

This briefing examines how IPPs, and other risk-based sentences, are now the chief drivers of the prison population's continuing growth. And considers the situation for those caught up in the uncertainty of this sentence.

INDEFINITELY MAYBE?

how the indeterminate sentence for public protection is unjust and unsustainable

a Prison Reform Trust briefing

One of the first acts of Jack Straw's term as Secretary of State for Justice was to call for an urgent review of the indeterminate sentence for public protection (IPP).¹ A move welcomed by criminal justice professionals and the families of those serving IPP sentences alike. How is it that an as yet little known sentence, newly introduced, has become perhaps the most pressing of the many crises facing a beleaguered prison system?

The answer is that in the 2003 Criminal Justice Act, the Blair government, with astonishing recklessness, created a new sort of sentence that is on course to destabilise the running of prisons, to breach the capacity of the whole system and even to rebuild the miseries of the old system of asylums for people suffering mental illness but this time within the bleakness of our prisons.

Until now the government has had two reactions to the havoc of the IPP sentence, which has set the criminal justice system reeling. The first is to boast publicly about their toughness in introducing it. The second has been to ignore the operational chaos caused by its unplanned implementation on prison landings and to stonewall requests for the resources urgently needed to service the massive new load the sentence entails. The government has played gesture politics while neglecting its management responsibilities to the prison system.

This briefing examines how IPPs, and other risk-based sentences, are now the chief drivers of the prison population's continuing growth. It looks at the law creating IPPs, drawn with extraordinary broadness and a lack of awareness of consequence. It also looks at how the courts have taken up the sentence and the reality of how the sentence is delivered in already crowded and unprepared prisons. It considers the situation for those caught up in the uncertainty of this Kafkaesque sentence. Finally, it looks ahead and makes recommendations for the future.

The new justice secretary has been wise to put IPPs at the top of his in-tray. Left as is the IPP sentence would have short-circuited the entire prison system and spawned injustices for a generation.

The indeterminate sentence's effect on the prison population

The prison population is at record levels and yet, almost across the board, magistrates and judges have responded to the government's plea not to lock up people unless absolutely necessary. The number of people on remand at the end of May 2007 was down 6% on the year before. The number of fine defaulters in prison was only 64. The number of women in prison was down by 2%. And, the number of people on short sentences of under 6 months, was down by 2%. These are the cases where sentencers can most often choose between prison, or a community punishment.

And yet the population continues to surge. The reason is very simple. Sentencing and the function of prison are being quietly but thoroughly transformed, in a way that will have far-reaching consequences. Prison is now being used increasingly not as a place of measured punishment but as a place of containment for public safety. The 'just dessert' model of sentencing where a period of punishment is carefully measured out against the offence has been replaced by a belief that people can be held indefinitely, for a huge range of offences, until rehabilitation has been administered and somehow proven.

Indefinite sentences, that is life and the new sentence of indeterminate detention for public protection, have grown by 31% over the last year. The number of people serving these sentences now exceeds the number on short sentences of a year or less. Risk aversion is behind other rises in the prison population too. The number of civil prisoners is historically high at 1,376; it is overwhelmingly accounted for by foreign national prisoners detained beyond their sentence, following the scandals of 2006. Recalls to prison for people released on license have grown by 350% over the last 5 years. Finally, home detention curfew (HDC) has begun to wither on the vine. There were 2,336 people on HDC on 6 July. A year ago on 8 July 2006 it was 2,729. That reflects a growing reluctance of governors and others to take any risk, however carefully calculated, on releasing people on tag.

Today's acute overcrowding crisis is not just the result of sending more people to prison for longer. It is also caused and compounded by not letting people out at the end of their tariff or their sentence. The government is presiding over a shift in the function of prison, from a place of measured punishment to a crude instrument of social engineering and an ineffective, and massively expensive, form of crime prevention. IPPs are a major part of this shift.

The scale of IPPs is overwhelming. In a parliamentary answer, Gerry Sutcliffe, then prisons minister, gave the number on 20 April 2007 as 2,547,² two years after the sentence was introduced. Despite the short tariffs many are given, only five people had been released up to the end of April.³ As detailed below, a large number are still in local prisons, in a kind of holding pattern, not progressing their sentence. And yet, the only estimate the government gave of the effect of IPPs on the prison population was at the Standing Committee stage of the Criminal Justice Act 2003, from the then prisons minister Hilary Benn:

It will depend on how the courts, having regard to the trigger offences and the thresholds that we have set, operate the assessment of "significant risk to members of the public of serious harm". That is quite difficult to know. However, we have assumed in our modelling that over time—because it would take time for the effect to develop—there would be an additional 900 in the prison population. That is only modelling, of course, and the honest answer is that it is difficult to assess the effect, because it depends on the courts' interpretation of the provision.⁴

It is now estimated that there will be 12,000 people serving IPPs by 2012.⁵ The government's estimate was out by an order of magnitude. The government undertook a radical and far-reaching change in sentencing policy without thinking through the consequences or, as we shall see, making provision for the resources needed.

What is an indeterminate sentence?

In the run up to the Criminal Justice Act 2003, which brought in the IPP, the government commissioned the Halliday report on sentencing, called Making Punishments Work. This took an overview of the purpose and effectiveness of sentencing and came up with many recommendations that would be taken forward in the 2003 act. Because of a renewed overcrowding crisis, however, some of the most important provisions, such as the 'custody plus' to reform shorter prison sentences would never be commenced and put into practice.

However the Halliday Report was explicitly a refinement of the earlier 'just desserts' model of sentencing which measured out an appropriate punishment against the gravity of an offence. Although Halliday did suggest an adjustment to take account of a growing concern with highly persistent offenders:

The existing 'just deserts' philosophy should be modified by incorporating a new presumption that severity of sentence should increase when an offender has sufficiently recent and relevant previous convictions.

That statement is wholly different from the new indeterminate sentence that was finally introduced in the act. The IPP, as described in the explanatory notes for the bill, is a different kind of sentence for dangerous offenders:

This sentence may only be passed by a court if the offender is convicted of a specified sexual or violent offence (listed in Schedule 15) carrying a maximum sentence of 10 years or more and the court considers that the offender poses a significant risk of serious harm.

It is, in effect a life sentence. Like the life sentence it contains three elements. First a 'tariff' that is a period of imprisonment judged to be a just dessert for the crime committed. Second, an unlimited time of detention until the prisoners can prove that they are no longer a threat to the public. Finally, release under licence. A licence is a set of stipulations about work, accommodation, associates and behaviours that a released offender must stick too. It is administered by the probation service, and any breaking of conditions or any new offending whatsoever, can land the person straight back in prison. The only difference between the life and the IPP sentences is that the person released from the IPP can, eventually, bid to have their licence ended. As the explanatory note for the bill puts it:

After 10 years has elapsed following the release of an offender serving a sentence of imprisonment or detention for public protection, the offender may apply to the Parole Board for his licence to be terminated. If the Parole Board is satisfied that no further risk is posed then it must recommend to the Secretary of State that the licence be terminated. If the Parole Board concludes that the offender continues to pose a risk then it must reject the application and the offender may not submit another application until at least 12 months has elapsed.

It is obviously far too early to see how this difference will work in practice. For all intents the IPP is a life sentence. However, while the use of the life sentences has traditionally been very tightly controlled, there is a large range of offences that can put people in the field for an IPP. Schedule 15 of the 2003 Criminal Justice Act is a hugely heterogeneous list. For violent offences the list includes assault resisting arrest, robbery, arson, burglary with intent to do unlawful damage and breaking section 1 of the public order act (rioting). So it runs all the way from relatively minor offences, not necessarily causing individual harm right up to the crime of genocide. The picture for sexual offences is equally mixed. The list includes voyeurism, keeping a brothel, necrophilia, exposure and bestiality.

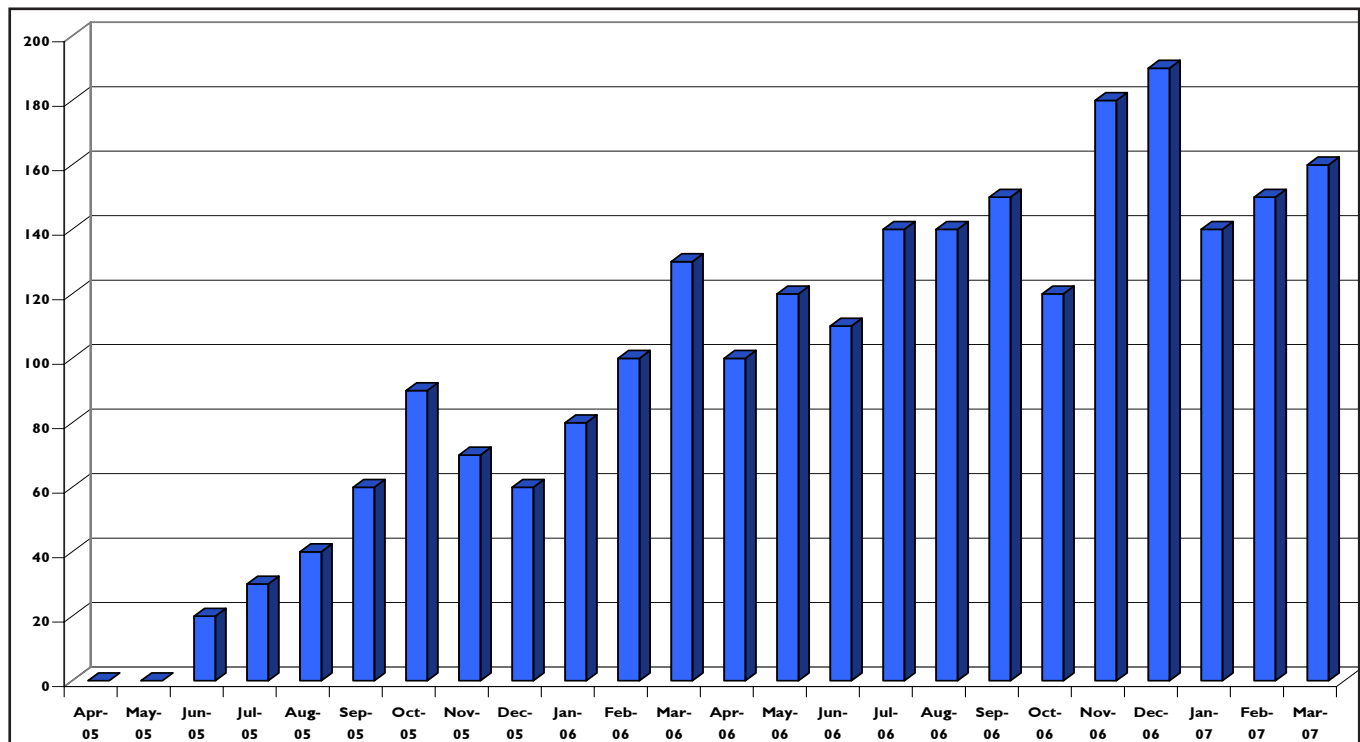
The range of over 150 offences, and the fact that many of them are offences that encompass a wide span of possible seriousness, mean that the IPP is drawn very loosely.

There was no significant debate about IPPs during the progress of the Criminal Justice Act 2003 in parliament. So it is hard to know exactly what the government's intention was in creating the sentence. But that very lack of discussion and the absence of a grounding within the Halliday report suggests that the government did not think the measure was a major change likely to have a particularly large impact. That is reinforced by Hillary Benn's prediction of the impact on the prison population, quoted above. Perhaps the IPP was envisaged as a technical tweak to the sentencing structure, designed to stop the repeat of a handful of very serious and notorious cases. It may, indeed, have been introduced in the wake of a single high profile case. Appearing to take a particularly tough line on those thought to be dangerous may even have been used as a trade off to allow the government to press ahead with promoting community sentences for petty offenders. In any case, the drafting of the legislation, and its take-up by the courts, means that IPPs have become the major legacy of the 2003 Act.

Who is being sentenced to indeterminate custody?

From a relatively slow start the courts have turned to the IPP as a staple sentence

Number of IPP receptions into prison by month since their introduction(*)



(*) Figures rounded to nearest 10.⁶

The first statistics available from the Home Office and the Ministry of Justice suggest that IPPs are being used for relatively minor offences and for younger people rather than recidivists for whom every other option has been exhausted.⁷ The median tariff for the first year of use was 30 months, or two and a half years. Such a tariff suggests a serious offence, but not one at the higher end of the possible scale for which IPPs are given. 70% of the people given IPPs in their first year of operation were serving tariffs of 3 years or less. 57% of the people receiving them were under 30. It is clearly vital that the government evaluate soon whether the take-up of this sentence has been both directed differently and taken up more widely than anticipated.

Certainly, the chairman of the parole board, Sir Duncan Nichol raised his long-term concerns in a *Guardian* article in January of this year:

Sir Duncan Nichol, chairman of the parole board, has revealed official projections that show the number of prisoners on the new indeterminate sentences at any one time is expected to accelerate even faster and reach 12,500 within five years – far outstripping the 8,252 strong traditional ‘lifer’ population in England and Wales.

It is not just that more people are going into prison on IPPs than expected, it's also that people are not coming out. Gerry Sutcliffe, then prisons' minister, revealed in a parliamentary answer that at the end of April 2007 only five people had been released from IPPs. And yet, we know that of the sentences handed down in their first year, 147 had a tariff of 1-18 months. Some people who have contacted the Prison Reform Trust had tariffs better measured in weeks than months.

A few individual stories have emerged in the media that suggest the IPP sentence can be given to very vulnerable people, perhaps indicating an overlap between 'dangerousness' as defined in the 2003 act and mental illness. For example, the BBC reported on 17 January 2007, the case of Natasha Precardo who was remanded into prison on charges which were later dropped. While in prison she tried to set fire to herself. After that failed attempt, she tried to start a few more fires in her cell. Sentencing her to an IPP with a six month tariff, the judge said:

In prison you developed a taste for fire. But there it did no more than cause repeated damage and disruption. However, if you were to do something like that in a hostel, a house or a block of flats you could cause great injury. In fact, you could cause loss of life.

Another story is that of Christopher Brown, reported by the BBC on 16 December 2005. He was a homeless 18 year old who set fire to some outside rubbish bins in Barnstable, causing a few pounds worth of damage. According to his lawyer he was seeking the longest possible sentence in prison, feeling that he could not cope with life in the community. He received an IPP with an 18 month tariff.

How are IPPs administered?

The administration of IPPs, like that of life sentences, is directed toward people being declared no longer a threat to the public. Release is in the hands of the Parole Board, looking at the progress of the individual through the prison system. The decision of the Parole Board is dependent on the individual successfully completing courses designed to tackle the causes of their offending and being able to give an account of the constructive life they hope to live on the outside, given the training, education and accommodation help the prison has given them. In other words, the essence of the IPP, like the life sentence is good behaviour from the prisoner and progression through the courses offered by the prison system. People are judged no longer to be a threat when they have gone through the necessary hoops.

But IPPs were introduced at a time when the system for processing lifers, functionally almost exactly the same as that for IPPs, was already grossly stretched and oversubscribed. As the Chief Inspector of Prisons put it in her 2005/6 annual report:

The last five years have therefore seen a depressingly circular movement: from a system unable to cope with the unexpected pressure of 4,000 indeterminate-sentenced prisoners to one equally unfit to deal with twice that number. The inability to progress these prisoners properly through the system is both a casualty of, and a contributor to, our overcrowded prisons.

One prisoner told the Prison Reform Trust:

A lot of us with short tariffs are finding it difficult to get to a first stage lifer prison to do the courses being asked of us. It seems that the government have brought in these new sentences without thinking it through.

In fact, a huge number of people with life and IPP sentences are simply stacked up in local prisons. These prisons are not only the busiest and most crowded part of the system, they also leave a person serving an IPP stuck in limbo, all but unable to progress their sentence. In a parliamentary answer, the prisons' minister confirmed the huge scale of the problem:

There were 2,603 prisoners serving indeterminate sentences held in local prisons, as at 13 April 2007. The majority of them were waiting for transfer to first stage lifer prisons, but the figure also includes a small number of recalled life sentence prisoners who will not be on the waiting lists for main lifer centres.⁸

Most people given IPPs will also have served a period of custodial remand, before trial and before sentencing. Given that this counts against their tariff, there is even less chance of completing the sentence within the tariff. As Sir Duncan Nichol in January's *Guardian* article said, short tariff IPPs for an offender meant "that he is entitled to be considered for release almost as soon as he is received into custody following trial."

One prisoner with a six month tariff wrote to the Prison Reform Trust to say he was already six months over his six month tariff and had only just been transferred to a first stage lifer prison.

This warehousing of IPP prisoners, stuck in bureaucratic tailbacks, is crucial. It strikes at the heart of what makes prisons run smoothly and what promotes rehabilitation: fairness. People going into prison need to be offered an implicit bargain that goes along these lines: if you behave yourself and work towards rehabilitation, you will progress through your sentence, earn more privileges and eventually win your release more quickly than otherwise. Instead of a clear, responsible bargain like that being offered to IPP prisoners, they are stuck in limbo, waiting out endless years on the packed and transitory landings of Victorian local prisons.

In his report on the prison disturbances of April 1990, Lord Woolf, stressed the importance of fairness and justice in the administration of a prison sentence:

A recurring theme in the evidence from prisoners who may have instigated, and who were involved in the riots, was that their actions were a response to the manner in which they were treated by the prison system. Although they did not always use these terms, they felt a lack of justice. (p226 – 9.24)

The huge hold ups suggest that the government was either incompetent or irresponsible in planning for the introduction of this sentence.

Lifer News, the publicly available journal for people working on life and IPP sentences, puts the lack of resources starkly in its Autumn 2006 edition, 18 months after the sentence was introduced, and a full four years after the criminal justice act was introduced in parliament:

No additional funding for indeterminate sentence prisoners is available at present, the NOMS board has provisionally allocated funding for the next financial year. However, it has yet to determine how this money will be used.

The prisons' minister confirmed the lack of specific planning for the revolutionary change IPPs represented to the prison system:

No additional resources were allocated specifically for IPP but correctional services budgets take into account the overall work load demanded of them, including all the measures in the 2003 Act.⁹

Even before the IPPs added such huge pressure to the prison system, it was already struggling to maintain some of its

rehabilitation functions. Offending behaviour programmes peaked in 2003/4 at 9,169. They fell to 7,744 in 2004/5 and again further to 7,445 in 2005/6 according to Prison Service annual reports. Articles on a case brought by two tariff-expired IPP prisoners in the *Guardian* and the *Telegraph* on 23 June 2007, reported that over 1,000 people are already held beyond tariff, without access to the courses they need to demonstrate that they are ready for release.

As one mother put it writing to the Prison Reform Trust:

When the law was changed regarding sentencing, the correct provision should have been made for prisoners like my son, an IPP sentenced prisoner. As soon as he was sentenced he should have been moved to the appropriate prison thus allowing him to complete the courses in time for parole and abide by the judge's recommendation.

Instead the IPP sentence has been constructed on the lines of a Wild West filmset. There are frontages to the buildings, but once you go through the doors, there's nothing behind them. People sentenced to IPPs are in an indeterminate state, as well as on an indeterminate sentence.

The problem stretches beyond the administration of the sentence within prisons. The parole board is also a potential choke point. The board was not given extra resources to cope with the huge new demand IPPs represent. As Mr Justice Collins put it on a judgment on a case brought by Michael Cooper, serving life for arson, and reported by the Press Association on 18 May:

There is no doubt there is much greater pressure upon the Parole Board resulting from recent legislation – in particular the 2003 Criminal Justice Act – on sentencing and life imprisonment for public protection.

In as far as there is a problem over resources, that must be faced by the Government and the necessary resources provided to enable the board to carry out its functions in a manner which complies with its obligations under the law.

Again, it is almost impossible to escape the conclusion that the government brought forward the IPP legislation in a knee-jerk way with no real planning or forethought – it is a 'dangerous people act' in the tradition of the dangerous dogs act.

Can prison make people less 'dangerous', anyhow?

We know from the NHS plan 2000 that 5-8% of the prison population as a whole has a 'serious and enduring' mental illness. There is no reason to suspect that this would be any less for people with IPPs. In fact, given that the reckless framing of the sentence doesn't even attempt to unpick 'dangerousness' and vulnerability, it is possible that mentally ill people will be more heavily represented in the IPP population. Beyond the moral problems of this, it is likely that people will be put in an environment that will make them less settled. It would be, for example a kind of torture to put someone suffering a serious condition involving paranoia or psychosis in the chaotic local prison environment indefinitely. As the Joint Committee on Human Rights put it in its 2004 report on deaths in custody:

The evidence we have gathered suggests that prison actually leads to an acute worsening of mental health problems. By sending people with a history of mental health problems to prison for minor offences the state is placing them in an environment that is proven to be dangerous to their health and well-being.

There are other groups for whom prison is an ill-judged intervention, if the aim is to stabilise their behaviour and to increase their future prospects for an orderly life. Research for the Prison Reform Trust's *Know One Knows*

programme on learning difficulties and learning disabilities has found that 20-30% of the prison population have difficulties that interfere with their ability to cope within the criminal justice system. The courses that should be working on reducing their risk factors while inside, are not designed to meet their needs. One young man serving an IPP told the Prison Reform Trust:

To lower my risk, I have to do ETS [Enhanced Thinking Skills: a course offered in prison] but because I can't read and write, I can't lower my situation. I'm just stuck. They are saying that until I can read and write I can't do ETS and I can't lower my risk. It's hard. Hard dealing with the sentence let alone dealing with the stress of not being able to do the course

It's like when I'm trying to say I can't learn no more. I've been to a special school and I've learnt as much as I can but they don't believe that. But why should I be punished for two things? I'm being punished for the crime and again for not being able to read and write.

Another very significant group within the prison system are children and young people. The sky-high re-offending rates for children and young people suggests that spending such a formative period in custody does little to socialise and little to promote life-chances. Why then should an indeterminate sentence, which is built around the idea that time in prison can make people less likely to re-offend, be the right way to deal with a young person?

But the doubts over prison's ability to increase people's chance of leading a stable life on release are not just confined to people with mental illness, those with learning difficulties and learning disabilities, and young people. The prison environment works against many of the factors that predict re-offending for everyone. As Halliday states in his report:

Of social variables: drug misuse is most strongly linked with the likelihood of reconviction; problems with employment, accommodation and money are also significant, and; alcohol misuse is significant in relation to older offenders.

In each of these cases prison either worsens the factors, or is not the best place to work on them. Similarly, the Social Inclusion Unit's seminal 2002 report on reducing re-offending by ex-prisoners, identifies accommodation, employment and family contact as crucial to reducing re-offending. Time spent in prison, especially in a system as chronically crowded as ours, works away as a solvent on all of these ties. The longer people spend in prison, the more likely they are to be estranged from their family and the more difficult they find it to re-enter the job market. All the efforts of prisons to increase employability and nurture family contact, take place against the riptide effect of prison, which constantly tugs prisoners further away from the community.

Finally, there is the effect of long-term institutionalisation on an individual's fundamental ability to function in the outside world. Many long-term prisoners have found themselves unable to cope with release or the move to open conditions. The institutional life of prison offers comparatively little responsibility for decision-making and a lot of imposed structure built into the day. If the effect of the IPP sentence is looking up a cohort of people throughout their twenties, then what will be the outcome on release?

The classic pattern of desistance from crime is for people to turn away from it during their twenties, perhaps as they acquire family and work responsibilities. Therefore it might seem to follow that locking people up for their twenties will mean releasing them, after their 'cycle' of offending has finished. But that would be to omit the effect of long-term imprisonment as a variable. Locked away without developing ties, social skills or work experience, what will people do on their release? A potential problem with locking up people for their twenties is that they shamble out in their thirties; as a generation of criminal justice system veterans with no stake and no prospects.

Vulnerability and risk for IPP prisoners

One prisoner told the Prison Reform Trust:

From talking to others on IPPs there is a growing unrest as we are told nothing and are just 'left to it' and just today one person has taken their own life who was on IPP.

The overwhelming experience of prisoners on IPPs and concerned families contacting the Prison Reform Trust is confusion about their sentence. That is clearly no state of mind to begin a prison sentence. Potential life sentenced prisoners are identified on remand and the process of explaining their complex sentence begins then. Prisoners likely to receive IPPs, and their families, are not given adequate information or support.

The Prison Reform Trust has heard of people with IPPs taking their own lives in prison but the government refuses to give figures on the total number. Astonishingly, they claim it would be too expensive, a 'disproportionate cost', to examine the 150 or so suicides since the sentence was introduced to tally up the number of people serving IPPs.¹⁰

Release and parole

Once people on IPPs begin being released, there will be a different set of pressures on the criminal justice system.

First, the probation service will have an almost open-ended commitment to manage and supervise a large number of people in the community. Given that releases are now running so far behind schedule, that is not currently a problem. But given the lack of extra resources and planning for the prison part of the sentence or the Parole Board, it would surely be complacent to assume that the government has paid sufficient attention to the demand IPPs will place on probation services.

Second, this sentence have been grossly oversold to the public by ministers from the top down. Tony Blair, when prime minister, brandished the IPP sentence several times at prime minister's questions, as proof of his toughness and commitment to public safety. For example here, on 13 June 2007:

The Criminal Justice Act 2003 allows us, for the first time, to give indeterminate sentences for the most dangerous, violent or sexual offenders.

By stating that all IPPs are being given to the 'worst' offenders, and by betting on the ability of prison system that his government put under such pressure to rehabilitate successfully, he was teeing up a huge problem for his successors. People released after a full range of offences re-offend to some degree. The less serious the offences, broadly speaking, the more likely re-offending. By locking up mid-range and even petty offenders, and over-promising on preventing re-offending the government is planting the seeds of a press storm once people are released. And some do re-offend, however petty the offence. Not only will that strike public confidence, but it also risks setting up a ratchet that will choke the release of other IPP prisoners what ever progress they have made.

Even before the IPP, recalls for life-sentenced prisoners had been increasing steadily:

Recalls from life licence^(*), from table 10.9 in the Offender Management Caseload Statistics 2005 England & Wales

Number of recalls	1999	2000	2001	2002	2003	2004	2005
Life licence(1)	34	34	30	26	44	71	111

^(*) Inmates whose licences have been revoked and were recalled to custody excluding abscondees.

Once people are finally released from IPPs, it is only too likely that they will find themselves pulled back into prison again and again for minor offences or for technical breaches of their licences, such as missing probation meetings. Even after first release, there's every chance that men and women with IPPs will continue to live in a criminal justice limbo for the rest of their lives.

Crime Prevention and Public Protection

In 2006 the crime figures for US rose by 1.3%, robberies and large city murders by 6%. That is the second year of rises. New York City, has more murders as a single conurbation than across the whole of England and Wales in a year. This is in a country that has doubled its prison population from one to two million over the last fifteen years. Much of that growth has been caused by risk-based sentencing. Neither the destination nor the direction of travel is desirable.

In the 10 years of the Blair government, ambition for crime prevention has atrophied from a real desire for early intervention and tackling the drugs trade and drug addiction, into a tough-sounding but ultimately ineffectual tinkering with individual sentences. This approach does almost nothing to affect the overall volume of crime. Sentencing should be proportionate to the offence, delivering justice for the victim and the wider society. But sentencing for individual offences has a very limited effect on the volume of crime and violence in society: it satisfies the need for justice rather than being an effective instrument of public policy. For example, the Carter Report ascribed 22% increase in the use of custody since 1997 only a 5% decrease in crime. It stated:

there is no convincing evidence that further increases in the use of custody would significantly reduce crime.

And yet, the Blair government's record of frantic meddling with individual sentences, cheered by the media, would suggest that is the best lever on overall criminal activity. Whatever the problem, whether knife crime or dangerous driving the answer was always looked for in sentencing policy.

Violence is a continuing blight on our society, whether between young men, between partners or directed at children. It is insufficient to respond only with sentencing policy, given the limited reach of the criminal justice system

Drug treatment, an epidemiological approach to violence prevention, family counselling, after school and school-staying programmes, work on the built environment, the reduction of hazardous drinking... There are very many effective, affordable and proven ways to reduce violence in society which lie gathering dust on the shelf while the government adjust and readjusts sentencing policy

If the prison system carries on down this path, what comes after the immediate horizon of overcrowding? We will face the moral question of humane containment. How can we justify locking someone away for years beyond their term of punishment, in the appalling conditions of a busy prison? David Rose, in his excellent article on IPPs in the *New Statesman* quoted Winston Churchill on the outcome of an earlier measure of preventative detention. It netted:

Men of little mental capacity or strength... whose frequent convictions testify as much to their clumsiness as their persistence in crime.

Finally, such is the climate of fear around crime, that there has been no serious political debate about what an acceptable rate of false positive is for public protection sentencing. What happens if someone spends five years of their life in prison, beyond their term of punishment unnecessarily because someone thought them a threat? How would this mistake come to light? Who would be held responsible for it? The answers are: nothing, no way and no one.

Once someone is painted dangerous, they simply have to wait out the time until they are recategorised. As for false positives, they simply don't figure. Despite the fact that holding someone in prison unnecessarily is perhaps the worst

crime that the state can commit against an individual. For the counter-balance, it looks all too likely that we will have to wait for the stories of people detained for years after their release date.

What next

The government must act now to:

- ▶ Review the use of the indeterminate sentence for public protection (IPP): has it been used as a specialised tool for serious violent and sexual crimes, or has it been taken up more generally than planned and more generally than useful? There is no doubt that some of the offences for which the sentence has been given are grave, but what is needed is a review of its overall use and effectiveness.
- ▶ Take full account of substantive criticism of IPPs sentences levelled by, among others, the Lord Chief Justice, the chairman of the Parole Board and the Chief Inspector of Prisons.
- ▶ Issue guidelines to check the growth in the use of IPP sentences during the period they are under review.
- ▶ Require courts to consider the question of 'dangerousness' much more carefully.
- ▶ Take immediate account of any decisions made as a result of judicial review of the failure to provide opportunities to undertake offending behaviour programmes in order to progress the IPP sentence.
- ▶ Revisit the 2003 act. For example: instead of IPPs being a default setting, operating as a 'strike'law, they could be handed down as a separate and additional judicial decision, supported by evidence and separately appellable.
- ▶ Provide adequate information and support for prisoners and their families facing the prospect of an IPP.
- ▶ Look urgently at how the IPP sentence is being administered in prisons, and find ways to clear the backlogs.
- ▶ Establish proper recording and reporting mechanisms so that the full extent of the impact of the IPP sentence can be assessed and individual progress monitored.
- ▶ Tackle the resource needs of the Parole Board and the prison and probation services.
- ▶ Look at release and resettlement, people will need far greater support to lead a constructive life, and an end to the 'recall to prison first, ask questions later' approach.
- ▶ Conduct an urgent investigation into the number of IPP sentenced men and women in prison who have taken their own lives, and review safer custody procedures.
- ▶ Review specifically the prevalence and influence of mental illness on IPP sentencing and subsequent treatment in prison.

1. Press Association. Andrew Woodcock, 12 July 2007
2. House of Commons, written answers 26 April 2007
3. House of Commons, written answers, 17 May 2007
4. House of Commons, Standing Committee, 11 February 2003, col 917
5. Guardian, 10/1/2007
6. House of Commons, written answers, 17 May 2007
7. Offender Management Caseload Statistics, Online Data spreadsheets: section 8 and 10 (2005)
8. House of Commons, written answers 30 April 2007
9. House of Commons, written answers 30 April 2007
10. House of Commons, written answers 26 April 2007

Selected Prison Reform Trust publications and briefings

- ⇒ Prison Overcrowding: the Inside Story, 2002 - £7.50
- ⇒ Growing Old in Prison - a Scoping Study on Older Prisoners, 2003 - £9
- ⇒ The Decision to Imprison: Sentencing and the Prison Population, 2003 - £10
- ⇒ Troubled Inside: Responding to the Mental Health Needs of Women in Prison, 2003 - £9
- ⇒ Going The Distance - Developing Effective Policy and Practice with Foreign National Prisoners, 2004 - £7.50
- ⇒ Lacking Conviction: the Rise of the Women's Remand Population, 2004 - £9.50
- ⇒ Troubled Inside: Responding to the Mental Health Needs of Men in Prison, 2005 - £12
- ⇒ No One Knows - the prevalence & associated needs of offenders with learning difficulties & learning disabilities, 2007 (briefing paper)
- ⇒ No One Knows - identifying and supporting prisoners with learning difficulties and learning disabilities, 2007 - £10
- ⇒ Mitigation: the role of personal factors in sentencing, available from October 2007 - £12
- ⇒ Bromley Briefings: prison factfile, May 2007 (briefing paper)

The Prison Reform Trust would like to thank the Hadley Trust for their support and Edward Holmes for all his applied research which informed this briefing by William Higham.

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Prison Reform Trust, 15 Northburgh Street, London EC1V 0JR.
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