

Prison Reform Trust briefing

**Westminster Hall debate on the Justice Committee's report on IPP sentences,
27 April 2023**

Introduction

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 Group on Penal Affairs 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.

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Key facts¹

2,892 people are still in prison serving an IPP sentence.

1,498 of those (52%) are in prison on recall.

The number of people in prison on recall is up 10% since 2021, and the average time spent on recall in prison is two years.²

The remaining 1,394 people (48%) have never been released from prison.

There has been a decline in the number of people released from prison for the first time, down 15% since 2021. Re-release from recall is also down 17% since 2021.³

¹ Unless stated otherwise these figures are taken from Table 1.9a. Ministry of Justice (2023) *Offender management statistics, July to September 2022*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2022>

² Table 5.11, Ibid.

³ Table 3.1 and 5.11, Ibid.

Nearly all those 1,394 people have already served their minimum term.

1,362 people are in prison held beyond their tariff—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence. Nearly half of those (46%) have been held for 10 years or more over their original tariff.⁴

81 people serving an IPP sentence have taken their own lives while in prison.

There were nine self-inflicted deaths of people serving IPP in 2022. This is the highest number of self-inflicted deaths in a single year since the IPP was introduced.⁵

The rate of self-harm amongst IPP prisoners is twice that of those serving a life sentence.⁶

Justice committee IPP report and government response

The Prison Reform Trust welcomed the Justice Committee’s inquiry on IPP sentences and provided oral and written evidence to the committee. The resulting report was in depth and authoritative, recognising that addressing the legacy of the sentence required a careful balance between the needs of justice and safeguarding public protection. The report was unequivocal in its call that government, judiciary and parliament must act together to end the injustice which the sentence represents. It provided a carefully considered set of practical recommendations for change.

The government’s response to the committee’s report could have been an opportunity to right an historic wrong. But despite repeated delays, the inadequate response failed to live up to the challenge posed by the committee and simply prolongs the anguish and uncertainty facing those still trapped in this unjust sentence. While some of the commitments are welcome, most of what the government offers is either the promise of future reviews, or complacent descriptions of current processes which the Justice Committee and everyone familiar with the treatment of people serving the IPP sentence knows are failing. In the following sections we examine some of the committee’s key recommendations and present our analysis of the government’s response.

Expert committee

To address the “unique injustice caused by the IPP sentence” the Justice Committee’s primary recommendation was for the government to bring forward legislation on resentencing, with the establishment of “a time-limited small expert committee to advise on the practical implementation of the resentencing exercise in conjunction with the senior judiciary.” The committee did not “underestimate the complexity of undertaking a large-scale resentencing exercise for IPP prisoners” and recognised “it would require careful thought, significant planning, and sufficient resource.” But it was clear that “the potential difficulties do not justify failing to grasp the nettle.”

Rather than engage with the substance of the committee’s recommendation, or consider alternatives such as the establishment of a committee in lieu of a final decision on resentencing, the government rejected this recommendation out of hand. The government’s

⁴ Table 1.9b, Ibid.

⁵ Table 1.6, Ibid.

⁶ Table 2.6. Ministry of Justice (2023) *Safety in custody quarterly: update to September 2022*. <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2022> and Table A1.1. Ministry of Justice (2022) *Offender management statistics quarterly: January to March 2022*. <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2022>

refusal to establish an expert committee to provide the necessary detailed consideration of available options on resentencing is a missed opportunity. As the committee states, despite its potential difficulties, resentencing is “the only way to address the unique injustice caused by the IPP sentence and its subsequent administration, and to restore proportionality to the original sentences that were given.”

IPP action plan

The committee criticised the government’s existing IPP action plan, saying it found the absence of detail “surprising” and that it lacked “a clear strategic priority and ownership, as well as operational detail, timeframes, and performance measures.” It recommended that “the MoJ and HMPPS develop a new action plan, which should include clear performance measures for each of its workstreams. The new action plan should also, against each workstream, include an accountable owner for the workstream, and a timeframe for completion of each workstream activity so that there can be greater accountability and scrutiny. A new version of the IPP Action Plan should be published by the end of Q1 2023, with a report on the operation of the plan and any revisions to it published annually thereafter.”

The government accepted this recommendation saying it wanted to “increase the support offered to IPP offenders to progress both in prisons and on licence in the community. The MoJ and HMPPS have commenced work on this review and will provide full details of the refreshed action plan and associated governance within the timeframe set out by the Committee.”

We welcome the government’s acceptance of this recommendation, and the opportunity of a revised action plan for better governance and oversight and a much more prominent focus on what happens post release. We urge MPs to press the government to ensure that the action plan is published with clear performance measures; deadlines; and details of its governance structure. Given the government’s rejection of the committee’s central recommendation on resentencing, it is essential that this is a plan with clear actions, metrics, and deadlines. There are many recent examples of criminal justice strategy and policy which remain little more than grand statements of aspiration, with no clear plan on how to deliver the desired outcome.⁷

An explicit and central aim of the action plan should be a reduction in the IPP population both in prison and ultimately in the community. Each workstream of the plan needs to have a headline measure with regular reporting against these measures overseen by an external reference group. The plan also needs to provide clear metrics which show whether it is achieving its policy objective. That includes — the number of people never released; in custody following recall; in community under supervision; in community not under supervision; and numbers of licences terminated. Those numbers exist and need to be incorporated as part of the metrics against which the plan is assessed.

Recall review

The committee said that the government needed to devote “far greater energy and resource to tackling the “recall merry-go-round”, ensuring that IPP prisoners who do secure their release are able to live a successful life thereafter, avoiding unnecessary recall to prison. We agree with the Chair of the Parole Board that the Government should examine this issue in depth, covering, for example, the threshold for recalls, the use of Executive release, and

⁷ Recent examples include the Female Offender Strategy; Government’s Response to the Lammy Review; and Prison Strategy White Paper.

the role of the Parole Board. The Government should discuss with local government how to ensure an adequate supply of approved premises that does not over burden specific local authorities. Emergency recalls should only be used as a last resort. Probation staff should be encouraged and supported to use alternative measures to emergency recall, such as adjusted reporting requirements, curfews and use of electronic tags.”

The government partially accepted this recommendation. While it did not accept that offenders serving the IPP sentence on licence are being recalled to prison unnecessarily, it did agree to commission the Chief Inspector of Probation to conduct an independent thematic inspection in 2023/24 on whether IPP recalls are necessary and proportionate to the offender’s increased risk in connection with his breaching of licence conditions.

While we welcome the commissioning of this review, it is important that the terms of reference for that review should consider not just the quality of decisions to recall, but the quality of support that could prevent the need for such a decision even to be considered.

PRT’s research report *No life, no freedom, no future* published in December 2020 investigated this very issue.⁸ Drawing on HMPPS data provided for the study, in-depth interviews with 31 people serving the IPP sentence, and focus groups with a range of professionals involved in the recall process, the study identified both helpful and unhelpful practice and made a range of recommendations. Crucially, the study looked beyond the specific issue of whether recall decisions appeared justified at the point at which they were taken. What we found, unsurprisingly, was that the recall decision was typically the last of a sequence of events and decisions, and that both the safety of the public and the best interests of the person under supervision could best be served by improvements in what happened before such a decision became necessary.

However, the request to the Chief Inspector contained in the government’s response to the committee describes a review which seeks to discover: “Whether IPP recalls are necessary and proportionate to the offender’s increased risk in connection with his breaching of licence conditions.”

As the government’s response acknowledges, this is already well-trodden ground, not least by the Chief Inspector in his thematic inspection of recall culture and practice, published on 10 November 2020.⁹

The terms of the reference for the review are still to be finalised. We urge MPs to press the government to ensure that the review is not restricted to the relatively narrow question of whether recall decisions are taken appropriately in the circumstances as they appear at the time they are taken. We all share a desire that people should not be recalled unnecessarily, and none of us want the public to be put at risk of serious harm. But what our research showed was that the changes necessary to achieve those two goals were not primarily about the recall decision, but about the quality of practical support and the supervisory relationship. Therefore, the Chief Inspector should be invited to look at how an increase in risk justifying recall can be prevented, rather than simply at the probation service response when that best of all outcomes has not been achieved.

⁸ Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future: The experiences of people recalled whilst serving IPP sentences*. Prison Reform Trust. <https://prisonreformtrust.org.uk/publication/no-life-no-freedom-no-future-the-experiences-of-people-recalled-whilst-serving-ipp-sentences/>

⁹ HM Inspectorate of Probation. (2020). *A thematic review of probation recall culture and practice*. <https://www.justiceinspectores.gov.uk/hmiprobation/inspections/recallthematic/>

Mental health

The committee recommended that in “identifying solutions to the IPP problem, the MoJ, HMPPS and Parole Board must acknowledge the psychological harm caused by the IPP sentence, and the challenges this presents regarding progression. The MoJ and HMPPS should also set out how they intend to improve access to mental health support for IPP prisoners, including transfers to secure hospitals and therapeutic settings. (Paragraph 58)”

While the government partially accepted this recommendation, its response completely fails to recognise the uniquely damaging impact of the IPP sentence on the mental health of those it continues to detain indefinitely — only going so far as acknowledging that the uncertainty of a release date “can be unsettling”.

People given IPPs are disproportionately likely to have pre-existing mental health problems and research documents the negative mental health implications of IPP imprisonment.¹⁰ 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.¹¹ Mental ill-health can limit progress towards release. Serving an abolished sentence can make people feel ‘disenfranchised, frustrated and distressed’.¹² As we have already argued, this doesn’t simply disappear on release. Research also 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.¹³

In the government’s response, the committee is told that it should be reassured by existing work underway following several recent reports into mental health, and that a Mental Health Working Group has been formed “manage the commitments and activities in the reports”. The government has refused to engage in the substance of the committee’s recommendation. We urge MPs to challenge the government to spell out what work is underway which specifically addresses the substance of the committee’s recommendation.

¹⁰ 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

¹¹ Annison, H., & Straub, C. (2019). *A helping hand: Supporting families in the resettlement of people serving IPPs*. Prison Reform Trust. <https://prisonreformtrust.org.uk/publication/a-helping-hand/>

¹² 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.thegriffinssociety.org/system/files/papers/fullreport/griffins_research_paper_2018-02_updated_21.03.2019.pdf

¹³ 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.

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