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'Frustrations within': Imprisonment for Public Protection (IPP):

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The ever-increasing amount (in terms of both length and number) of post-tariff detention of IPP prisoners has contributed to the continuing growth of the prison population and is likely to accelerate the growth over time. For the Prison Service, the burdens imposed by the IPP sentence are not only a matter of additional numbers in prison, but also the logistical problems associated with the management of large numbers serving indeterminate sentences.¹

The introduction of the indeterminate sentence of Imprisonment for Public Protection (IPP) has had a significant impact on the Criminal Justice System, particularly in relation to managing the sheer number of these prisoners. Not only is the introduction of the IPP sentence a significant challenge for the Prison Service, but also the Parole Board, Probation Service, and the offenders who must serve this sentence.

The IPP sentence was introduced following the Halliday Report², which highlighted the need for a new sentence for those offenders convicted of a dangerous sexual or violent offence; following this the Criminal Justice Act 2003 introduced a mandatory framework for the sentencing of 'dangerous offenders'. The IPP sentence enables courts to imprison for an indefinite period of time offenders who are convicted of 'violent' and/or 'sexual' offences, who are considered to be 'dangerous', but whose offending does not meet the requirements for a life sentence. IPP prisoners are given a minimum tariff which must be served before release is considered, but are then kept in custody until the Parole Board is satisfied that they are no longer a 'risk to life or limb' and can be safely managed in the community.³

When this sentence was implemented in April 2005 it became mandatory to impose it on those convicted of an offence with a maximum penalty of ten years imprisonment or more and where the court felt that there was a significant risk of serious harm to the

public. This mandatory framework led to far more offenders being given IPP sentences than was originally anticipated,⁴ placing the resources of both the Prison and Probation Services under strain.⁵ In December 2007, Jack Straw announced that amendments would be made to prevent the imposition of the IPP sentence where the minimum tariff would be below two years. This came into force in July 2008 in the shape of the Criminal Justice and Immigration Act 2008, but only applied to offenders who were sentenced on or after this date. Following these amendments the courts have the power to impose an IPP sentence, but no longer have a duty to do so, giving judges more discretion in their sentencing decisions. These changes are not retrospective so there has been no impact on prisoners who are already serving IPP sentences.⁶

The effect that the IPP sentence has on offenders has not yet been fully explored. This sentence aims to protect the public, but the potential negative side effects on offenders also need to be considered. Whilst some studies have made mention of the sentence and expressed concern for the wellbeing of those subjected to it⁷, not enough research has focused on the frustrations of these offenders. Concern about the impact of indeterminate sentencing is not a new phenomenon; early commentators such as Radzinowicz expressed similar reservations:

Unless indeterminate sentences are awarded with great care, there is a grave risk that this measure, designed to ensure the better protection of society, may become an instrument of social aggression and weaken the basic principles of individual liberty.⁸

This article explores the frustrations of the IPP sentence. This was achieved through an extensive review of the existing literature alongside eight semi-structured qualitative interviews with prisoners serving IPP sentences at HMP Kingston. This research was

1. Jacobson, J. and Hough, M. (2010) *Unjust Deserts: imprisonment for public protection*, London: Prison Reform Trust (Pg VI).
2. Halliday, J. (2001) *Making Punishments Work: A Review of the Sentencing Framework for England and Wales*, London: Home Office.
3. HM Chief Inspector of Prisons (2008) *The Indeterminate Sentence for Public Protection: A Thematic Review*, London: Home Office (Pg 11).
4. Ashworth, A. (2010) *Sentencing and Criminal Justice (Fifth Edition)*, Cambridge: Cambridge University Press.
5. NOMS (2007) *The Statistical Briefing on Indeterminate Sentences for Public Protection*, April 2007, London: Home Office.
6. This is potentially a further source of frustration as Article 7 of the European Convention does not disallow retrospective changes in law.
7. E.g. Crewe, B. (2009) *The Prisoner Society: Power, Adaption, and Social Life in an English Prison*, Oxford: Oxford University Press.
8. Radzinowicz, L. (1945) *The Modern Approach to Criminal Law*, London: Macmillan (Pg 167).

undertaken as part of a part-time Masters degree at the Institute of Criminology, University of Cambridge. The interviewees provided consistent accounts of their frustrations, which have been divided into three areas: The frustrations of receiving the sentence; living with the sentence; and seeking release.

Receiving the IPP sentence

Lack of Information

Seven of the eight prisoners sampled mentioned that the lack of information they received was a considerable pain of imprisonment. A concern was raised that information was not readily available: 'Most of the information about the sentence came from the prisoners; they were the only source of information' (Prisoner Two). It is also arguable that this lack of information was more prevalent among those who received the sentence in its infancy. There is now more information available, but one prisoner said that when he was trying to gather information about the sentence he: 'never knew what was true, it is like Chinese whispers in jail' (Prisoner One).

Although this sentence has only been in existence for a few years, there is still a clear gap in knowledge and an atmosphere of confusion surrounding it. Respondents at HMP Kingston reported that the lack of information seemed to be experienced by prisoners, staff and the whole Criminal Justice System: 'When I first came into custody I did not really know what it meant to have an IPP sentence. I asked the staff, but they did not know...' (Prisoner Seven).

Lack of legitimacy

Another frustration which was discussed with much intensity throughout the interviews was the feeling that the IPP sentence was unjust and unfair. One prisoner said: 'I don't think I deserve this life sentence, I don't think the Judge or anyone thought I deserved it' (Prisoner One). One of the main sources of frustration was that those with IPP sentences felt as though they were given a life sentence, and in many respects were actually treated as such. They felt that this was not

deserved as it seemed disproportionate to their crime: 'I have not taken a life, I have not threatened life or limb, so how have I ended up with a life sentence?' (Prisoner Five). The frustration of unfairness seemed more pressing for two particular categories; those given a short tariff, and first time offenders.

During the IPP sentence

Uncertainty and Indeterminacy

One of the most striking themes which emerged during interviews was the frustration of uncertainty and indeterminacy. This has been touched upon in Crewe's research,⁹ although this was not specifically focused on IPP prisoners. Many interviewees referred to the sensation of feeling lost and like: 'there is no light at the end of the tunnel' (Prisoner One). There appeared to be confusion about the sentence and ever-changing barriers to gaining release, with uncertainty about when this end would ever arrive. This led to feelings of hopelessness and helplessness; the future of an IPP prisoner is not in their hands, and interviewees felt that there was nothing they could do about it: 'sometimes I wake up and just don't want to get out of bed, I know that there is nothing I can do throughout that day to change anything, it is pointless even trying' (Prisoner Eight). Six of the eight prisoners

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interviewed specifically mentioned feeling like they were serving 'life on remand' due to the uncertainty of their situation. This theme was consistent throughout the interviews: 'I feel like I am still on remand now, I have nothing to lose' (Prisoner One); 'not ever knowing when I'm going to get out, I feel like I am on remand' (Prisoner Five).

During interviews, I asked how this sentence differed to others, to gain insight into which frustrations appeared to be linked specifically to the IPP sentence. Unlike determinate sentenced prisoners an IPP prisoner cannot plan for their future, because they do not know their release date: 'everything is just uncertain' (Prisoner Six); 'I don't know when I will be out, and I can't plan for my future' (Prisoner Two). Offenders felt as though they were: 'merely existing' (Prisoner Three) or being 'warehoused' (Prisoner Five).

9. Crewe, B. (2009) *The Prisoner Society: Power, Adaption, and Social Life in an English Prison*, Oxford: Oxford University Press; Crewe, B. (2010) 'Revisiting the Pains of Imprisonment', paper presented at Institute of Criminology, February 2010.

Five out of the eight interviewees said that this was the worst thing about the IPP sentence. One said: 'it is like Groundhog day, it is just the same thing every day and you don't know when it is going to stop' (Prisoner Four).

Disruption to life course

An area identified in the literature review as causing considerable pain for indeterminate sentenced prisoners was the loss of significant events in their life course.¹⁰ All prisoners suffer this loss to a certain extent, but it can be argued that this pain is greater for those serving indeterminate sentences, as they have the burden of not knowing when or whether they will be able to continue their life course. One prisoner stated: 'It feels as though my life is on hold' (Prisoner Two); another said: 'my life feels like it is over...' (Prisoner Five). More specific fears were expressed by one prisoner:

With this sentence they are taking away my chances of having kids and settling down with a family of my own, getting a house and a nice job, I know it could still be possible when I get out, but when am I going to get out there? (Prisoner Seven)

Interviewees described cutting links with the outside world, friends moving on, and only close family remaining for support. Unlike with a determinate sentence, these offenders were unable to suggest when they will be able to continue their lives. Four interviewees reported that they found it difficult speaking to family, because they did not understand the sentence, and it made it harder being asked questions which could not be answered: 'I don't even ring them any more, because it hurts when they say 'how you doing, when you getting out?', and I just can't tell them' (Prisoner One). Research suggests that close family links and relationships are key contributors

to desistance from crime,¹¹ and that there is a link between social bonds and a reduction in criminal behaviour.¹² With this sentence it is difficult to maintain these social bonds, and if anything the sentence puts undue strain on them.

Loss of Independence and reliance on others

A shared frustration for all prisoners is that they suffer the loss of freedom, and the opportunity of contacting family and loved ones whenever they please, becoming reliant on others for their basic needs. An additional burden for IPP prisoners is that they have to rely on others for progression through their sentence, and this creates many additional frustrations. One prisoner identified the need to complete courses, and do more than just serve his sentence to gain release: 'Before I could just come in to prison, do my own time and that was it, now I can't just keep myself to myself, that is not enough to get me released' (Prisoner Four).

One frustration identified within this was the perceived subjectivity of those on whom prisoners relied and of the assessment process in general.¹³ All IPP prisoners are allocated an Offender Manager (OM) and an Offender Supervisor (OS), in order to manage their sentence plan and to guide them through it. Five of the prisoners interviewed reported poor relations between they and their OM, and the value of having an OS was questioned by four interviewees. The system put in place is theoretically sound, but in practice it is not sufficiently resourced to meet required standards.¹⁴ In addition, some offenders claimed that there were differences in the quality of offender management, stating that whether you received a good supervisor or a less supportive one was: 'the luck of the draw' (Prisoner Six).

Another area which troubled all of those interviewed was the loss of independence suffered because of reliance on prison-based forensic

All prisoners suffer this loss to a certain extent, but it can be argued that this pain is greater for those serving indeterminate sentences, as they have the burden of not knowing when or whether they will be able to continue their life course.

10. Jewkes Y. (2005) 'Loss, liminality and the life sentence: managing identity through a disrupted life course', in Liebling A. and Maruna S. (Eds.) *The Effects of Imprisonment*, Cullompton: Willan; Cohen, S. and Taylor, L. (1972) *Psychological Survival: The Experience of Long-Term Imprisonment*, Harmondsworth: Penguin.
11. Maruna, S. (1997) 'Going straight: desistance from crime and life narratives of reform', *The Narrative Study of Lives*, 5, 59-93.
12. Laub, J. H., Sampson, R. J., and Sweeten, G. (2006) 'Assessing Sampson and Laub's life-course theory of crime', in F. T. Cullen, J. P. Wright, and K. R. Blevins (Eds.) *Taking stock: The status of criminological theory*, New Brunswick, NJ: Transaction Publishing.
13. Padfield, N. (2002) *Beyond the Tariff: Human Rights and the Release of Life Sentence Prisoners*, Cullompton: Willan.
14. Jacobson, J. and Hough, M. (2010) *Unjust Deserts: imprisonment for public protection*, London: Prison Reform Trust.

psychologists. Crewe discusses the way that a wide range of prisoners recognise and resent the 'power of the pen'.¹⁵ For IPP prisoners, this is even more important, as everything written down about them can count towards or against their release. Psychologists, and more importantly their reports, are feared because they can be a hindrance to release. These assessments are often written by trainee psychologists. Interviewees felt that psychologists often 'twist things' (Prisoner Eight), and were therefore unwilling to talk to them, owing to concern that what they said might be misinterpreted and used against them. One prisoner recounted his meeting with a psychologist as follows:

My mum likes to smoke cannabis... she said 'would you like to see your mum still even though she smokes cannabis?', and I have said, 'well yeah I would'., Now she is my mum, I will tell her not to smoke it when I am with her, and not to have it in the house, because of the consequences for me, and I will make sure she doesn't have any drug dealers or whatever around the house when I am there, but I am still going to see her, because that's my mum...

but in the paperwork she wrote '[Prisoner] states that he will still be associating with known drug dealers and drug takers on the outside'... that is the kind of thing I am having to deal with. No matter what she does, she is still my mum and I am still going to see her. (Prisoner One)

Loss of Identity

A further frustration identified by four interviewees was the loss of identity; they no longer felt like themselves, and for some it was as though part of them had died inside: 'Half of me has shut down in here, it is hard keeping yourself alive. I often put on a smile so everyone thinks I am ok, but I am not' (Prisoner One). There was an overwhelming atmosphere of depression during my interviews, and many made it clear that they felt that they would never be the same again. When asked how they felt they were treated during the

course of their sentence, one prisoner said: 'I think I am treated like a category, we are all treated the same' (Prisoner Four). IPP sentenced prisoners are subject to various risk assessments and programmes, and are assumed to fit specific risk categories, therefore it is understandable why they suggested they were treated as a 'risk', rather than as individuals: 'In here nobody looks at me and actually sees me, they just see my risk' (Prisoner Five). When being assessed, five interviewees felt as though the various agencies: 'just want to tick the boxes' (Prisoner Two). Two offenders believed that they could not be themselves as this could be detrimental to their release. As one prisoner stated when talking about prison officers:

I cannot ask a simple question like 'why are you talking to me like that?', because they can write down that I have been confrontational, which can affect me when trying to gain release, so they can do what they like. (Prisoner Three)

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Trying to gain release

'Jumping through hoops'

Within the NOMS Offender Management Model, the IPP prisoner is allocated targets

which must be achieved in order to gain release. Interviewees described these targets as ever-changing. One prisoner stated: 'You have to work so hard and jump through hoops to get your risk down' (Prisoner Four). A string of frustrations stem from the fact that an IPP prisoner needs to 'prove' that they are no longer a risk of serious harm to the public.¹⁶ Predominately, lowering risk involves completing a sentence plan, containing targets and objectives, including a number of offending behaviour programmes (OBPs). A pain identified was that many of the OBPs set were perceived not to be suitable or beneficial for that individual: 'I was put down for [course¹⁷], but got a letter back saying I was not suitable' (Prisoner Two); 'They want me to do [course¹⁸], but this course is not going to benefit me, that is not what will help me' (Prisoner Five). Similarly, McNeill¹⁹ claims that there is no generalisable rule of what works to alter a person's behaviour. The offender also needs to want to change.

15. Crewe, B. (2010) *Revisiting the Pains of Imprisonment*, paper presented at Institute of Criminology, February 2010.

16. Jacobson, J. and Hough, M. (2010) *Unjust Deserts: imprisonment for public protection*, London: Prison Reform Trust.

17. Course name omitted to assist anonymity of participants.

18. Course name omitted to assist anonymity of participants.

19. McNeill (2009) *Towards Effective Practice in Offender Supervision*, Scottish Centre for Crime and Justice Research, Report 01/09.

Interviewees argued that instead of just focusing on courses there should be greater emphasis on the causes of the crime: 'It feels like they are just papering over the cracks instead of helping to address the actual problems' (Prisoner Two). One prisoner in particular was concerned with his sentence plan:

I do not agree with my sentence plan. I have been asked to do a course which is not designed for my sort of crime, but they feel that they have to give me a course, and they try to fit you into a category. Don't give me a course which is not going to benefit me in any way, give me something useful to do...
(Prisoner Two)

A more pressing issue was that the interviewees claimed that unrealistic targets were given to IPP prisoners, especially those on shorter tariffs. Four of the sample stated that they had courses that they 'needed' to do, because they were on their sentence plan, but could not do for a number of legitimate reasons. Three of them even had courses on their sentence plan that were not run in the establishment they resided in, and regardless of their best efforts they were unable to secure a transfer to a suitable establishment. One IPP prisoner with a ten month tariff stated: 'I came here to do [courses²⁰], but a month after I came here they stopped doing the courses. Two years on I still can't get out to another nick to do it' (Prisoner One). On top of this, for an IPP prisoner who had a relatively short tariff, there was too much on their sentence plan for them to possibly complete before the end of their tariff. For others, parole needed to be deferred in order to give them time to complete their courses:

I am supposed to be having my parole next August, by that time I will be two years over tariff and I cannot access this course until the middle of next year. It is a six month course, then it takes anything up to six months for them to write the report, so I have to knock my parole back to August 2012, then at the end of that there is no guarantee that they aren't going to turn around and say we think you should do this course now. Then they will not do that course here, so I have to be

shipped somewhere else and start again, get yourself onto the list, you may be a priority, but you are a priority of the prioritised list.
(Prisoner Two)

The Power of the Parole Board

In terms of gaining release, the power of the Parole Board warrants its own discussion as a frustration for IPP prisoners. This frustration was highlighted by every interviewee. One prisoner described the difficulties of trying to prove that he was no longer a risk:

I am now over my tariff owing to no fault of my own. I am serving extra time as they can not prove that I am still a risk to the public, but I cannot prove that I am not a risk.
(Prisoner Five)

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A greater cause of frustration was that an offender could be given an IPP sentence based on previous offending. One prisoner asked: 'How can you demonstrate a reduced risk when you can be sentenced based on a previous offence, it just does not make sense, how do you demonstrate a reduced risk that is no longer there?'

(Prisoner Two). The Parole Board is given ultimate power in decision making, which has instilled fear into IPP prisoners when they come up for parole, with one interviewee asking: 'What happens if the board members do not like me?' (Prisoner Seven). Another frustration was borne from the sheer numbers of IPP prisoners and under-resourcing of the Parole Board, which meant that boards were often delayed. There is now a sifting process to ease this strain, whereby prisoners may not even have a board if it is deemed that they are unlikely to be eligible for release. Parole Board hearings were seen by my interviewees as a chance for progression, so this new process was extremely frustrating and disheartening, as one prisoner reported: 'I have not had a parole board for four years, I just get a piece of paper through my door saying that I am not going to be released' (Prisoner Two). This process was experienced as impersonal: 'The Parole Board is very important to me, they decide whether I get released, but they don't know me, they don't know if I am a risk' (Prisoner Six).

20. Course names omitted to assist anonymity of participants.

Incarcerated for Life

The last clearly identifiable frustration was that of the life licence. For an IPP prisoner, this can be removed after ten years, but there has not yet been an example of this, and will not be for at least another five years. In terms of the amount of reporting a life sentenced prisoner needs to do after ten years in the community the difference between a life sentence and IPP is not significant.²¹ Nevertheless, if there is suspicion that an IPP offender is involved in a crime, they can be recalled to prison for an 'indefinite period of time'.²² There was an overwhelming feeling during interviews that even when released an IPP offender would not be free: 'My sentence is never going to be over. I will be constantly walking on eggshells' (Prisoner Three). If after recall they are found not guilty, they still have to face the Parole Board in order to gain release. One interviewee argued that this sentence would create a society of ex-offenders always cautious of what awaits them:

Anyone who has any grudge against me could just make one call to the police and that would be me straight back to prison and my life is in someone else's hands once again. All I can do is keep my head down and do what is expected of me and live a crime free life...there is nothing more I can do.
(Prisoner Three)

The interviewees seemed to lack a full understanding of the purpose of the life licence, and this helps to explain some of their concerns and opposition to it. Again, lack of information and understanding seems relevant here. If the life licence is better understood, it is unlikely that it will instil so much fear in these offenders. However, some of the fears expressed are not without foundation. The life licence attached to the sentence does suffer from inflexibility, with automatic recall to prison being initiated even on

a minor breach or for a wrongful arrest. This blanket response of recall further adds to the strain on the Prison Service and Parole Board, compounding the problems of this sentence.

'The Rehabilitation Revolution' and the future of the IPP

The future of the IPP sentence needs to be considered, given the complex difficulties identified. With all the attention this sentence has received, there is a real possibility of it being amended or even abolished. A Green Paper, 'Breaking the Cycle', was released in December 2010 for consultation, Kenneth Clarke stated:

*The green paper is an important change of direction in penal policy which will put more emphasis on reducing reoffending without reducing the punishment of offenders.*²³

This comprehensive paper makes many recommendations, with a central aim to: 'make the public safer by breaking the cycle of crime', and only use the IPP for those who 'pose a very serious risk of future harm'.²⁴ The recommendations include amending the minimum tariff length to five years, rather than

two. This in itself would restrict the use of this sentence, reserving it for more serious offences, thereby reducing the number of IPP prisoners.

If changes are to be made to this sentence, there are some key areas which deserve particular attention. Some of the frustrations identified in this research appeared to be unnecessary by-products of the sentence, which could be addressed with relative ease. The most obvious of these problems related to lack of information. There is a need for training to be developed and delivered to staff to assist with the

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21. National Probation Service (2009) *Probation Circular 05/2009 – Reporting Arrangements For Offenders Released on Life Licence*. Last accessed online on 31/12/2010: <http://www.probation.homeoffice.gov.uk/files/pdf/PC05%202009.pdf>
22. Appleton, C. and Roberts, C. (2005) *The Resettlement of Discretionary Life-sentenced Offenders*, London: Home Office (Pg 10).
23. Ministry of Justice (2010) *Time to break the cycle of crime and reoffending*, Speech given by Kenneth Clarke on 7th December 2010. Last accessed on 31/12/2010: <http://www.justice.gov.uk/news/newsrelease071210c.htm>
24. Ministry of Justice (2010) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, London: The Stationary Office (Pg 10-11).

management of IPP prisoners. In addition, more information should be distributed to all offenders given this sentence providing basic details about it. During interviews I gave all interviewees a guidance booklet²⁵ and for all but two this was the first comprehensive explanation of the sentence.

Furthermore, the intention for offenders to experience 'end-to-end offender management' appeared not to have been realised; many of the sample felt unsupported and experienced a lack of overall management and guidance. Offenders expected to have had more contact with their offender manager, but few had received sufficient contact. Without further research, it is impossible to pinpoint the reason for this, but it is worth acknowledging the likely link between the strain on Probation Service resources and the problems

outlined. The tightening of budgets throughout the Ministry of Justice is unlikely to complement effective management of an ever-growing IPP prisoner population. Similarly, my interviewees had difficulties accessing the courses named on their sentence plans, limiting their progression through the system. Setting unrealistic or unattainable objectives is de-motivating for prisoners, and makes it impossible for them to prove their willingness to address their offending behaviour. Cutting budgets is only going to escalate these problems, and the gap between resources and expectations needs to narrow. Without these changes, it is questionable what purpose this sentence serves. If the aim of the IPP sentence is to keep these offenders off the street, then it is clearly achieving this. However if the hope is for rehabilitation, this sentence still has some way to go.



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25. Prison Reform Trust (2008) *Booklet for IPP Prisoners*, Guidance booklet provided online. Last accessed on 31/12/2010: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/IPP%20information%20booklet.pdf>