

The Case for Retrospectively Abolishing Imprisonment for Public Protection (IPP) sentences

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Abstract

This brief critical commentary article will examine and develop an argument for why Imprisonment for Public Protection (IPP) sentences should be retrospectively abolished, following their prospective abolishment in 2012. Mental health, prison staff, family impacts and ways to help these effects will be discussed. This article posits that the original IPP sentences failed for four key reasons; (1) they targeted the wrong type of offenders; (2) they made it harder for the offenders to get out of prison; (3) they contributed to the overcrowding issue in prisons; (4) increased negative effects on staff, prisoners, and their families. However, simply abolishing IPPs retrospectively would not solve the problem faced in the Criminal Justice System. The epidemic created by IPPs needs much more than an abolition. The combination of rigorous rehabilitation efforts and counselling will allow quality of life improvements for the prisoners as well as benefitting the prison system in the long-term.

Introduction

Imprisonment for Public Protection (IPP) sentences were introduced by the Labour Government under the *Criminal Justice Act 2003* (c.44), consisting of offences committed

from April 4th, 2005. IPPs were then abolished by the Coalition Government for those convicted from December 3rd, 2012, but not retrospectively, meaning prisoners with existing IPP sentences remained on this sentence (Beard, 2019). IPPs are indeterminate sentences, designed to keep offenders who pose a substantial risk of causing significant harm to the public in prison until they no longer pose this risk. The IPP sentences targeted offenders committing one or more of a specified violent or sexual offence, where the level of offence did not warrant a life sentence (Beard, 2019). However, this did not end up being the case as one third of offenders were sentenced to a tariff under two years (Jacobson & Hough, 2010), one offender even being sentenced to a 28-day tariff (Strickland & Beard, 2012). The sentencing objectives were not being met as they were being given to less serious offenders. The offenders needed to prove that they were no longer a threat to society, placing a strain on the prison and parole system (Beard, 2019; McDermott & Willmott, 2018). These criticisms contributed to the decision to abolish IPPs, as well as its influence on the rapid overcrowding in prisons (Beard, 2019). IPPs have yet to be abolished retrospectively. Whilst the overcrowding due to IPPs has reduced, other impacts on the prisoners, prison staff and parole system have not (See Woodfield et al., 2019; 2022). Therefore, it has been argued that IPPs should also be abolished retrospectively (HLFPR, 2013; Beard, 2019). There are currently 1,969 IPP prisoners as of June 30th, 2020 (Ministry of Justice, 2020) and over 8000 prisoners have served an IPP sentence overall (Prison Reform Trust, 2022), making this a large-scale issue that is still affecting many people. IPP sentences have not met their aims and if the decision to abolish them was made, it is questionable why they were not abolished retrospectively too as the mental health impacts on both prisoners and staff, remain the same (Woodfield et al., 2019; 2022).

IPP sentencing background

IPPs were introduced following the Halliday Report (Halliday et al., 2001) and the Government's 2002 White Paper, *Justice for All* (CJS, 2002). The Halliday Report proposed a new determinate prison sentence for offenders who were not sentenced to life, whereas the White Paper wanted to "introduce a new sentence to ensure that dangerous violent and sexual offenders stay in custody for as long as they present a risk to society". IPPs aimed to reduce reoffending rates (Truss, 2016) and help achieve the goal of prisons being a place for reformation (Ministry of Justice, 2016). A service review of IPPs in 2007 (Ministry of Justice, 2007), made changes to the existing IPP sentences. These stated that the offender must have been previously convicted of an offence listed in Schedule 15A of the 2003 Act (c.44) before committing the most recent offence, or if the term the offender would have served if given a determinate sentence would have been a minimum of two years. This caused issues with fairness as it was also not retrospective. It was criticised as two groups of people with the exact same offending history could be given different sentences (indeterminate or determinate) depending on if it was before or after July 2008 (Jacobson & Hough, 2010). In 2010, another review of IPPs was conducted, resulting in the publication of the 2010 Green Paper (Ministry of Justice, 2010). It proposed that IPPs should only be given to those who would have otherwise received a determinate sentence of at least 10 years. This, however, did not come into practice and instead David Cameron gave a press conference stating how the IPP system would be reviewed urgently (Cameron, 2011). Ultimately, this resulted in the abolition of IPPs with The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) – only for those convicted after December 2nd, 2012. The decision to not abolish IPPs retrospectively was made as the Coalition Government felt that the sentences were given

lawfully so even though the policy changed, it didn't mean previous sentences needed to (McNally, 2012). They also felt that it would be too difficult for the court to manage due to risk management issues, such as explanations of release to victims and the public. Further to this, the Justice Secretary at the time, Michael Gove, spoke of existing IPP sentences; he had no plans to change the statutory test for release of offenders, however there were initiatives to be put in place to help IPP prisoners progress towards their release (Gove, 2016a). From this, more needs to be done in terms of existing IPPs. The reasons for the failure of IPPs will be discussed as well as later suggestions from both Government officials and other sources.

Reasons for failure summary

The original IPP sentences failed for several reasons:

1) They ended up targeting the wrong type of offenders.

The Justice Committee report (Justice Committee, 2008) stated that the number of IPP sentences with short tariffs demonstrates that this sentence has not been directed at offenders who pose a significant risk to society but instead to a large group of offenders whose behaviours do not need an IPP sentence.

2) They made it harder for the offenders to get out of prison.

IPP sentenced offenders must prove to the parole system that they no longer pose a threat to society (Beard, 2019). The parole system is usually for offenders with longer sentences and there are several steps required to demonstrate their lack of risk to the public. IPPs ended up having many short tariffs, as opposed to the proposed longer sentences (Jacobson & Hough, 2010). With short sentences there was insufficient time to undertake rehabilitation and

resettlement interventions needed to prove to the Parole Board by the time their tariff was up (Justice Committee, 2008). This made it much harder for offenders to be released on licence from prison when their tariff was up, meaning many prisoners overstayed their time in prison. This is highlighted by the fact that in June 2019, 94% of those serving IPP sentences were over-tariff (Ministry of Justice, 2020).

3) They contributed to the overcrowding issue in prisons.

Whilst there were other factors contributing to the overcrowding of prisons, IPPs proved to have a significant impact. During 2000-2012, there were more offenders serving indeterminate sentences (including life sentences) than those serving sentences under 12 months (Rutherford et al., 2008). This shows how the demographic of sentences changed during the time of IPPs, emphasising its role in the overcrowding of prisons.

4) Increased negative effects on staff, prisoners, and their families.

Many studies have assessed the mental health effects on prisoners serving IPP sentences. Harris et al., (2020) identified three key themes felt after the IPP prison recall: severe anxiety, self-isolation because of this and hopelessness. The Howard League for Penal Reform (2013) found that 92% of staff reported decreased job satisfaction after the introduction of IPPs as they felt they undermined staff credibility and could not treat all prisoners fairly. Families were also experiencing psychological harm, as they felt uncertainty concerning when their loved one would be released, and they also felt that their family relationships were disrupted (Prison Service Journal, 2019). The stress of life after release was something experienced by both prisoners and their families.

Whilst the issue of overcrowding is no longer present in terms of IPP additions, the problem of existing offenders trying to prove their risk-free behaviour remains, as well as mental health effects. A statement by Nick Hardwick implied that without legislative or policy changes, fast, efficient progress will not be achieved; it is not possible to help all IPP cases through the Parole Board solely (Parole Board, 2016). He suggested revising the risk test for release to limit the detained offenders to those who still pose a risk to society and taking executive action to release those serving over-tariffed sentences. Michael Gove agreed with the latter action in his Longford Lecture (Gove, 2016b), adding that more cases could be released, ideally with an increased use of GPS tags in specific cases. Many recommendations were also made in a thematic report on IPPs (HMIP, 2016) including ensuring offenders are in a prison which has the necessary and timely support and rehabilitation to prove they are no longer a risk. Whilst there are recommendations from various sources, the Government are not taking immediate action despite how much of an impact IPPs are still having on the prison system and the prisoners themselves.

Prisoner effects

The mental health impacts from IPPs have had the most profound effect on prisoners. Whilst in some cases they act as a deterrent from reoffending (Merola, 2015), there is also an unfair weight of hopelessness and anxiety. Firstly, those sentenced to IPPs were significantly more likely to enter prison with existing mental health problems, such as feeling depressed and/or suicidal (HMIP, 2016). Those sentenced have a higher chance of being predisposed to mental health effects meaning that they may struggle more mentally with their time in prison than those serving life or determinate sentences. A study found that IPP prisoners were more likely

to have an emotional motivation for their crime than those in the general prison population (Rutherford et al., 2008). This common theme of pre-existing emotional issues suggests a stereotype for IPP prisoners. As they are a vulnerable group, having better mental health support in place would have been beneficial (Filkin et al., 2022; Thew et al., 2018). Unfortunately, many prisoners who served IPPs still have mental health issues today. The recalling nature of IPPs has created uncertainty which has been associated with low self-esteem and a lack of sense of control over the future (Peters et al., 2017). Uncertainty and hopelessness have been identified as a risk factor for suicide ideation (Boduszek et al., 2021; Wolfe et al., 2017) with many prisoners attempting suicide (Rutherford et al., 2008; McDermott & Willmott, 2018). The most common impact experienced seems to be anxiety. IPP prisoners experience high levels of anxiety as well as an increased risk of self-harm (HLFPR, 2007, 2013). General stress and depression have also been experienced due to the indeterminate nature of the IPP sentences (Rutherford et al., 2008; Greco & Roger, 2003). It was also highlighted that those prisoners sentenced to short tariffs pre-2008, particularly struggled with anxiety as they saw other offenders convicted of similar crimes post-2008, enter and leave the prison system before them (Filkin et al., 2022; HLFPR, 2013). This was due to the changes made in the Criminal Justice and Immigration Act 2008.

Whilst IPPs aimed to allow rehabilitation evidence to get out of prison, the sentences given out failed to accommodate this due to their short nature. Another issue, which is still present despite the IPP abolition, is that many IPP prisoners are over-tariff. As previously mentioned, as of June 2019, 94% of IPP prisoners were over-tariff (Ministry of Justice, 2020). Rose (2012) highlighted the criticisms focused on in the 2010 Green Paper. One of these being that effective rehabilitation of offenders was proving hard for those sentenced to IPPs. When the

sentences given are so short, it does not allow time for rehabilitation interventions to be administered to the IPP prisoners. Consequently, this means that those offenders cannot show that they have 'changed' and are suitable for release. This means that many prisoners serving IPP sentences end up serving a longer sentence than initially thought. It has been identified that due to a systemic failure the rehabilitation efforts could not be carried out as intended (HMCIP, 2008).

Familial effects

It is not just prisoners affected by indeterminate sentencing; it is also family and friends. Many families feel a sense of injustice and bitterness towards the justice system (Annison & Condry, 2018). Annison & Condry (2018) also found a theme of hopelessness experienced by family members, describing it as "a never-ending battle". A feeling of hopelessness is seen consistently across both prisoners and their families. As well as emotional issues, families are faced with geographical issues. Many families feel they are unable to support their imprisoned family member due to them being moved from prison to prison or being in a prison a significant distance from home. Prisoners who receive visits from family and have family support upon release are almost 40% less likely to reoffend (May et al., 2008). As one of the aims of prison is to reduce reoffending rates, placing prisoners far from their families seems counterproductive. Families have also reported struggling to support the prisoner due to poor communication and rapid staff turnover rates (Annison & Condry, 2018). Children of those serving an IPP sentence are also heavily impacted. Research has shown negative outcomes for those with imprisoned parents, including poorer education performance, social isolation and increased mental health issues (Clancy & Maguire, 2017; Sharratts et al., 2022).

These have been directly connected to shame and bullying experienced by these children (Debowska et al., 2018; Moses, 2010). However, this isn't the case for all children although negative stereotyping can occur amongst practitioners, leading to a hyper focus on that child, expecting them to behave in a negative way as they grow up (Boduszek et al., 2017; Knudsen, 2016). McConnell and Raikes (2018) summarise this; a child will be hugely impacted through not only watching their parent serve an IPP sentence, but, indirectly, through the observation of their other caregiver/s being affected by the sentence. Support needs to be offered to families who have been involved with previous IPP sentences and those who are currently going through it. Not abolishing IPPs retrospectively undoubtedly created a further sense of injustice amongst family members of those serving IPPs. Retrospectively abolishing the IPP sentences may begin this process of healing.

Prison system and staff effects

After focusing on personal and mental health effects of IPPs, the wider effect on the prison system, including staff, should also be considered (See Woodfield et al., 2022). When first abolished, one of the reasons was due to the contribution to the overcrowding prison population. With the 2012 abolition, the rapid increase in prison population stopped and now averages around 85,000 per year. Although, IPPs were only one of the many factors involved in this increase (Beard, 2019). Further to the overcrowding effect, other pressures were inflicted upon prisons and the parole system. As the parole system was usually used by those serving long-term sentences, the increase in cases needed to be assessed created pressure on the Probation Service (HMCIP, 2008). There are still many cases which need to be assessed highlighting the continuation of this pressure on the probation service. Rehabilitation access

is another issue which contributed to the abolition of IPP sentences. In combination with the overcrowding prisons, short-tariff sentences made it difficult for the prisoner to get access to rehabilitation programmes before their tariff was up (Beard, 2019; McDermott & Willmott, 2018). This led to an inability to show that they were no longer a risk to the public, consequently not being released and serving longer than their tariff. On a local level, IPP sentences have also impacted prison staff. 92% of staff reported that IPPs decreased staff job satisfaction (HLFPR, 2013). This was because they felt that IPPs undermined staff credibility, hindered staff treating all prisoners equally and often meant staff could not help prisoners progress through their sentence. With the abolition of IPPs, this prevented new prisoners coming in but did not stop these issues for the existing prisoners serving these sentences. It is important to recognise the wealth of evidence which suggests negative impacts emerging from prisonisation itself, especially upon offending identities. Many studies have shown that offending identities may indeed become worse and further internalised during a period of extended incarceration (Boduszek et al., 2021; Filkin et al., 2022; Sherretts et al., 2017; Sherretts & Willmott, 2016). Likewise problematic attitudes towards particular crime types (Debowska, Boduszek, & Willmott, 2018) and psychopathology linked to offending behaviour are also found to get worse during lengthy imprisonment (Boduszek et al., 2017; 2018; 2021). However, a recent systematic review of interventions focuses on both forensic and non-forensic settings designed to help change and adjust prisoners' identity to allow for more pro-social outcomes. The study provides some examples of ways in which the prison service may engage prisoners to reduce the effects of such extended incarceration (see Barnett et al., 2021). Probation staff may also feel political pressure when helping those on IPPs due to their more complex mental health issues (Smart, 2018). Stress and anxiety have also been seen throughout the Criminal Justice System due to a lack of communication (Nurse et al., 2003).

King and Crisp (2021) predicted that this organisational anxiety could be projected onto prisoners, experiencing it as injustice or victimisation. Good prisoner-staff relationships have been shown to be mediators of self-determination in prisoners (Crewe, 2007; Liebling, 2011; Liebling et al., 2019) which could improve their behaviour in prison showing the lack of risk needed to be released. The importance of having good staff relationships with prisoners is clear, as well as the negative impacts IPP sentences have had and still have on the prison and parole system and prison staff. Providing support to staff as well as retrospectively abolishing IPPs would help release the pressures felt on an individual and systemic level.

Further actions

To overcome the problem with the existing IPP sentences, a number of steps need to be taken. Various methods have been previously suggested. For example, Michael Gove proposed that using the power of executive clemency to release all over-tariff IPP prisoners would help solve the IPP issue as well as help overcrowding in prisons (Webster, 2016). In a recent debate suggesting amendments to the IPP sentence, ideas included providing alternative methods to immediate recall such as electronic tagging as well as providing pressure for the Government to act on the issue (House of Lords, 2021). They also highlight that it is due to the lack of support after prison release which encourages the high level of breaching of their license terms, leading to high recall rates of IPP prisoners.

A common theme throughout the IPP process is lack of support both in prison, in terms of rehabilitation, and after prison, with no support for those released. Prioritising access to programmes would aid prisoners in progressing to meet the release criteria. Having a prison

system with rehabilitation as the primary focus could lead to a more positive psychological environment (Jordan, 2011), improving mental health impacts together with rehabilitating prisoners. For example, therapeutic animal programmes in prisons have seen improved mood as well as an increased sense of responsibility, enhanced trust, and communication (Mercer et al., 2015). Placing IPP prisoners into these rehabilitation programmes would simultaneously help progress towards release and improve their mental health. Those who have served over-tariff should have priority access to these programmes.

Whilst retrospective abolition will fix some things, it needs to go hand in hand with offering rehabilitation programmes as well as counselling to families and the prisoners themselves. Counselling needs to be offered to those serving IPPs and those who have served them. The mental health impacts that have come with the uncertainty of the indeterminate sentence has created negative mental health impacts amongst the IPP population. To begin to resolve this, counselling could allow the prisoners and their families to deal with the events that have occurred and hopefully decrease anxiety. Support outside of prison has also been identified as an area that is lacking (Edgar & Rickford, 2009). Supporting the prisoners post-release, could help reduce reoffending rates, benefitting the general population. Prison and parole staff may also be overlooked. The pressure felt from the IPP sentences is unjust so offering additional training or having a senior member of staff to speak to about how they feel could be beneficial, reducing organisational anxiety.

Conclusions

This policy proposal would begin to undo the wrongdoings of implementing IPP sentencing. It promotes the disaster of IPPs to be used as a learning experience of what not to do. By abolishing IPPs retrospectively, prisoners may finally feel justice and can begin to heal. As most of these prisoners have served over-tariff, it does not seem unfair to release them or at least review their case. If they are not eligible for release, then their sentence should be changed to a determinant one in line with sentencing for those convicted of a similar crime. With regards to the public, it should be stressed that these prisoners have served their time and if they have not or cannot prove that they should be released, a determinant sentence will be issued. This will hopefully avoid the public or victims feeling as though prisoners have been let off lightly. Backlash may be experienced due to the failings of the system, however, as this has already been experienced from the previous IPP abolition, the government should be prepared to deal with this.

The evidence clearly shows how IPPs are continuing to affect the prison population in terms of the staff, prisoners, and the system in general. Whilst we can see that some of the previous impacts of IPPs have been resolved by the 2012 abolition, such as overcrowding due to the number of sentences given out, it is obvious that other impacts still exist. Merely abolishing new IPP sentences was not enough to solve all the problems that the prison system and prisoners faced after the introduction of IPPs.

However, simply abolishing IPPs retrospectively would not solve the problem faced in the Criminal Justice System. The epidemic created by IPPs needs much more than an abolition. The combination of rigorous rehabilitation efforts and counselling will allow quality of life improvements for the prisoners as well as benefitting the prison system in the long-term.

Policy Recommendations

This policy brief recommends that:

- Current IPP cases are reviewed and retrospectively abolished with alternate sentencing in place for those who don't meet the release criteria

- Provide optional counselling for those who have served/been serving an IPP sentence

- Prison and parole staff are offered support

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Reviewer 1 – Caroline Lilley (*The University of Sheffield, School of Law*)

Overall this is a solid paper. There is a clear, well-thought-out structure that makes it an easy read. As a reader with no previous knowledge of IPPs, the introduction and “IPP sentencing background” sections provide sufficient detail to form a foundation of knowledge. Some latter areas feel repetitive of key ideas presented earlier in the paper; however, the writing flow improves as the piece progresses.

I recommend this paper for publication. I have a few minor cosmetic revision recommendations.

1. In the abstract, I recommend removing the “;” after listing the four main reasons for failing IPPs and replacing it with a complete stop. This will break up the sentence and make it easier to read.
2. On page 5, the sentence starting, “Families were also experiencing psychological harm”. I recommend adding “as *they* felt uncertainty” to improve the sentence’s flow.
3. On page 6, paragraph 1, the final sentence, “the government are not taking immediate action”, I recommend changing “considering” to “despite” as the sentence is unclear.
4. On page 9, the sentence that summarises “McConnell and Raikes’s (2018) work is a little unclear and could benefit from a rewrite to make it more understandable.
5. On page 10, in the sentence “This was *as* they felt that IPPs undermined staff credibility”, I recommend changing the “as” to “because”. This will help the clarity of the sentence.
6. On page 12, the sentence “Placing IPP prisons into these rehabilitation programmes in prisons” should read “Placing IPP *prisoners...*”.

The above recommendations are optional but may help with the clarity of the writing.

Caroline Lilley
University of Sheffield

Reviewer 2 – Kathryn Devine (*University of Huddersfield, School of Psychology*)

Overall, this was an interesting article, I felt that it provided a good outline of the use of IPP and the argument for reviewing and removing these. I felt that the issues were clearly explained.

I have included some comments regarding possible changes below

Page 3, Line 8

Where you have started the sentence with “stating”. This may read better if this is changed to these stated

Page 3, Line 10

I feel that a comma may be missing between “offence” and “or”

Page 4, Line 3

You mention “risk management issues”, however I wonder if it would be beneficial to provide more detail as to what these issues are

Page 4, Line 4

When you write about Michael Gove’s speak, it appears that the tense of writing changes here, I wonder if it may be beneficial to review this. Are you writing in the present tense and quoting his speak or refereeing to something he has said in the past? This may benefit from being clearer

Page 9, Line 3

You mention “negative stereotyping” however it is not clear who is making the negative stereotyping, or what these are. Would expansion on this point provide additional information to the reader and clarify your point.

Page 11, Line 20 and 21

Your sentence starting “however a recent...” this sentence is not clear in its meaning, and I wonder if there is a further mistake when you write “prison service may engage in prisoners”. I think that reviewing this to ensure clarity would be beneficial

However, I feel that this article can be accepted following minor corrections.

Kathryn Devine
University of Huddersfield