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Imprisonment for Public Protection – The dynamics of the failure

by Mike Lauder

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Background

On 17 July 2002 David Blunkett announced a White Paper, Justice for All (Home Office, 2002). He stated:

“In protecting the public, we are placing emphasis on dealing with dangerous, violent and sexual offenders. Those not sentenced to life imprisonment but who are nevertheless a danger to society will remain in custody until they are considered safe for release. An indeterminate sentence will ensure that they will only be released under strict supervision when they are no longer assessed to be a threat to the public”.

(HC Deb 17 July 2002, c287)

The Imprisonment for Public Protection (IPP) sentence was introduced under the Criminal Justice Act 2003. The IPP sentence was abolished in 2012, but this action was not retrospective. By December 2024, there were still 2,614 IPP prisoners (1,045 unreleased and 1,569 recalled) and, of those unreleased, 98.7% had served time beyond their tariff (Ministry of Justice, 2025).

There are now some parties who believe that keeping this cohort of people in prison is uniquely cruel as there is evidence that to do so might create unwarranted psychological harm (Grimshaw, 2022). Members of Parliament now recognise that the IPP system is fundamentally flawed. What was devised to be a social good has, some would argue, become one that creates harm (Justice Committee, 2022).

Aim

The aim of this working paper is to describe the lessons to be learnt from the implementation of IPP.

Approach

In this working paper I summarise some potential learning from my examination of the House of Commons Justice Committee report on the IPP sentence, published in September 2022 (Justice Committee, 2022). I use Disaster Incubation Theory (DIT) as an analytical framework to build a picture of the system dynamics. In this case, the system was the one that devised, implemented and managed IPP sentences. The framework is used as a catalyst to prompt questions to stimulate fresh insight into why a system might fail. The DIT theory also provides a framework around which future work could be structured.

I will start by defining some of the key terms that I use in this paper. Central to this discussion are the terms ‘disaster’, ‘crisis’ and ‘accident’. At their most basic level, these terms all refer to unwanted events that we care about. In this context, the ‘we’ refers to us as individuals or as part of a grouping. If ‘we’ do not care about the events in question, they are merely an occurrence. The important dynamic here is that while those who care may be prepared to spend a considerable amount of energy tackling the unwanted event, those who do not care will be less likely to be willing to do the same.

Disaster Incubation Theory

Disaster Incubation Theory (DIT) provides us with a way to explore the origins of unwanted events. DIT was developed by Barry Turner in 1978 and is divided into six stages.

Stage One: the 'Notional Nominal Starting Point'. This is a period in time when unwanted events are foreseen, discussed and measures put in place to prevent them from emerging.

Stage Two: the 'Incubation Period'. This is the period of routine operations where the unwanted emerges.

Stage Three: the 'Precipitating Event'. This is the event that brings the systemic failure to the attention of the process owner.

Stage Four: the 'Onset'. This describes how the unwanted event continues to unfold and develop, even after the issue has been recognised.

Stage Five: the 'Rescue and Salvage'. This is about how the unwanted event is to be resolved and the New Normal to be established.

Stage Six: the 'Full Cultural Adjustment'. This is the period of learning after the event.

One of the weaknesses in Turner's model is that it is linear. Turner describes the stages as being a sequence that finishes with learning from what has happened. In my interpretation of his model, I look to use it with more consideration of the true complexity of such situations.

In general, when we think about disasters, crises and accidents, we think of crashes, fires and explosions. We think about their start point as being at a moment in time. However, there is a second type of unwanted event that does not have a pronounced 'Precipitating Event' (Stage Three). These emerge slowly over time: they have been labelled 'progressive' events. In the development of progressive events, we can see the same stages as described by Turner, but these stages are more intertwined. The model becomes non-linear in nature and, therefore, the basic DIT model needs to be adapted to reflect this.

I have therefore made a number of adaptations to Turner's basic model to cope with non-linear systems (Lauder, 2024), some of which I list here. First, I look to enrich Stage One by linking it to current standard Performance and Risk Management practices. Second, I look at the link between Stage One (Notional Nominal Starting Point) and Stage Six (Full Cultural Adjustment). This places the whole framework within the context of organisational learning. Third, in Stage Two (Incubation Period), I observe Turner's Model as a recurring pattern framed around 'Recovery Windows' (Edmondson, 2005). Fourth, Crisis Management Theory accepts that, after the crisis, the world will not return to its original state. This revised state is labelled the *New Normal*. This label is explored at the end of Stage Five. Fifth, I see Stages Four (Onset) and Five (Rescue and Salvage) running concurrently as a competition between the forces (dynamics) that perpetuate the unwanted events and those that impose the *New Normal*. Finally, by considering the model as a complex system, this allows for the incorporation of other theories that relate to disaster, crisis, safety or accident management. While it might not explain these relationships in terms of cause-and-effect, it does help us to be aware of and question their existence as a factor in system dynamics.

IPP Crisis

In the case of IPP, the unwanted event that some people care about is that there are prisoners who are subject to indefinite detention and this is thought to be causing them unwarranted psychological harm. While the courts have stopped handing out IPP sentences, there are still many prisoners subject to the terms of the IPP regimes. In summary, the DIT model covers the period from the inception of IPP (circa 2002) until a time in the future when the issue is no longer considered to be a problem. The IPP system has already been subject to three periods of review: in 2007 (Ministry of Justice, 2007), in 2012 (Legal Aid, Sentencing and Punishment of Offenders Act 2012) and in 2022 (Justice Committee, 2022). The term 'review' here refers both to specific published reviews (such as the internal Lockyer Review in 2007, shared with the public in 2008) and more broadly to a period of review, in which the various actors involved reflected on the system. In terms of the overall DIT model, these reviews can be seen as being three *Recovery Windows* within Stage Two (Incubation Period) as they were attempts to avoid the emerging crisis. However, lessons learnt from these reviews are still relevant today and so are linked to Stage Six (Full Cultural Adjustment). Here we see that learning from these types of events is a truly complex process. Let us now look at each stage in more detail.

Stage One - Notional Nominal Starting Point

In the case of IPP sentences, I would set the 'Notional Nominal Starting Point' (Stage One) as 2002, when discussions began around what would eventually become IPP (HC Deb 17 July 2002, c287). It can be assumed that the IPP system was put in place to resolve an issue previously identified to which the IPP sentence was seen to be the solution. This means that there was history from which it would have been possible to learn if the stakeholders had taken the opportunities open to them.

In his statement to the House of Commons on 17 July 2002, David Blunkett said that the purpose of the IPP sentence (the outcome) was 'to protect the public, punish the perpetrator and prevent reoffending'. How the Ministry of Justice converted this intent into practice has not been examined. However, what is clear from the subsequent history of IPP is that the system did not deliver the outcome intended.

In practical terms, the proposed sentence was made up of three parts. There was the tariff (the minimum sentence to be served), pre-parole (the period during which the prisoner must prove to the Parole Board that they are no longer a threat to the public and so can be released from prison) and licence (when the prisoner has to show for a period of 10 years from their release that they are not a threat to the public by abiding by the terms of their licence). Each part makes its own demands on the justice system.

It is unclear whether a formal model was used to support the analysis done prior to the implementation of the IPP system. However, if we map this process to DIT, we only see the Precipitating Event (Stage Three), the Rescue and Salvage (Stage Five), and the Full Cultural Adjustment (Stage Six) stages. This means that many opportunities to learn from the past, and to avoid making the same mistakes, were lost. I will offer two examples.

First, we see confusion between whether the system is meant to be rules-based or principles-based. The use of vague definitions, in this case 'significant risk of serious harm' and 'unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined' (Criminal Justice Act, 2003, s.247) is consistent with a principles-based approach. However, the reviews focused on the processes involved and this would suggest a rules-based approach. There is a perception that 'the Law' offers a rules-based approach to managing society. However, the Law also seems to like to use vague definitions (as shown above). In the case of IPP, this vagueness led to overuse of the sentence and a risk averse approach to release decisions during the pre-parole stage of the sentence. Academic research in safety management has revealed the practical flaws in such approaches that lead to unwanted outcomes. It also suggests that there is a need to define clearly when not to use a rule as much as when to use it. In the case of the Law, these issues can be argued out in court. While this may be good for lawyers, it can be seen to be bad for those subject to a flawed legal process. Here we see the Law failing to learn from practice in other areas of life.

The second example is a clear failure to establish a decision baseline. In this case I would have expected to see a discussion about the role that imprisonment plays in society. As the intention of the IPP sentence was to use it as a form of public protection, I would have expected to see benefit of incarceration considered against the cost to the individual and whether stakeholders thought that this was a price society was willing to pay. This is the complex dynamic that lies at the heart of the IPP proposal and therefore constituted a significant risk to the overall success of the scheme right from the start. In the case of IPP, we now see the very complex dynamics at work and how these dynamics have caused the IPP sentence to unravel. I would speculate that this, and a number of other key dynamics, were not examined in any meaningful manner, the risk they posed was never understood and so measures to prevent them were never put in place.

Stage Two – Incubation Period

In Turner's conceptualisation of the DIT model, Stage Two (Incubation Period) is the period following implementation where the evolving events start to overwhelm the measures put in place to prevent unwanted occurrences. In the case of IPP, I have yet to find evidence that the issues that emerged were ever identified or that prevention measures were put in place. Should this prove to be the case, then it cannot be a surprise that these failures emerged within the system. The lesson from the study of safety critical systems is that if you are not clear about what you want to prevent and put in place the appropriate barriers, then you can't be surprised when such failures emerge.

There have been three periods of review (*Recovery Windows*) in which stakeholders have identified issues with IPP (in some cases publishing these findings in official reviews or reports) and tried to resolve them (in some cases through legislative change). This approach is consistent with the *Perfect World Paradigm* (see Lauder, 2024). There is however no established way to consistently label these revisions, and this can lead to confusion when discussing them. To illustrate this issue, we will discuss the three efforts to revise the IPP process in more detail.

The first revision of the system is known as the Lockyear Review. It was initiated in 2007 and included 16 recommendations that looked to address backlogs in the system and to amend the future processes. These

adjustments started in 2008. The review did not change the desired outcome, just the way the process was managed. The overarching problem was not resolved; as there was no perceived crisis, rather only the identification of a defective process, the Lockyear review can be seen to be a *Recovery Window* with a reset of the Incubation Period (Stage Two).

There was a second revision of the process in 2012, when the European Convention on Human Rights (ECHR) declared IPP a human rights violation. This led to the abolition of the IPP sentence later that year in the *Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012*. The legislative change removed the tariff for new prisoners; but left several thousand prisoners still subject to the provision of the sentence. It could be argued that the ECHR findings constituted Stage Three (Precipitating Event) and the crisis was resolved (Stage Five – Rescue and Salvage) by no longer allowing the IPP sentence to be given. In addition, the desired outcome had also changed (although this has never been plainly stated): this clearly constituted a desired *New Normal* involving no new sentences. The system learnt and went to reset (Stage One - Notional Nominal Starting Point). Therefore, several of the constituent parts of the DIT framework were present but, in hindsight, this was simply another *Recovery Window*, as the fundamental problems of IPP prisoners remained.

The most recent revision to the system was the result of stakeholders raising issues such as: 1) pre-parole prisoners having limited access to means that show they are no longer a threat to the public (i.e. rehabilitation programmes), 2) the number of prisoners recalled to prison while under licence, and 3) the number of prisoners who were self-harming. This led to the House of Commons Justice Committee publishing a report in 2022: it received a mixed response. The Government rejected three recommendations and partially rejected another four: they only accepted four. This means that, despite the considerable efforts to resolve them, a *New Normal* was not set and problems still persisted within the IPP system. Again, opportunities to learn were lost. For this reason, this revision is likely to turn out to be just another *Recovery Window* rather than the final solution.

Stage Three: Precipitating Event

Stage Three is about the process owner (in the case of IPP this is the Ministry of Justice) acknowledging a problem and taking steps to remedy it. A good rule of thumb is that every benefit comes at a cost. However, when the benefits and the cost accrue to different stakeholders, the costs (risks) may be overlooked. This would seem to be the case with IPP sentences.

It is probable that the modes of failure that occurred were never considered. As I speculated earlier, those who set up the IPP process are likely to have only considered what the problems were, defined their solution, and then how they would implement it. Consistent with the *Perfect World Paradigm*, it is likely that they would have mainly focused on delivering the envisaged benefit (the new IPP regime). It is evident from the way that the IPP situation has emerged that those who are now expressing concern did not have a real voice in the beginning. Here, we can see that those who would benefit from the initiative were not the people who would suffer from its flawed implementation. Those who benefited had a voice, those who now pay the price did not.

For the IPP case to reach the *Precipitating Event*, there needs to be an alignment between those with the power to resolve the matter (the process owner, i.e. the Ministry of Justice) and the stakeholders expressing concern. It should be noted that at this point there does not need to be any alignment of what the *New Normal* should look like, this is likely finally to emerge only during Stage Five (Rescue and Salvage).

The key point of learning here is that one person's crisis may not be reflected in the views of others. For Stage Two (Incubation Period) to become Stage Three (Precipitating Event) it requires the process owner to accept the nature of the problem and to commit to resolving it. Gaining this commitment proves to be more difficult when there is no jeopardy for the process owner if they do nothing.

Stage Four: Onset

Even when the process owner has acknowledged that there is a problem, there will be dynamics that cause the problem to persist until either action is taken to change the dynamics or the energy that drives the dynamics naturally dissipates. In the case of IPP sentences, a number of these dynamics are clear. One example is entrenched positions. I will highlight two such issues. The first concerns how stakeholders view the issues: some advocates feel that a number of those subject to IPP sentences have been recalled unfairly, the Ministry of Justice does not. The dynamic caused by this clear difference of opinion will affect whether the issues are acknowledged or not. A second dynamic is differing stakeholder attitudes towards recommendations proposed. The recommendation for full abolition of the IPP sentences was rejected as the sentences 'had been lawfully imposed'. The recommendation to reject a resentencing exercise was based on arguments ranging from concerns of the victims to the resources needed. All these positions show entrenched views at play. This stops people from asking whether what they had been trying to do was still the right thing to do (technically with organisational learning this is known as 'double loop learning').

To learn about the dynamics at play, stakeholders need to examine and understand why they reject ideas. These reasons then need to be scrutinised to ensure that the reasons remain valid rather than just being an artefact or bias ingrained within the system. Without truly understanding the cause of a problem, a viable solution will never be found and the dynamic causing the Onset (Stage Four) will not be effectively countered.

Stage Five: Rescue and Salvage

While in Stages Two to Four, it is good enough to recognise what the unwanted event is, a key facet of Stage Five (Rescue and Salvage) is the need to define what the *New Normal* should look like. Only once the new end state has been agreed can provisions be made to bring it into effect. This requires an alignment amongst the diverse range of stakeholders. In the case of IPP, a defined *New Normal* may be sometime in coming.

The Government's view is that the 'IPP Action Plan, suitably updated, remains the best option by which these offenders can progress towards safe release' (Justice Committee, 2023). What they have not done, as yet, is define

their idea of the *New Normal*. If these plans are to command the trust of all stakeholders, then the authorities need to provide a clear set of performance measures against which progress can be judged.

As part of the learning process, we again see the need for a clearly defined aim (supported by the appropriate *performance measures*) to increase the probability that it will be achieved. This will utilise the resources identified and set aside during the risk/crisis management contingency planning process; if not, suitable resource will have to be extracted from elsewhere if the issue is to be resolved successfully. This transfer of resources may be the catalyst for other processes within the overall system to fail. Those advocating for change now have to move from identifying that there is a problem to defining what needs to be done to resolve it.

Stage Six: Cultural Readjustment

In Turner's conceptualisation of the DIT model, learning comes at the end of the process. The learning process is more complex as described above. In practice, the opportunity to learn is a constant in any process. Unfortunately, while there is always the opportunity to learn, organisations do not always take advantage of this potential benefit. In the case of IPP, there are clear questions about what learning has been accumulated over time and whether anything new will be discovered as part of a future inquiry. I would speculate that any such inquiry process would learn nothing new and would simply highlight issues already covered within the relevant literature but that were overlooked in this case.

Discussion

DIT's purpose is to make people question the rigour of their analytical approach. The main benefit it brings is to beg questions that beget more questions, ones that will stimulate deeper thinking about issues. This enriched thinking should also stimulate learning. With reference to the IPP case study, the main question is, where is the system today and has the Justice Committee done enough to prompt the final resolution of this problem?

The acquisition of learning is never a straightforward process. In Stage One, I suspect that there was little effort made to learn from the past. There will have been many failed initiatives within the sponsor organisation and similar bodies which could have provided warnings of the potential failures experienced by the IPP initiative. It is evident that this learning was not captured. During Stage Two, we see the reviews (*Recovery Windows*) undertaking a truncated form of investigation when seen through DIT. Their mode of operation was to try to correct the perceived faults in the system ('to do things right') rather than ensure the system was 'doing the right thing'.

An issue for complex processes is the difficulty there is in differentiating between activity that constitutes *Recovery Windows* within Stage Two (Incubation Period), and real progress to a *New Normal*. In this case there were three *Recovery Windows*, each spanning a number of years. It is also still unclear whether the process owner (Ministry of Justice) is now on route to resolving the issues raised by IPP sentencing or whether the current activity will, in hindsight, just be another *Recovery Window* where the opportunity was lost.

We also see examples of where the benefits and costs balance have been misappraised, despite this subject being a major part of a number of key academic and practitioner disciplines (Risk Management, Performance Management, and Safety Management to name but three). We see this failure in Stage One (Notional Nominal Starting Point) where the system clearly focused on the benefit of bringing in the IPP system but failed to appreciate the cost (e.g. mental health concerns) for those subject to its provision. We see a similar failure in Stage Two (Incubation Period) where there was failure to appreciate that a benefit to IPP prisoners (the Probation Boards focusing their effort on resolving IPP issues) would have detrimental effects on the service that would be delivered to the rest of the prison population. These issues therefore raise the question of why it is so difficult to learn from the past.

There is also an argument that, because of the benefits/costs imbalance, legal processes should be treated with the same rigour as safety critical systems. The rigour demanded of safety critical systems is due to the extreme jeopardy that any failure might place upon stakeholders. What is clear from the IPP case is that the same consideration (duty of care) should be applied to legal processes, as they also have the ability to ruin people's lives. We might take as an example the total number of people effected by the failure of the Boeing 737 Max and compare that to the IPP system, they are comparable. We then need to look at the jeopardy that befell Boeing to the jeopardy faced by the department that designed the IPP system: they are not comparable. Is this fair and equitable?

However, in the end, the most fundamental aspect of a system is its purpose. In Stage One the purpose needs to be clearly stated along with a realistic plan to deliver it. Then, as is now standard risk management practice, the barriers to success need to be defined and measures put in place to prevent them happening. An *a priori* position of performance management is that if the purpose is not clearly articulated then it is unlikely to be achieved. This leads to us questioning how clearly (defined by SMART¹ performance measures) was the purpose of IPP stated originally. Then as we track each of the three *Recovery Windows*, we need to question whether a *New Normal* was ever defined. The first *Recovery Window* seems not to have changed the purpose, just the parameters of the system (who would be captured by it). The second *Recovery Window* again did the same. By the time of the third *Recovery Window*, many stakeholders had recognised that the system was intrinsically unfair and should be ended. However, again the *New Normal* has not been articulated. In order to help move this problem to a resolution, a *New Normal* needs to be agreed and articulated so that a common purpose can be forged amongst all the stakeholders.

I see two potential *New Normal* states being created. The first is that the prison system should not hold any person subject to an IPP tariff. The second is that the prison system should only hold those prisoners who warrant the IPP tariff. In both cases it is assumed that this purpose would be balanced against keeping the public safe. Even in this simple example it should be clear to see how different the courses of action to achieve them would need to be. The resources needed, the trade-offs required and the potential unintended consequences would have to be examined before a plan could be put in place. In terms of the DIT model, we are now back in Stage One.

1 SMART - Simple/Specific – Measurable – Appropriate/ Attainable/Agreed – Relevant/Realistic – Time Bound/ Timely/Taut

Finally, we see that the processes of government seem to militate against the efficient resolution of problems. Rather than having highly directed action (as recommended by performance management studies), we see 'nudges and winks' where one part of the system politely suggests and another part politely rejects ideas. This approach seems to focus more on the integrity of the process than on the resolution of the issue. Learning from other disciplines stresses the needs for clear leadership to enable a system to define and deliver a *New Normal*!

Conclusion

In this paper we see how the failure to take lessons from the past is likely to have contributed to the IPP failure, and whether the culture of the department involved (its failure to learn from the past) is likely to lead to failures of a similar magnitude in the future. One of the conclusions that may be drawn from this assessment is that maybe the legal systems should face the same degree of scrutiny and rigour as do safety critical systems, as system failures can cause a great deal of unintended harm to individuals in their care.

As a society, we aspire to learn from the past. We aspire to ensure that some unwanted event 'never happens again' (Lauder, 2013). The idea of learning from the past is a simple concept but it is much more difficult to put into practice. There is a wealth of distilled experience (derived from practice and academic studies) available to those who are prepared to look. However, the desire for efficient decision-making militates against the thoroughness needed to evaluate the knowledge available to them (Hollnagel, 2009). This trade-off is why the exultation that 'it should never happen again' is naïve; learning is a very complex process. Therefore, in this field, points should be given for effort!

The use of models such as DIT helps organisations to focus on what is important. It does this by enabling its users to establish the dynamics of any situation and therefore gives them the ability to manage them in the most appropriate manner.



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