, M., Edgar, K., & Webster, R. (2020). 'I'm always walking on eggshells, and there's no chance of me ever being free': The mental health implications of Imprisonment for Public Protection in the community and post-recall. *Criminal Behaviour and Mental Health*, 30(6), 331–340. <https://doi.org/10.1002/cbm.2180>

Freedom, No Future.¹⁸ This research, which was published in December 2020 and generously supported by The Persula Foundation and Kowitz Family Foundation (UK), had four main objectives:

- To provide an accurate and detailed picture of the number of people on an IPP in custody and on licence
- To gather new data from recalled IPP prisoners to help understand their experiences on licence and in custody, and their high recall rate
- To gain the perspectives of prison and probation staff and Parole Board members about why people on IPPs are being recalled and how they are prepared for re-release
- To make recommendations relevant both to reducing recall and accelerating re-release.

18. HMPPS kindly provided us with access to two relevant data sets. One contained all recalls of people serving an IPP since 2015, and the other detailed the re-releases of 1,140 individuals.
19. Between April and December 2019, we conducted in-depth interviews with 28 men and three women who had been recalled to prison while serving an IPP. Participants had spent on average four years, 10 months in prison post-tariff expiry before their initial release. The time between their most recent release and latest recall ranged from one month to over six years.
20. We conducted focus groups with National Probation Service staff and members of the Parole Board, and interviewed staff from Offender Management Units, including offender supervisors, and lawyers with expertise in prison matters.

Key findings

Statistical analysis of HMPPS data

21. Between 2015 and 30 September 2019 a total of 4,095 people serving IPPs were released, 1,760 of whom were subsequently recalled.¹⁹ Several were recalled more than once, with the total incidences of recall amounting to 2,342. Almost two-thirds of recalls listed multiple official reasons, the most common being non-compliance (36%) and further offence/charge (25%).²⁰
22. The second database documented 1,140 individuals who had been recalled and then re-released. For this cohort, the length of time they remained in the community before being recalled again varied. One in ten were returned to prison within one month, while one in five had been out for over two years.

¹⁸ Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf

¹⁹ Data correct as of 30 September 2019. Owing to changes in recording systems, January 2015 was the earliest date from which HMPPS was able to provide reliable data. Approximately 2,300 IPPs had been released prior to this date.

²⁰ The HMPPS dataset listed the following reasons for recall: alcohol, relationships, drugs, failed to keep in touch, fail to reside as required, further offence/charge, non-compliance, travelling outside the UK, breach of exclusion zone, failed home visit, and failed to work as approved.

The interviews: experience of prison pre-release

23. All 31 participants had been held in prison post-tariff. They cited various reasons: long waits to complete programmes, the slow pace of the Parole Board process, assessments that they continued to pose a risk, and their own problematic behaviour, often brought on by the IPP sentence itself. Being held post-tariff often had negative effects on their wellbeing and mental health, as well as on their families. Many felt ill-equipped for release, lacking work opportunities, and being released to hostels—sometimes in locations entirely unknown to them.

Life on licence

24. Almost half noted their licence conditions were impractical, or unnecessarily restrictive. Some said their conditions increased their risk of reoffending. Many described inadequate support from, and a lack of trust in, probation officers. A profound fear of recall meant some participants felt unable to be open with probation about their problems. It also led many to social isolation and undermined their wellbeing.
25. Participants experienced a wide range of problems in the community. Approximately half reported problems with accommodation, including stresses associated with living in approved premises (AP) or being located far from home. More than half reported drug misuse and/or mental ill-health. Some said problems with relationships or negative peer influences contributed to their recall. Other common challenges were unemployment, financial instability, and the lack of a supportive network.

Recall

26. Many IPP interviewees suggested that recall decisions were taken too lightly, made without exploring alternatives or sufficient oversight. Most (23/31) of the participants had not been convicted of a subsequent offence when they were recalled. Participants were often recalled for poor behaviour which fell short of illegal activity, and often disputed the facts of their alleged actions, or the fairness of recalling them based on such behaviour. Several Parole Board members expressed the view that some people were recalled unnecessarily for minor issues of compliance, or in response to serious mental ill-health, which should have been treated in hospital.
27. Several prisoners and professionals suggested there should be a more robust review mechanism for recalls, and fixed term recalls as an alternative.
28. Interviewees often suggested that probation officers should have provided more support with tasks like finding work, setting up bank accounts, and accessing mental health services.
29. Most interviewees took some responsibility for being recalled. Fatalism was a common theme: almost half felt that recall was inevitable.

Back in prison

30. Prisoners struggled to cope with the indefinite nature of recall and the loss of family relationships they had rebuilt. Recall often cost people their jobs, housing, and family support, leaving many feeling that their prospects of successful reintegration had been damaged. The prospect of a never-ending cycle of prison, release, recall, and prison left many hopeless.
31. Post-recall, prisoners often lacked motivation to engage, distrusting the probation officers who had recalled them and the wider system. They were intensely aware of their dilemma:

required to prove they were safe while held in a negative environment rife with drugs and violence.

32. Many participants reported not knowing what was required of them to gain re-release and some had not been given targets for reducing their risk.
33. Most interviewees were frustrated by the slow process for re-release, and having no release date, which made it hard to plan for the future. They often lacked faith in the risk assessments that could keep them in prison indefinitely. The fact that the IPP had been abolished made people feel particularly aggrieved.
34. At its worst, the system: recalled people to indefinite custody for behaviour that appeared to fall well short of the tests set in official guidance; defined needs (e.g. mental health) as risk factors; ignored the impact of the unfairness of the sentence on wellbeing and behaviour; could not provide the necessary support; and provided no purpose to time back in custody or a plan for re- release. Not all IPP prisoners experienced all of these, but they were common enough to reveal a system in need of radical improvement.

Recommendations: good and bad practice

This study identified aspects of the process for people serving IPPs that support or undermine reintegration.

In the community

Helpful
<ul style="list-style-type: none"> • Licence conditions being fully explained and understood. • Continuity of probation officers. • Meaningful activities like work, volunteering or caring responsibilities that provide positive structure. • Somebody to speak with openly about problems, without fear of recall.
Unhelpful
<ul style="list-style-type: none"> • Licence conditions that prevent positive aspects of normal life (e.g. family ties and work). • A lack of financial security (e.g. delays to first payment of benefits). • Licence conditions being unaccompanied by adequate support. • A lack of safe accommodation. A fear of recall leading to social isolation and disengagement from probation.

Recall decisions

Helpful
<ul style="list-style-type: none">• Exhausting other options before resorting to recall (e.g. more frequent appointments or curfews).
Unhelpful
<ul style="list-style-type: none">• A lack of opportunity for people to put their side across to their probation officer before being recalled.• Decisions to recall based on insufficient evidence, a lack of knowledge of the individual, or hearsay.• Recalling people rather than enabling them to access necessary services (e.g. mental health care) in the community.

Whilst in prison

Helpful
<ul style="list-style-type: none">• Providing mental health support to deal with the impact of recall.• Clear sentence plans that enable prisoners to progress towards re-release and feel a sense of control over their futures.• Facilitating treatment programmes and interventions in the community wherever possible.
Unhelpful
<ul style="list-style-type: none">• Interpreting negative behaviour provoked by recall as evidence of continued or heightened risk.• A lack of clear targets or structure to work towards re-release.

35. To prevent the current situation in which people on an IPP licence are at risk of far more severe punishment than their behaviour would otherwise justify, we recommend the following measures:

- The test for recall should be that there is an imminent risk of the person committing an offence likely to cause serious harm, and that that risk cannot be managed in the community. Alternative measures should be required for any actions falling short of this threshold, such as arrest or conviction in relation to less serious offending, failure to reside at an agreed address and failure to maintain contact. Such measures might include adjusted reporting requirements, use of electronic tags, and curfews.
- Where a person has been charged with a further offence, the normal criminal justice processes should apply, with a court considering whether remand in custody is appropriate for the new alleged offence.
- If a person is convicted of a further offence and sentenced to custody whilst on licence, the court should decide whether they should also be recalled under the provisions of their IPP sentence.

- If a person is convicted of a further offence, and the court decides to recall them under the provisions of their IPP sentence, the Parole Board should be required to consider release alongside any consideration of discretionary release that attaches to the new sentence (for example an extended determinate sentence). Any review must coincide with the end of the custodial period in a fixed determinate sentence.
- IPP prisoners who have been recalled, not having received a new custodial sentence and not being re-released 'on the papers' by the Parole Board, should have the right to an oral hearing, if they so wish. They should be informed orally and in writing of their right to a hearing to take place within two months of their request. They should be entitled to free legal representation, and the probation service must attend the hearing to explain their recall decision.
- If the Parole Board panel upholds the decision to recall, it must set a fixed date for a further review (also at an oral hearing with free legal representation), no longer than 12 months from the date of recall.
- All recalled prisoners should be entitled to annual reviews of their continued detention at an oral Parole Board hearing with free legal representation.