

# IPPs—a disaster foretold?

Jon Robins considers the origins & consequences of the sentencing fiasco that was imprisonment for public protection

Thousands of prisoners are currently locked up past tariff—often for fairly minor offences—without hope of release, despite IPPs being scrapped more than a decade ago. Last November the scheme’s architect, Lord David Blunkett, performed the latest in a series of heart-felt *mea culpas* expressing sincere and public regret for what must have seemed like a good idea at the time.

The former New Labour home secretary pointed out, shockingly, that the mess of his creation is getting worse, not better. To be fair to Blunkett, his successors deserve their own share of blame for not fixing a crisis described as a ‘stain’ on our justice system by Ken Clarke (as a coalition government Lord Chancellor) when he scrapped the IPP back in 2012.

## Where are we now?

‘Out of the 3,000 people who are still in prison on IPP, 1,300 of them are there because of recalls,’ Lord Blunkett told fellow peers in a debate on the Police, Crime, Sentencing and Courts Bill. That was up 100% from 2016. If we are not careful, he warned, that trajectory will lead to more prisoners being in prison on IPP on recall, than are actually in prison for the original IPP, which was ‘a farcical situation and a tragedy for them’.

Priti Patel’s controversial Policing Bill was seen by Blunkett, peers and campaigners as a compelling vehicle for correcting the damage via a series of amendments, including providing for the release of IPP prisoners who had served more than the sentence for the offence (unless it could be demonstrated that they posed a risk to the public).

Research published in late 2020 by the Prison Reform Trust (PRT) revealed the anguish faced by the growing number of IPP prisoners recalled to prison for breach of their licence condition. According to

the PRT, that number had tripled in the past five years. In his introduction, the former Supreme Court justice, Lord Brown, explained most of those recalled hadn’t committed another offence, instead their recall was for (often minor) infractions of release conditions. As he pointed out, they existed in ‘a Kafkaesque world of uncertainty, despair and hopelessness’.

‘So long as I’m under IPP I have no life, no freedom, no future,’ one prisoner said. ‘I fear IPP will force me to commit suicide. I have lost all trust and hope in this justice system.’

## How did we get into this mess?

The IPP was introduced by New Labour’s Criminal Justice Act 2003 described as a ‘legislative statement of toughness on crime’. The previous year, Blunkett, then home secretary, delivering on Tony Blair’s promise to confirm New Labour as tougher on crime than the Tories, awarded Sarah Payne’s paedophile murderer a landmark minimum 50-year life sentence.

To Blunkett’s frustration, this became the last time a home secretary was able to set the minimum tariff for murder after the Law Lords ruled that such a decision was for courts, not politicians. But Blunkett, not prepared to be outmanoeuvred by the courts, responded with the IPP.

Prior to 2005, the life sentence was the only indeterminate sentence available to judges. Like a life sentence, an IPP would have a minimum term or tariff, to be served in custody but thereafter release could only be authorised by the Parole Board. This was introduced in the face of a chorus of disapproval as Blunkett, to his credit, acknowledged in last month’s debate. Lord Woolf, then the Lord Chief Justice, recalled his efforts to dissuade the minister. ‘But I obviously failed and we see now the consequences of the biggest mistake made in the criminal justice system during my

period as a judge.’

Almost immediately the IPP proved problematic. In her annual 2007 report, the prisons inspector, Dame Anne Owers, noted that its planning and introduction had been ‘badly mismanaged’ and had imposed ‘a needlessly large burden on prison budgets’, forcing prisoners to navigate their way through a system of (again) ‘Kafkaesque complexity’. ‘The bureaucratic treacle in which prison ... staff in general found themselves struggling was another legacy of this politically motivated law,’ she noted.

While the Home Office initially estimated that the introduction of IPP sentences would result in the imprisonment of some 900 people, more than 8,000 IPP sentences have been imposed. There was cross-party support in the recent debate in the House of Lords for the amendments which included releasing IPP prisoners who had served more than the sentence for the offence unless it could be shown that they posed a risk to the public. The Tory peer and former solicitor general Lord Garnier called for immediate action. ‘This obscenity must now end,’ he said.

David Blunkett has owned his ‘culpability’ and admitted the original intention to provide adequate support to both provide safety for the public and for rehabilitation had gone ‘badly wrong’. His department had ‘not fully agreed with the Treasury’ resources for rehabilitation nor had they appreciated how ‘cautious members of the judiciary’ would take a ‘safety first’ view. ‘I got it wrong,’ he said. ‘The Government now have the chance to get it right.’ But will they take it? Or will (as commentators expect) their desire to demonstrate their ‘toughness’ eclipse the clear need to correct injustice?

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