

## **Nick Hardwick**

- 1. Ahead of your discussions with the Secretary of State you asked me to set out my assessment of the scale of the challenge surrounding IPPs and for my views on the options, risks and issues, going forward. As we discussed I have been involved in the IPP issues for over 4 years both as the lead official responsible for sentencing policy and as Chief Executive of the Board so these represent my personal views drawing on my experience and knowledge.**
- 2. My assessment, is that the Parole Board is capable of working with its partners, alongside legislative change, to deliver increased IPP releases from the baseline previously modelled (c2,000 at the end of 2019-20) to c1,500 over the same period. This progress is dependent on the Parole Board being resourced to clear its backlog, being freed up from the cases where we add least value, and a modest increase in our release rate, balancing the need to protect the public.**

## **Background**

3. The indeterminate sentence for public protection was implemented in 2005 under the Criminal Justice Act 2003 and abolished in 2012. At the point of abolition there were 6,017 prisoners serving the sentence who had never been released. The latest published statistics show that there on 31<sup>st</sup> March 2016 there were 4,133 prisoners serving an indeterminate sentence for public protection (who have never been released), this represents a fall of 31%, and the population continues to fall by around 50-60 each month. However this headline number masks the fact that there are a growing number of IPPs who have been recalled to prison since their release.
4. The reduction in the number of IPP prisoners is a reflection of the fact that the parole system is progressing more cases and releasing an increasing proportion of IPP prisoners. Pre-abolition of the IPP sentence in 2010-11 the Parole Board released just 135 IPPs representing just 11.5% of the IPP review cases they considered. In 2015-16 the Board released 591 IPPs which was 35% of the cases they reviewed.
5. Despite the increase in releases, the sheer volume of IPP prisoners remaining in custody mean that unless there is a dramatic change in the release rate, or a statutory change, a significant number of IPPs will remain in custody beyond 2020. Even if the Board could release IPP prisoners at broadly the same rate for the next 4 years modelling suggests that c2,000 IPP would remain in custody by 2020.

## **Understanding the IPP population**

6. To understand the choices for resolving the IPP conundrum it is important to understand the complexion of those that remain in prison.
7. Whilst over 4,000 IPPs remain in prison a proportion are not yet eligible for release. 803 IPP prisoners have not yet served the **minimum** period set by

the judge, to be served for punishment. 88 prisoners had minimum tariffs of over 10 years (suggesting they had committed very serious offences). I strongly suspect that some offenders who received an IPP sentence would have received a discretionary life sentence if the IPP had not been an option. Whilst some IPP offenders however will have committed extremely serious offences meriting lengthy incarceration, some did not. 693 of those now serving an IPP sentence had a tariff of less than two years. 1,787 had a tariff of two to four years. The shortest tariff was 28 days.

8. The Government's current position is that IPPs will only be released once the parole board decides they are safe to release. Whilst it is almost certain that there will be a hard core of IPP prisoners who remain a significant risk, the aim of the system should be to ensure that all IPP prisoners are safely managed back into communities at the earliest opportunity. The Parole Board's draft strategy which we have developed, seeks to maximise the efficiency and effectiveness of our current processes in order to eradicate unnecessary delays.

### **General Efficiency:**

9. Following the Osborn judgment in 2013, demand for hearings increased exponentially and a significant backlog of cases needing to be heard arose. The number of outstanding cases reached a high of 3,163 in 2015. The Board has reduced the number of outstanding cases by nearly a quarter to 2,359 since then, as we focused on backlog reduction. Our new strategy seeks to eradicate the backlog by the end of 2017. That good progress is dependent on funding to keep parole hearings at a high level.
10. If the backlog was eradicated around 150-200 of those released would be IPPs. Aside from releasing those prisoners awaiting hearings eradication of the backlog would enable us to prioritise IPP cases. If we could review cases more regularly IPPs would have an opportunity to secure their release more quickly.
11. The Parole Board's strategy also envisages that the Board should focus less of its resources on determinate recall cases. There are legislative proposals to tackle this. Ahead of that we have tentatively agreed with NOMS that more release decisions should be made executively by the executive with the parole board reserved for the cases that merit its attention, or where there is a dispute.

### **Risk appetite:**

12. The Parole Board has a statutory release test which it **must** apply. The Board currently release 39% of those we review, but the release rate is sensitive to criticism of the Board, serious further offences taking place, and confidence. Under our draft strategy we see the opportunity through stronger leadership, to increase the confidence of Parole Board members to make the right decisions, whilst balancing protection of the public. We are already looking to ensure that the Board has the best possible information on risk and recently met with academics to start reviewing evidence about the relevance and weight of the evidence that the Parole Board currently uses to assess risk such as OASys scores and offending behaviour programmes.

### **Improving readiness for release and release plans:**

13. One of the key issues facing IPP prisoners is their assessed readiness for release. Where the Offender Manager and Offender Supervisor recommend release or progression the Parole Board will in most circumstances follow that recommendation. To achieve the best results we should seek to increase the proportion of cases that are recommended for release or progression perhaps through the use of additional tools such as location monitoring equipment and alcohol tags.
14. Our draft strategy proposes that the Parole Board could change its focus when they review all IPP cases who are over tariff to focus minds on the steps that might be necessary to find some hope of release. This might involve robust case management and greater case ownership for complex cases to ensure there is a pathway to release for all IPPs. Joint work is likely to be the most effective long-term solution to the IPP problem and I am certain that the prison reform programme has the potential to incentivise accelerated release.
15. The current prison populations suggest that there will be c2,000 IPPs in prison by 2020. I am relatively sanguine that if we had the resources and backing to follow through on the steps set out above we are capable of driving the number of IPP prisoners to c1,500 by 2020. That would mean releasing 10% more IPPs each year than the record high we achieved in 2015-16. I do not think that we are capable of reducing the population below 1,000. A reduction of that scale would require statutory intervention.

### **Policy interventions:**

16. Sentencing policy officials are well versed in the options here (there are variants variants):
- a) Conversion: The majority of IPP prisoners have now passed their tariff expiry point. It would be technically possible to seek to convert all or some of those serving an IPP sentence in order to provide a clear and certain release point. As a starting point ministers might for example seek to convert to a determinate term all prisoners with tariffs of under two years (693 prisoners) or all with tariffs of under 4 years (2,480 prisoners in total). It would be technically possible (though presentationally more difficult) to convert all IPP prisoners.
  - b) Establishing a "sunset" provision for all or some sentences. Ministers could seek to legislate to provide that all (or some) IPPs who are now post-tariff must be released no later than a future date (in say 2018/19) or within x years of their tariff expiry.
  - c) Changing the Parole Board release test. LASPO 2012 took a power to amend the parole Board's statutory release test. The current test focuses on protection of the public. It would I think be possible to change the release test for short tariff IPPs. Whilst the previous view (including from me) is that changing the test was unlikely to change behaviour in isolation, I do think it is capable of driving an improved release rate alongside stronger leadership.

### **Recall population**

17. As we have discussed previously ministers are considering policy options for reducing the recall prison population which has increased massively since the

late 1990s. Looking at the numbers there is, in my view, a compelling case for ministers to consider the growing problem with IPP recalls. Under the law as it stands IPPs are subject to recall for the rest of their lives. They can apply to have their licence rescinded if they comply with their licence condition for ten (unbroken) years. Based on the rate at which they breach few will ever be in a position to apply to have their licence rescinded.

18. Whilst the number of IPPs awaiting their first release has fallen by 31% since 2012, the number of recalled IPPs has risen fivefold over the same period. In 2015, 363 IPP prisoners were recalled, and under current arrangements can only be released by the Parole Board. It would be technically possible to change the licence period for IPPs to provide a maximum licence period of say 5 years (or some other period). Whilst it creates more work for the Board, it might be worthwhile exploring the potential for the Board to conduct an expedited paper review of recalled IPPs shortly after their recall to custody. Alternatively, the criteria for recall might be raised and greater autonomy given to offender managers, prison governors and approved premises managers to deal with licence breaches.

## **Conclusion**

19. These policy choices would guarantee a reduction, of the number of IPPs in custody. The challenge for the Government is the inevitable risk that some of these prisoners (who have previously been assessed as too dangerous to release on multiple occasions) go on to commit further offences. A small number of IPPs have already committed serious further offences following their release. Balancing that, is the sad reality that a proportion of all released prisoners go on to commit further offences.

**Martin Jones**  
**6 July 2016**