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# Perrie Lectures 2014: Life sentences in custody and beyond

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**This year's Perrie Lecture considered the difficult challenge of life sentence prisoners and, in doing so, asked the following questions which I will attempt to answer over the course of this article:**

- ❑ How can we safely and accurately risk assess for release on temporary licence?
- ❑ How can we successfully manage the growing number of elderly life sentenced prisoners?
- ❑ When is it safe to release?
- ❑ How can life sentenced prisoners be safely managed, supervised and monitored in the community?
- ❑ How can we support life sentenced prisoners to live a productive and law abiding life in the future?

In this article I will be drawing on my professional experience of working for over 20 years to redress the negative impact of imprisonment on children and families of prisoners and from my current position as an Independent Member of the Parole Board. However all views expressed are from a personal perspective and do not necessarily reflect the policies or views of the Parole Board.

My starting point for considering the overarching theme however was to ask the question as to who it is that needs to make sense of life sentences; for me this breaks down into four main stakeholders: the prisoner; the victim; the public; and the prisoner's family. Each one of these has a specific need to understand the sentence and, perhaps most importantly, what is meant by the minimum tariff. Whilst I will not dwell on public perceptions and the needs of victims in any great detail, I do consider that more needs to be done to properly explain the sentence so as to allay common misconceptions that the minimum tariff is, in fact, the sentence and that a life sentence means precisely that. This is particularly important for victims of crime who need to feel that justice has been done and often only take in the minimum tariff when the sentence is handed down. Whilst Judges, when delivering their sentence, do set this out to the defendant, it is often not taken in by either the defendant or the victim and is frequently misrepresented by the media.

There are many examples where the media jumps on 'light' sentences which are in fact life sentences with a relatively short minimum tariff; in my view this is one of the reasons for the significant increase we have seen in tariff lengths for serious offences in recent years as political rhetoric has ratcheted up sentence lengths. In the worst cases we have seen political interference and rushed statements of policy change that can have significant consequences — most recently with the media and political furore over life sentence prisoners being out on temporary release from open prisons (ROTL). The most serious of these was the case of Michael Wheatley, known throughout the press coverage as 'skull cracker', where much was made of why it was possible that a man serving 13 life sentences was 'free to wander in and out of an open prison' describing the situation as 'ludicrous'.<sup>1</sup> In the ensuing days the press went to town on other cases of prisoners who had absconded from open conditions leading to the Government announcing draconian measures that will have serious consequences for large numbers of prisoners who will now not be able to return to open conditions. The Government's decision however was made swiftly, in order to appease the media and perceived public outcry with little serious analysis of the problems or the impact of their proposed policy — both in terms of protecting the public and facilitating the resettlement of prisoners, many of whom have spent many years in closed conditions and need the gradual resettlement offered through open prisons. For many lifers the move to open conditions after many years in custody is quite a shock and some find they just cannot cope first time, but succeed when given a second chance there.

Returning to the issue of life sentence prisoners we need to understand the scale of the problem. There has been a steady increase in the number of lifers, while the overall indeterminate population increased rapidly after indeterminate sentences for public protection (IPP) were introduced in 2005. However, the rate of year-on-year growth in indeterminate sentences has slowed considerably following the changes introduced in the Criminal Justice and Immigration Act (CJIA) 2008 which

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1. See <http://www.express.co.uk/news/uk/475097/The-saga-of-Skull-Cracker-How-Michael-Wheatley-became-UK-s-Most-Wanted> accessed on 14 October 2014.

## Ministry of Justice Prison Population figures 31 March 2013 – 31 March 2014<sup>2</sup>

<b>Indeterminate Sentence for Public Protection</b>	Tariff expiry date (TED)			
Tariff length <sup>(a)</sup>	TED not passed	TED passed	TED not available	Total
Less than 2 years	13	941	0	954
2 years to less than or equal to 4 years	320	2,011	0	2,331
Greater than 4 years to less than or equal to 6 years	589	570	0	1,159
Greater than 6 years to less than or equal to 10 years	608	53	0	661
Greater than 10 years	89	0	0	89
Tariff length not available <sup>(b)</sup>	0	0	12	12
<b>Total</b>	<b>1,619</b>	<b>3,575</b>	<b>12</b>	<b>5,206</b>
<b>Life (all variations)<sup>(c)</sup></b>				
Tariff length <sup>(1)</sup>	TED not passed	TED passed	TED not available	Total
Less than or equal to 10 years	399	1,606	0	2,005
Greater than 10 years to less than or equal to 20 years	3,075	922	0	3,997
Greater than 20 years	1,143	38	0	1,181
Whole life	48	0	0	48
Tariff length not available <sup>(2)</sup>	0	0	188	188
<b>Total</b>	<b>4,665</b>	<b>2,566</b>	<b>188</b>	<b>7,419</b>

(a) *Tariff length is the time between date of sentence and tariff expiry date and does not take into account any time served on remand.*

(b) *Includes cases where a confirmed tariff expiry date has yet to be received and any unmatched records.*

(c) *Includes mandatory, discretionary, automatic life sentences and those relating to young adults and juveniles held in prison custody.*

restricted the use of IPPs. As of 31st March 2014 there were 85,265 people in prison, of these 12,625 were serving some form of life sentence, including IPPs.

The table above shows that over half of all IPPs have a tariff of less than 4 years and 954 have a tariff of under 2 years; under 100 have a tariff of over 10 years all of whom are therefore still pre-tariff. With regards to those sentenced to life, over half of all lifers (3,997) have a tariff of between 10 and 20 years; 1143 have a tariff of more than 20 years and just 48 people are serving whole life sentences with no chance of parole.

For prisoners and their families, the indefinite nature of the sentence with no release date is hard to comprehend:

*we got stressed by not knowing the date he was coming home. We thought we did and then it changed and then he just turned up.<sup>3</sup>*

There is a lack of information or explanation given to prisoners after sentence (particularly IPPs) and this is something I believe the Prison Service needs to take greater responsibility for. In the past 4 years as a member of the Parole Board I have come across countless IPPs who did not understand that they were

serving a form of life sentence and would not be released at their tariff for a considerable period into their sentence; some found out from other prisoners, some by seeing it on their file and some from their Offender Supervisor (OS), but lots did not have it properly explained to them on induction and many prisoners have stated that they only fully understood the nature of the sentence (and the role of the Parole Board) when being interviewed by their OS in preparation for their first parole hearing. This is not acceptable practice and it is incumbent on the Prison Service to ensure that all those serving IPPs and life sentences have their sentence clearly explained to them on induction so that they fully understand the role of the sentence plan in enabling them to progress in such a way that when they come up for consideration by the Parole Board they are in the best possible position for a positive decision. Partly as a result of this, some prisoners are not ready for progression at their first review by the Parole Board (which takes place pre-tariff), often resulting in a negative decision made on the papers; I will be returning to the detail of oral hearings and the Parole Board decision.

For families too, this lack of clarity causes a huge amount of unnecessary distress and anxiety with

2. Data Sources and Quality: These figures have been drawn from Ministry of Justice administrative IT systems which, as with any large scale recording system, are subject to possible errors with data entry and processing.

3. Action for Prisoners Families (2006) *Who's Guilty – Young People with a Prisoner in the Family* London: Action for Prisoners' Families.

children of prisoners' particularly badly affected; some young people never recover from this early trauma with children of prisoners being twice as likely to experience behavioural or mental health problems. Arguably of most importance to children is being told the truth about where their parent has gone, and when asked what will help them to cope, children and young people consistently state that being given information, support and child-focussed visits makes a huge difference.<sup>4</sup>

Yet all of this should be afforded to children of prisoners; they are rights enshrined in the articles of the United Nations Convention on the Rights of the Child (CRC) and, as signatories to the Convention, the UK government should be doing more to uphold its obligations to children. In particular the CRC provides children with:

- ❑ the right to be **free from discrimination**, including where such discrimination might be consequences of the status and actions of their parents (Art.2);
- ❑ protection of the **best interest of the child** (Art. 3);
- ❑ the right to have **direct and frequent contact with parents** from whom the child is separated (Art. 9);
- ❑ the right to **express his or her views** and to be heard in matters affecting their situation (Art. 12);
- ❑ the right to **protection of their family life and their privacy** (Art.16).
- ❑ the right to **protection from any physical or psychological harm or violence** (Art. 19)

When applied specifically to children of imprisoned parents the rights of the child should require that the child:

- ❑ has a right to be informed about what is going on and where their parent is;
- ❑ has the right to see his/her imprisoned parent(s) on a regular basis and in a manner that respects his/her physical and moral integrity;
- ❑ has a right to be assisted by public authorities that have the obligation to facilitate his/her contact with the imprisoned parent(s).

The findings of two recent studies undertaken in Europe<sup>5</sup> confirm that, whilst all European Union countries are signatories to the CRC, their rights are largely ignored in practice. The most fundamental right to be in contact with a separated parent is often undermined by restrictions imposed on the prisoner's contact with the outside world or by the imprisoned parent themselves denying their child access to visit

(often without taking into account how this must feel for their child), or the child's carer not wanting to take them to visit the prisoner. Children in their own capacity are seldom in a position to claim their rights, either because they do not know they have such rights or because they have nowhere to address their claim — unlike prisoners who do of course, frequently take cases arguing for their right to family life under Article 8 of the European Convention on Human Rights (incorporated in UK law through the Human Rights Act). There are however countless examples of good practice of work to address the needs of children of prisoners, often initiated by voluntary sector organisations both in UK and across Europe, ensuring that children (and the family as whole) are able to maintain contact with their family member in prison and it is something that would be easy to rectify through improved information and support. The need for early information and for the child to understand the meaning of the sentence is especially important in the cases of IPP and lifers where there will be so much uncertainty ahead. This could be done through inviting the family to an induction visit where the sentence is explained to them by a officer or NGO worker, enabling families to visit the cell (as happens in Northern Ireland) or by having family contact workers in all prisons (as happens in Scotland and N Ireland). In Norway every prison has a children's ombudsman making sure that children visiting receive appropriate treatment and support.

Not only is this important for the children of prisoners, but, improving and sustaining family support will assist in the resettlement of lifers. We know that prisoners with stable, positive family relationships have a better chance of successful resettlement and are less likely to re-offend on release, but not surprisingly family breakdown increases with the length of sentence. Many lifers have no close family support experienced dysfunctional and often negative childhoods and lengthy imprisonment strains those they do have. Those most likely to stay in contact are mothers, though grandmothers and siblings too play an important role in supporting lifers; and more IPPs will retain the support of their partner and children. The ability to retain family contact is compounded by:

- ❑ distance from home (particularly early in sentence if held in the dispersal estate)
- ❑ difficulties with travel and the cost of visiting and maintaining contact — and it continues to be a concern that many families who should be eligible to reclaim the costs of the travel under the Assisted Prison Visits scheme

4. Jones et al (2012) *Children of Prisoners – Interventions and mitigations to strengthen mental health* available at <http://eprints.hud.ac.uk/18019/>

5. Sharff-Smith, P. and Gampell, L. (2011) *Children of Imprisoned Parents* available at [http://www.academia.edu/4550506/Children\\_of\\_Imprisoned\\_Parents](http://www.academia.edu/4550506/Children_of_Imprisoned_Parents)

remain unaware of it or, for some reason do not take up the scheme.

- ❑ the often more austere and security focus on visits at High Security prisons, as a result of which some prisoners do not want their family members and children to visit — or the carer may not want to take the child on a visit.
- ❑ Family shame at the crime committed
- ❑ Prison moves — which are often necessary in order for the prisoner to access offending behaviour programmes that are increasingly few and far between (eg. SOTP, HRP, SCP, RESOLVE).<sup>6</sup>

Delays in accessing courses are arguably the most significant factor in prisoners being over-tariff as the absence of a lifer undertaking core risk reduction work is a major issue for the Parole Board when deciding on progression. All of this presents challenges for the prison estate, particularly at a time of ever-increasing budget cuts, focus on security and targets and the contracting out of so many services being delivered to prisoners. However, in order for prisoners to progress it is the Prison Service's duty to provide them with the programmes and opportunities to enable them to address and reduce their risk. Whilst the Parole Board may take the flack for the backlog and negative decisions, our duty is the protection of the public and much as we may feel some sympathy for lifers who are significantly post tariff, this cannot be a reason for progression. This is another area where prison staff and the Offender Manager (OM) need to be clear with prisoners so that they are not misled into believing that they should be progressed just because they are post-tariff and is something that it seems staff themselves do not perhaps fully understand. Similarly prison staff (and the OS in particular) should, in my view, do more to work with long-term lifers who have become stuck in the system and appear forgotten about. In my work at the Parole Board I sadly come

across lifers who seem not to want to be released — like a man I assessed recently who has been inside for 40 years and had spent the last 21 years in the same prison making no progress as he is not engaging in his sentence plan. He seemed to have been all but forgotten about and had not had an oral hearing for years due to the lack of support for progression or evidence of change. He lacked any community support or

resettlement plan and for him, prison probably appears the best option. Until recently the Parole Board was sending very few such cases to an oral hearing but following the Supreme Court judgement of *Osborn, Booth & Reilly v The Parole Board* (2013 UKSC 61) more prisoners are now being granted an oral hearing in the interests of fairness, even if it may seem unlikely that they will be granted a progressive move. The downside of this judgement is however already being felt by IPPs and lifers whose reviews are being significantly delayed due to the unprecedented increase in determinate sentence prisoner oral hearings (mainly those who have been recalled to prison).

Parole Board figures show that the number of cases being heard at an oral hearing has increased significantly from 2009-10 and 2013-14. The table below gives the number of oral hearings held over the 5 years from 2009-10 to 2013-14 however in summary:

- ❑ In 2009-10 895 lifer and 851 IPP cases were considered at an oral hearing;
- ❑ In 2013-14 1161 lifer and 1564 IPP cases were considered at an oral hearing.
- ❑ Of these in 2009-10 49 per cent of lifers and 46 per cent of IPPs were progressed either to open conditions or release
- ❑ In 2013-14 this had increased to 73 per cent of lifers and 79 per cent of IPPs being progressed.

At the same time the number of cases concluded negatively on the papers also decreased from 942 lifers and 1359 IPPs in 2009-10, to 653 lifers and 993 IPPs in 2013-14 (see table below).

At the same time, my personal view is that the Parole Board needs to look more imaginatively for evidence of a reduction in risk acknowledging that many lifers will not meet the criteria for the 'high end' accredited programmes that address violence and

Oral Hearings <sup>7</sup>		Life			IPP		
		Negative	Open	Release	Negative	Open	Release
Review	2009 / 10	455	311	129	459	325	67
	2010 / 11	338	579	263	430	607	135
	2011 / 12	300	463	311	402	628	395
	2012 / 13	241	481	397	347	656	469
	2013 / 14	313	469	379	323	740	501
Recall	2009 / 10	41	n/a	43	2	n/a	1
	2010 / 11	65	7	67	9	3	5
	2011 / 12	43	28	42	24	16	29
	2012 / 13	33	8	57	16	6	42
	2013 / 14	46	21	78	45	23	94

*As a result of the UKSC judgement these figures will be far higher for the current year (2014-15).*

6. See <http://www.justice.gov.uk/offenders/before-after-release/obp> accessed on 14 October 2014.

7. Table taken from The Parole Board (2014) *Annual Report and Accounts 2013-14* London: the Parole Board.

sexual offending in particular. There is substantial evidence on the importance of protective factors in reducing re-offending and learning from research into desistance should enable us to make valid assessments of risk without someone necessarily having undertaken an accredited programme. The difficulty we face in making such decisions however, is being confident that a change that appears evident within the confines of prison, is likely to endure when the person is back out in the community — something we can never be certain of.

Whilst the Parole Board does make negative decisions on the papers (without an oral hearing) any decision for 'release' in respect of lifers/IPP has to be made after a rigorous risk assessment undertaken at an oral hearing. In the majority of lifer/IPP cases, prisoners will not progress to open conditions without their case being referred to the Parole Board, however there are a few exceptional cases where the Secretary of State for Justice can approve a transfer to open conditions without the prisoner going through the usual Parole Board risk assessment — these are known as Guittard cases following another High Court ruling.<sup>8</sup> From my experience, I consider that the decision whether to progress someone to open conditions is often the hardest decision we have to make on the Board and is, in many ways, more significant than the release decision — although it probably does not feel that way to the prisoner. In progressing someone to open, the panel has to be satisfied that all core risk reduction work has been undertaken and that the prisoner has evidenced a reduction in risk whereby their risk is considered low enough to be managed in open conditions. We undertake a rigorous risk assessment to explore the issues and remaining risk. Where a lifer is in denial the process of assessing risk is particularly challenging but it does not preclude progression or release. The panel has to work on the basis of guilt and will need to understand the context in which the offence occurred and to look for evidence to reassure it that such circumstances are unlikely to repeat themselves and that the prisoner's behaviour and insight indicates little evidence of ongoing risk. However, it is not the case that compliant custodial behaviour (particularly in closed conditions) is in itself

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sufficient evidence of a reduction in risk, especially if the case of sex offenders or when the offender's profile is one where the offending and/or use of violence was largely instrumental.

Significantly, in decisions relating to a move to open conditions, the Parole Board only has the power to recommend the transfer and it is for the Secretary of State to direct it. This leads to the risk of interference and is a challenge which is likely to increase with the new restrictions on prisoners who have absconded returning to open prison and arrangements for ROTLs. It is also a particular issue for foreign national prisoners who are perceived to be at risk of absconding from open. The importance of a period in open in easing

those who have been inside a long time cannot be over-estimated, but we may need to look for alternatives and only time will tell whether the new 'resettlement plus' model will meet their needs. Many lifers are so institutionalised that the transition to open is too overwhelming due to the lack of support and structure they find there, and, in order for them to succeed, more psychological and pastoral support is needed in open prisons. The role of prison staff cannot be over-estimated in helping lifers prepare for release and gain the self-belief that can help them succeed. Another problem is that the ageing population of lifers means that many are post retirement age by

the time they are eligible for release and will not be able to benefit from community work or resettlement ROTLs. Instead they will need very gradual and supported reintegration though intensive work to help them build up a support network and a resettlement plan. Furthermore, the relationship between the OM and the prisoner is crucial but currently very unpredictable with the changes to the Probation Service. Additionally, many lifers have no meaningful connection to the Probation area they fall under (which is linked to where they committed the crime) and often are not in a prison near to it, presenting additional challenges for their effective resettlement and at times a barrier to release as it is difficult for the OM to put together an appropriate risk management plan. The lack of Approved Premises and suitable accommodation options, especially for older prisoners or those with mental health problems, and the difficulties in accessing

8. R (on the application of Guittard) v Secretary of State for Justice [2009] EWHC 2951 (Admin).

specialist support (e.g. psychological support) are also challenges when release decisions are being considered.

Following release, the Parole Board also has responsibility for decisions regarding lifers and IPPs who have been recalled, but the numbers concerned (as the table above shows) are relatively low and recall is rarely, thankfully, due to the committal of a further serious offence but is more likely to be linked to relapse into alcohol or drug misuse or for failing to comply with their licence conditions.

Over 1,000 of all prisoners serving an indeterminate sentence are foreign nationals presenting particular challenges for resettlement and release — including the parole process and their suitability for open conditions. Many of these prisoners will now be automatically repatriated on tariff expiry under the Tariff Expired Removal Scheme (TERS) introduced under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The scheme allows indeterminate foreign national prisoners (FNPs) who are confirmed by Immigration Enforcement to be liable to removal from the UK and to be removed from prison and the country upon, or any date after, the expiry of their tariff without reference to the Parole Board. TERS is mandatory and all eligible foreign national prisoners liable to removal must be considered by the Public Protection Casework Section (PPCS) for removal under the scheme. PPCS will inform the holding prison and the prisoner's OM about the prisoner's current immigration status and it is the OM's responsibility to liaise with the prison and the prisoner about the implications of the decision and ensure that victims are kept informed via the Victim Liaison Unit. Removal of eligible FNPs should occur on the expiry of their tariff or as soon afterwards as possible, however, delays in decisions and uncertainty over eligibility mean that some FNPs still go through the parole process. Whilst many indeterminate FNPs are

content to be removed, others have family — including children — living in the UK and may appeal the decision.

With regards the family, considerably more involvement is needed to truly prepare everyone for release as it is never easy for a prisoner to return to the family home after a long absence. Whilst they may have been gradually reintegrated through overnight ROTLs, expectations may be unrealistic and it is crucial that the OM has contact with family members to discuss their understanding of release, licence conditions and whether they would be alert to possible signs of increasing risk. If the plan is to release someone to Approved Premises again the family may need to understand why they cannot return home immediately. Initiatives such as Lifer pre-release days, family group conferencing pre and post release, and the use of a Family House for ROTLs (as in Denmark and Norway) can make a huge difference. Whilst most decisions for release are generally made once the lifer is in the open estate, release can be direct from closed — usually to Approved Premises and occasionally to residential rehabilitation.

In conclusion, in order to make sense of life sentences we need first and foremost to be able to understand the person behind the index offence. In order to give lifers the best chance of successful resettlement I believe there needs to be a radical rethink of how lifers and IPPs are managed, with greater consideration of the time someone has to serve until their tariff expiry date, at what stage in their sentence they should complete accredited programmes and what age they will be at that point so that a realistic plan can be worked towards. This requires a structured and personalised sentence plan that begins at remand and provides quality information and support to both the prisoner and, where possible, family members throughout custody and crucially after release.