

Child lifers: Developments in law and policy and the need for a distinct approach by criminal justice professionals

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England and Wales stands out as one of the only jurisdictions in western Europe where indeterminate sentences (sentences that have no formal end date) can be imposed on children aged between 10 and 17. Research has shown the pains that children serving such sentences experience, including feelings of abandonment, loneliness and 'deep despair' (p. 30).¹ Despite this, the number of children subject to indeterminate sentences in England and Wales has grown over the last decade, and recent changes in legislation have substantially increased the minimum terms in custody that judges must consider when imposing life sentences on those who have committed murder as children. This increasingly punitive legal response to children is in tension with other developments in law and policy that recognise the specific challenges and needs of children serving life sentences, as they progress through the system and into the community (e.g., shorter period on life licence, prioritisation for parole, improved support, and minimum term reviews). This article aims to bring the tension between the law and policy in this area into focus, and to highlight the important implications for practitioners working with 'child lifers'.²

What do we mean by 'child lifers'?

Children in England and Wales, aged between 10 and 17 years old, can be subject to indeterminate sentences. Such sentences have no fixed end point and mean that, in principle, children can be detained for the rest of their lives. England and Wales is the only jurisdiction in Europe where life sentences are regularly imposed on children. In this paper we refer to those

sentenced to indeterminate sentences for crimes that occurred when they were children as 'child lifers'.

Children are subject to different considerations from adults at sentencing,³ and the names given to indeterminate sentences for children and adults are distinct. There are three types of sentences that 'child lifers' currently in prison or under probation supervision in England and Wales are serving:

- ❑ Mandatory sentence for murder committed as a child: Detention at His Majesty's Pleasure (DHMP) (Sentencing Act 2020, s259);
- ❑ Discretionary life sentence: this includes detention for life (Sentencing Act 2020, s250 read with s258) and detention for life for manslaughter of emergency worker (Sentencing Act 2020, s250 read with s258A);
- ❑ Indeterminate sentence of Detention for Public Protection (DPP) imposed between 2005 and 2012: these sentences were originally imposed under the Criminal Justice Act 2003, s226(3) and s226(4). This sentence is the child equivalent of the Indeterminate sentence for Public Protection (IPP) for adults. Although the sentence was abolished in 2012, this was not applied retrospectively to those who had been sentenced already.

As with all life sentences in England and Wales, when a child is given a life sentence, the judge passes a 'minimum term' or 'tariff' period, which is the number of years they must serve in prison before they can be considered for release. Once the minimum term has been served, the Parole Board considers whether it is safe to release the individual on the basis of public protection. If they decide it is not, the individual remains in custody until the Parole Board

1. Tynan, R. R. (2022). Living in the present, imagining a future: Children and young people navigating the mandatory life sentence. *Prison Service Journal*, 261, 27-32.

2. While the term 'lifer' can be objectifying, one of the authors (Laura Janes) discussed the use of this term with a young man serving an indeterminate sentence which he received when he was a young teenager. He explained that he and other children sentenced to life preferred that it was used to highlight the stark reality of the law in England and Wales, which enables life sentences for children. He also explained that it was important that the prison system distinguishes individuals sentenced as children from those sentenced as adults in their response to child lifers as their life experiences are very different.

3. See s105 Children Act 1989, s58 Sentencing Act 2020.

approves release at a subsequent periodic review (reviews must occur at least every two years). On release, the individual is required to remain on licence for the rest of their natural life and can be recalled to prison at any time if they breach their licence conditions. The only exception to this is for those serving a DPP sentence, where the licence may be cancelled after a specified period of time (see below).

Prevalence of child lifers in England and Wales

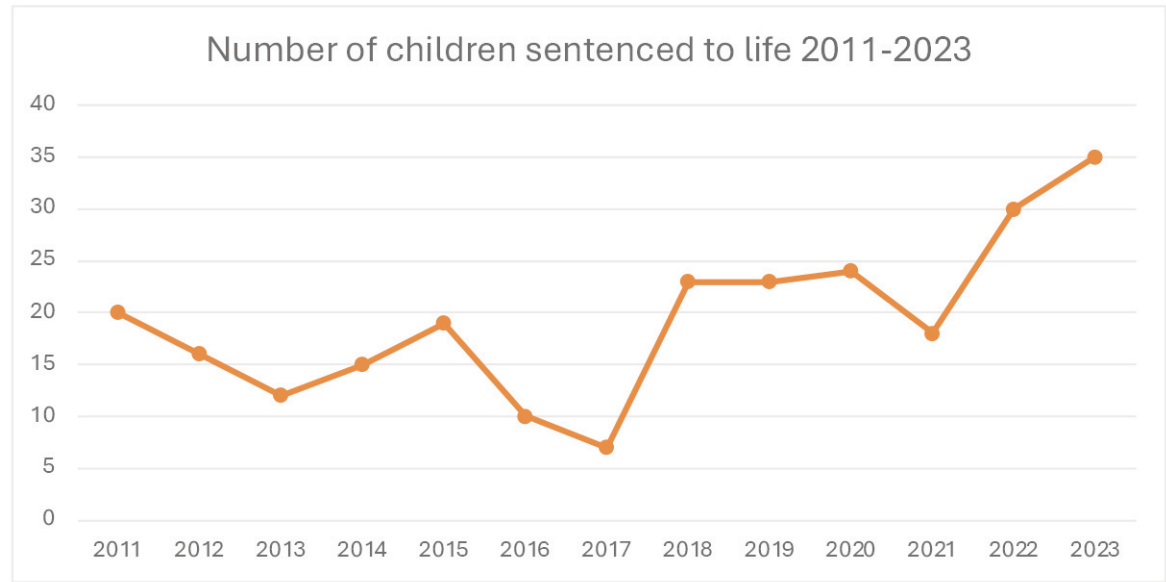
Although the number of individuals in prisons in England and Wales who were sentenced to DPP as children has reduced (due to its abolition), more children have been given either mandatory or

discretionary life sentences over the last twenty years and have been sentenced to longer minimum terms.

In total, 326 children were sentenced to DPP during the seven years that it was available to judges.⁴ The latest data shows that, on 12th March 2024, of those 326 children, approximately 32 remained in custody having never been released (meaning that these children will have served at least 12 years in prison); 48 were in custody after being released but recalled to prison; and a further ‘hundred or so’ had been released and were serving their DPP sentence in the community on licence.⁵

In recent years the number of children sentenced to mandatory or discretionary life each year has been rising, as Figure 1 below shows.⁶

Figure 1: Number of children sentenced to mandatory and discretionary life sentences 2011-2023.



In September 2022, there were 446 unreleased men and women who had been sentenced to DHMP (mandatory life),⁷ as children, and 36 children currently serving mandatory and discretionary life sentences in England and Wales (DHMP and Custody for Life).⁸ It is very likely that the use of ‘joint enterprise’, a legal tool that enables more than one individual to be convicted for a single offence, has contributed to the increase in the number of children serving life sentences. For example, in the six months to September 2024, the

Crown Prosecution Service reported that 14 per cent (95) of defendants in homicide or attempted homicide cases ‘prosecuted on a joint enterprise basis’ were children.⁹

In line with the broader (significant) rise in the average length of life sentences in England and Wales,¹⁰ data shows that growing numbers of children serving life sentences have been sentenced to longer minimum terms. Despite the starting point for a child convicted of murder being 12 years in custody in 2021, at least 14

4. Ministry of Justice (2016). *Criminal justice statistics quarterly: December 2015*, Outcomes by offence tool. Ministry of Justice.
5. Victims and Prisoners Bill, Volume 836: debated on Tuesday 12 March, Col 1979 2024 <https://hansard.parliament.uk/lords/2024-03-12/debates/9B2F3A68-A886-433F-93AF-79FA2B266E0A/VictimsAndPrisonersBill#contribution-C1F86D90-AA85-4CAF-8C25-F549F8349D74>
6. This data excludes DPP sentences in 2011 and 2012 when they were last available. Ministry of Justice (2024). *Criminal Justice System statistics quarterly: June 2023*, Outcomes by offence data tool: June 2023. Ministry of Justice.
7. FOIA request 221215009 (2023), Freedom of Information Act (FOIA). Requested by Susie Hulley.
8. FOIA request 221117026 (2022), Freedom of Information Act (FOIA). Requested by Susie Hulley.
9. CPS (2023), ‘Crown Prosecution Service Joint Enterprise Pilot 2023: Data Analysis’, <https://www.cps.gov.uk/publication/crown-prosecution-service-joint-enterprise-pilot-2023-data-analysis>
10. Crewe, B., Hulley, S., & Wright, S. (2020). *Life imprisonment from young adulthood: Adaptation, identity and time*. Palgrave.

children were given minimum terms of 15 years or more in prison during that year, compared to three in 2011, and none in 2002.¹¹ Significant increases in mandatory minimum terms for children sentenced to DHMP, introduced in the Police, Crime, Sentencing and Courts Act 2022 (outlined below), is expected to lead to more children entering prison on life sentences with very long tariffs.¹²

The pains of life sentences for children

There is little empirical research conducted with children sentenced to life in England and Wales to inform our understanding of their experiences. However, the work that is available here and in comparable contexts highlights the significant emotional, psychological, and social problems that children who are sentenced to life face in prison and on release.

Recent analysis of the experiences of (relatively small numbers of) boys still in the early stages of a life sentence in England and Wales notes the lack of perceived legal and moral legitimacy of the sentence, as well as difficulties associated with processing the offence.¹³ This was particularly the case for children convicted of murder at a trial involving joint enterprise, who struggled to cope with their detention and make sense of their future.¹⁴

The early stage of the life sentence has been identified as an acutely emotional time for individuals convicted as children or young adults. In a rare, qualitative study of the experiences of individuals who were convicted of murder as children in South Australia, Deegan describes a 'pattern of extreme emotional turbulence' (p. 138) among the children during the early stage of their life sentences.¹⁵ Deegan

notes the negative impact of such feelings on adolescents (e.g., night terrors) and on the prison environment (e.g., greater volatility).¹⁶

Children's acute emotional response to serving a life sentence was, in part, due to the significant rupture in their relationships with family and friends that occurred on entry into custody. Missing loved ones was the most cited pain of imprisonment for children in Tynan's research, who described the 'deep distress' (p. 30) of being forcibly separated from their mothers and younger siblings.¹⁷ Participants in Deegan's research felt 'total abandonment' when they began their life sentence and described it as akin to being banished to a different world.¹⁸ Being torn from their familial and social world at this key stage in their development left individuals 'depressed' and 'traumatized'.

Despite such distress, support for children serving life sentences in custody appears to be elusive. For example, none of the four children serving life sentences in a prison in England in Tynan's research felt that they were being 'advised or supported to find positive ways to cope'.¹⁹ Thomas and Sadie (psychologists working with children sentenced to life) developed a group based 'intervention' to support child lifers after noting that the children's 'distress was intensified by the loneliness of having no sanctioned space in which to

share it with others in similar circumstances' (p. 52).²⁰ However, such support appears to be ad hoc rather than systematically available.

Children who have grown up in prison report improvements in maturity, emotional control, psychological stability, and the development of greater respect for others over time.²¹ However, they also recognise that their maturation is 'limited and contextual' (p. 308).²² In this way, adaptation to

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11. UK Parliament. (2022). The Lord Bishop of Gloucester: Written Questions.

<https://members.parliament.uk/member/4540/writtenquestions#expand-1489049>

12. See s127, Police, Crime, Sentencing and Courts Act 2022 <https://www.legislation.gov.uk/ukpga/2022/32/section/127>

13. Thomas, H. and Sadie, C. (2022). "We are the walking dead": Piloting group therapy for adolescent boys serving life sentences. *Prison Service Journal*, 261, 51-57; See footnote 1: Tynan (2022).

14. See footnote 1: Tynan (2022).

15. Deegan, S. (2021). *Juvenile lifers: (Lethal) violence, incarceration and rehabilitation*. Routledge.

16. See footnote 15: Deegan (2021); see footnote 10: Crewe, et al. (2020), regarding men and women sentenced to long life sentences during young adulthood in England and Wales reporting a similarly acute emotional response to the early years in custody.

17. See footnote 1: Tynan (2022).

18. See footnote 15: Deegan (2021).

19. See footnote 1: Tynan (2022).

20. See footnote 13: Thomas and Sadie (2022).

21. See footnote 1: Tynan (2022).

22. See footnote 10: Crewe, et al. (2020); Crewe, B. (2024). 'Sedative Coping', contextual maturity and institutionalization among prisoners serving life sentences in England and Wales. *The British Journal of Criminology*, available online <https://academic.oup.com/bjc/advance-article/doi/10.1093/bjc/azae001/7585780>.

imprisonment may be maladaptive for release, as children remain inexperienced in many areas of 'life' outside, including intimate relationships. In Deegan's Australian study, individuals sentenced to life as children also felt that the focus on 'reducing risk', rather than human growth, limited their capacity to grow and develop in a meaningful way during the sentence (as people serving indeterminate sentences in England and Wales have also noted).²³

Practitioners' responses to children sentenced to life, and their offences, can also negatively impact children's welfare and development. Deegan found that the seriousness of 'murder' obscured the young age of children in custody and the pain of being separated from family was overlooked by staff, who focused on the material possessions children had rather than the 'loneliness' they suffered.²⁴ Tynan noted that common behaviours associated with adolescence (e.g., breaking rules, testing boundaries) were punished as infractions in prison or used as indicators of risk, attracting 'tighter' oversight by staff and prison psychologists.²⁵ Racialised tropes among prison staff about children from black ethnic backgrounds and their pre-prisons lifestyles (particularly those convicted using joint enterprise who are often seen to be 'gang involved'), also rendered them less likely to see them as vulnerable children, impacting their subsequent responses to these children.²⁶

In a rare exploration of the release experiences of child lifers, Deegan noted the prevalence of feelings of fear and anxiety, as individuals recognised their lack of 'life' experience beyond a prison setting.²⁷ Technological ignorance, inexperience in intimate relationships, and difficulties finding secure employment led to feelings of insecurity. Individuals also experienced precarious situations with parole supervisors, with some succumbing to the pressures of release and then being recalled to prison. Deegan described one of her participant's initial optimism about their future on release had 'free fallen' so that post-release he felt 'sad', and was 'highly agitated and paranoid' (p. 186).²⁸

While others managed to adjust and find employment, they still experienced multiple obstacles, including restrictive licence conditions, a lack of belonging, and struggling to integrate into social situations.²⁹ Piecing together the available research demonstrates the multitude of problems that child lifers suffer during their detention and on release.

A distinct approach to children — the development of the existing legal framework

The need for a distinct approach to children has been recognised in law since the Juvenile Offenders Act 1847. This Act distinguished children by allowing those under 14 years to be charged with lesser offences than

their adult counterparts. An entirely separate court system for 'juveniles' was established thereafter, under the Children Act 1908, otherwise known as the 'Children's Charter'. The Children's Charter was characterised as a reforming measure which was intended to provide 'special treatment for child offenders, with the emphasis more on treatment and care than on punishment' (p. 81).³⁰

The Children's Charter replaced both the death sentence, and the life sentence (which was the sentence that would otherwise have been imposed on children aged between 7 and 16 who had been condemned to death and then reprieved) with an order for a new type of sentence that authorised detention for an unspecified period (s103). Modelled on a similar sentence for people with mental disorders, it was designed to be preventative and therapeutic in character rather than punitive, authorising detention for as long as necessary, or at His or Her 'Majesty's Pleasure'. The sentence was expanded to all children above the age of criminal responsibility but under 18 in the Children and Young Person's Act 1933 (s53).

It was not until the Murder (Abolition of Death Penalty) Act 1965 was passed that the death penalty was abolished for most crimes committed by adults in

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23. See, for example, Jarman, B., & Vince, C. (2022). *Making progress? What progression means for people serving the longest sentences*. Prison Reform Trust.

24. See footnote 15: Deegan (2021).

25. See footnote 1: Tynan (2022).

26. See footnote 1: Tynan (2022).

27. See footnote 15: Deegan (2021); and see discussion of 'contextual maturity' in Crewe, et al. (2020) (footnote 9).

28. See footnote 15: Deegan (2021).

29. See footnote 15: Deegan (2021).

30. Aikin, K. W. W. (1972). *The Last Years of Liberal England, 1900-1914*. Collins.

England and Wales and the mandatory life sentence was introduced for adults in its present form. The provisions of that Act highlighted the intended difference between mandatory life sentences for children and adults: while an indeterminate sentence was to be imposed on both in cases of murder, for adults a minimum period could be specified for punishment. By contrast, no minimum term was set for children on the basis that they could be released at any time in accordance with progress and in recognition of the nature of the sentence as preventative and therapeutic. For example, the first HMP detainee — a boy of 15 convicted of the murder of his younger brother in 1915 — was released after only two years in detention in a Borstal reformatory.³¹ Annual reviews were conducted with the aim of ensuring release at the earliest possible stage.

It was only in 1983 that those serving DHMP sentences were subject to minimum terms set in the same way as adults (at that time by the Home Secretary with advice from judges).³² However, a review function remained an inherent part of the sentence, allowing the minimum term to be reduced in view of progress.³³ Until recently, a review of progress by the High Court was available to all those serving the sentence once they reached the halfway point of their minimum term and further reviews could occur throughout the sentence (see below).

The Criminal Justice Act 2003 formally introduced the judicialisation of the minimum term, but judges had to have regard to a schedule which provided that the starting point for children convicted of murder should be set at 12 years (schedule 21). Recent changes to the starting points and ranges for minimum terms for DHMPs and restrictions on the availability of minimum term reviews, introduced by the Police, Crime,

Sentencing and Courts Act 2022, are outlined in the following section.

Discretionary life sentences have always been available for children convicted of serious offences other than murder. In its current form, sentence of detention for life under sections 250 and 258 of the Sentencing Act 2020 can only be imposed if the seriousness of the offence justifies it and the sentencing court considers that there is a risk of serious harm of committing further specified offences. Discretionary life sentences and DPP sentences operate in a way that is identical to mandatory life sentences except for the fact that there is no right to a review of progress after the half-way point.

DPP sentences were created by s226 of the Criminal Justice Act 2003. They could be imposed on anyone convicted under the age of 18 who had committed a specified offence and who was deemed dangerous but did not meet the threshold for a discretionary life sentence.³⁴ For individuals sentenced to DPP, they operate identically to discretionary life sentences, except for the fact that once released by the Parole Board, the licence can be terminated after a specified period of time. Future changes to this are described in the following section.

Recent changes in law and implications for practitioners

A number of changes to mandatory life sentences were implemented in the Police, Crime, Sentencing and Courts Act 2022. The act changed the starting points in murder cases for children of different ages, as outlined in Figure 2.

<i>Equivalent for adults</i>	Mandatory minimum starting points		
	<i>15 years</i>	<i>25 years</i>	<i>30 years</i>
Person's age when offence committed	Does not fall in other categories of offence	Sufficiently seriousness e.g., murder with knife or other weapon taken to the scene	Seriousness 'particularly high' e.g., murder with firearm, for gain, sexual/ sadistic conduct, two or more victims
14 or under	8 years	13 years	15 years
15 or 16	10 years	17 years	20 years
17	14 years	23 years	27 years

31. Akester, K. (1997). Detention during HM's pleasure. *Criminal Justice Matters*, 29(1), 13-15.
32. R v Secretary of State for the Home Department, Ex parte Venables [1998] AC 407.
33. R v Secretary of State for the Home Department, Ex parte Smith [2006] 1 AC 159.
34. In their original form, they could be imposed with a minimum term of any period but following the Criminal Justice and Immigration Act 2008, they could only be imposed where the offence warranted a notional determinate term of at least four years.
35. Table adapted from s127 Police, Crime, Sentencing and Courts Act 2022, <https://www.legislation.gov.uk/ukpga/2022/32/section/127> which section updates Schedule 21 of the Sentencing Act 2020. Also see NAYJ (2021). *There's nothing smart about sentencing children harshly*. <https://thenayj.org.uk/therersquos-nothing-smart-about-sentencing-children-harshly-nsbp/>

Figure 2: *Mandatory starting points for life sentences for children imposed in the Police, Crime, Sentencing and Courts Act 2022.*³⁵

As a result of the changes in the Police, Crime, Sentencing and Court Act professionals working in prisons may start to see more child lifers entering prison with very long minimum terms. The same Act also removed the opportunity for children convicted of murder to receive a review of their minimum term based on their progress, if they turned 18 years of age before being sentenced (128 of the Police Crime Sentencing and Courts Act 2022). In addition, it removed the opportunity for on-going reviews, reducing the scope of the progress review to a one-off opportunity. There will be a sizeable number of people in the system who had expected to have such a review who are no longer entitled to one.

The restriction on progress reviews to only those convicted of murder when aged under 18 at the point of sentence was successfully challenged in the High Court in the case of *Quaye* in 2024.³⁶ The Court found that there was no objective justification for treating individuals sentenced before and after the age of 18 differently. The Court noted that ‘it is now widely recognised that young adults will continue to mature after their 18th birthday’ and that ‘the date of sentence can be subject to delay for a variety of reasons that are wholly unconnected to the culpability’. The Court also found that the removal of a progress review at the half-way point risked the sentence becoming arbitrary and a breach of the right to liberty protected by Article 5 of the European Convention on Human Rights. The Secretary of State is appealing the decision so the current law remains that anyone sentenced after the age of 18 who has not yet had a minimum term review will not be offered one until the appeal is settled and the law is changed. However, it is possible that they will become entitled to a review if the appeal is upheld and the law changes: this should be borne in mind by professionals responsible for their sentence planning.

While the DPP sentence was abolished by Legal Aid, Sentencing and Punishment of Offenders Act

2012, as noted above at least 85 individuals sentenced as children remain in prison, with many more unaccounted for in the data.³⁷ During the passage of the Victims and Prisoners Act 2024, legislative and policy changes were announced by the Ministry of Justice for those serving DPP sentences.

On 21 May 2024 Lord Bellamy stated in the House of Lords that [the Ministry] ‘recognise the specific challenges faced by this cohort’ (col. 965).³⁸ The changes included reducing the qualifying period — the period after which the Parole Board will review the necessity for licence — from ten years since first release to two years (whereas the reduction for those convicted to IPPs as adults is three years). DPPs will also benefit from a new sunset clause which means that, after the

qualifying period has expired and two full years have passed without the licence being revoked, the licence will automatically expire. In one of the author’s experiences working with many individuals serving DPP sentences (LJ), many have taken great hope from these proposals as signalling some light at the end of the tunnel.

In addition to the recent changes in the law, the Ministry of Justice committed to a number of policy changes affecting individuals serving DPP sentences. These were announced in the House of Lords on 21st May 2024 in recognition of the particular needs of the

cohort. They include a plan to ‘update HMPPS operational policy so that there is a presumed annual referral of DPP cases to the [Parole] board unless there is a clear reason why this would not be beneficial to the individual concerned.’ Further, in recognition of the ‘need to provide tailored support’ for people serving DPPs sentences, the Government announced further changes to the input from HMPPS psychology. As of 21st May 2024, it was confirmed that every DPP prisoner, whether never released or recalled, had had a case review. From that point on, those in prison serving DPP sentences should have quarterly reviews of their progress.

It was also confirmed in May 2024 that senior operational leaders across HMPPS had been commissioned to produce operational delivery plans,

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36. *R (Quaye) -v- Secretary of State for Justice* [2024] EWHC 211 (Admin). <https://www.judiciary.uk/judgments/r-quaye-v-secretary-of-state-for-justice/>

37. Some will have sadly passed away.

38. Victims and Prisoners Bill, Volume 838: debated on Tuesday 21 May 2024. <https://hansard.parliament.uk/lords/2024-05-21/debates/21D1F04A-652C-41B8-8544-55D902903B6A/VictimsAndPrisonersBill#>

within which there must be a specific focus on supporting and progressing DPP prisoners: 'This means expediting any required prison transfers, or access to required services or interventions. There is now a clear expectation that senior leaders know how all the DPP prisoners in their areas are progressing and that prisons and probation are being held to account for their work with them' (col. 966).³⁹

The new law and policy, which is expected to be published in Autumn 2024, signals a recognition that those sentenced to life as children require a different approach. This is specifically in relation to progressing individuals serving DPP sentences through the prison system and considering the termination of their DPP licences. These have important implications for those working with such individuals in prisons and on probation.

In addition to these changes, the Parole Board has introduced a range of policies and guidance that recognise the special position of child lifers. Parole Board policy requires that an oral hearing must be granted where the person is under 18 at the point of application or recall, if release or progression cannot be determined on the papers, and there is a presumption of an oral hearing for young adults.⁴⁰ The Parole Board has also recently revised its listing policies to 'automatically prioritise' cases concerning anyone who

was convicted as a child and is serving a sentence of DPP whether at the paper stage,⁴¹ or the oral hearing stage.⁴² It has now also agreed to prioritise cases of those serving DHMP. The Parole Board has drafted updated guidance in respect for anyone under the age of 18 at point of referral to the Board. These changes will be relevant to any professional involved in the management and progression of those sentenced to DHMP or DPP.

Conclusion

As more children enter prison sentenced to increasingly punitive life sentences, it is essential that the system and those working within it are able to identify them and recognise the distinct pains and problems they suffer in custody and beyond. Developments in law and policy may go some way to addressing the needs of child lifers in prison and on probation, but changes in law and policy are only effective alongside cultural and practice change. Increasing awareness of the recent developments in law and policy in relation to men and women serving DPP and life sentences among all professionals working with child lifers is essential. In addition, more systematic and intensive support for child lifers is needed, which focuses on their distinct and considerable suffering

39. See footnote 38: Victims and Prisoners Bill.

40. Parole Board (2023). Types of Cases Member Guidance. https://assets.publishing.service.gov.uk/media/657afe4b0467eb000d55f82b/Types_of_Cases_Guidance_November_2023_v3.0_FINAL_EXTERNAL.pdf -

41. Parole Board (2023). *Prioritisation Framework for Paper Reviews under the Member Case Assessment Process*. https://assets.publishing.service.gov.uk/media/64edd24c13ae15000d6e2f68/Prioritisation_Framework_for_Paper_Reviews_under_the_Member_Case_Assessment_Process_FINAL.pdf

42. Parole Board (2023). Listing Prioritisation Framework for Oral Hearings https://assets.publishing.service.gov.uk/media/64a596dcc531eb001364feeb/Listing_prioritisation_framework__LPF__-_Version_4.0_-_30th_May_2023.pdf.