

# UNGRIPP

## Legal Q&A Session on the IPP Sentence

Summary of session held on 22<sup>nd</sup> September 2021

Questions answered by Dean Kingham of Reece Thomas Watson Solicitors.

### Introduction

This document contains a summary of the commentary, questions and responses from a legal Q&A session held for people serving an IPP sentence, and their families. Commentary and responses were provided by Dean Kingham, and are reproduced in this summary. Dean, is a Prison and Public Law solicitor at Reece Thomas Watson Solicitors. He is a committee member for the Association of Prison Lawyers and Parole Board lead. He specialises in representing complex cases before the Parole Board, and those stuck in the system.

The contents list below can be used to navigate to specific summaries and questions.

The last section of the document contains a glossary of abbreviated terms used throughout the session. All abbreviations in the text are directly linked to the glossary, to aid understanding.

We hope that people affected by the IPP sentence find the provided information useful. Follow our work campaigning for change to the IPP sentence at [www.ungripp.com](http://www.ungripp.com) and on Twitter @UNGRIPP.

Follow Dean's work at @deankingham on Twitter.

## Table of Contents

<b>Introduction.....</b>	<b>1</b>
<b>Summary of the Current Situation.....</b>	<b>2</b>
<b>Q&amp;A Session .....</b>	<b>3</b>
<b>Are people who are serving an IPP sentence going to be given a fair hearing? .....</b>	<b>3</b>
<b>Release was granted at the last Parole hearing but it was cancelled at the last minute due to concerns from one panel member. Since then all courses have been undertaken and behaviour changed. Will this have a positive impact on the next Parole hearing? .....</b>	<b>3</b>
<b>Is the campaigning around the IPP being heard and listened to?.....</b>	<b>3</b>
<b>When wrong or false information is included in a dossier, how does one go about holding the author to account in order to have the information redacted to ensure all information is accurate? .....</b>	<b>3</b>
<b>What provision is there for those who are still in prison to pursue false report writers for libel, slander and defamation? .....</b>	<b>3</b>
<b>Is there any way that an OMU can be required to implement the decision of a Parole panel, that a person in prison be moved from Cat B to a Cat C? .....</b>	<b>4</b>
<b>What can the Parole Board do when they recommend a move from Cat B to Cat C in a previous Parole hearing but this has not happened and the person is still in a Cat B at the next Parole hearing?.....</b>	<b>4</b>
<b>How long does the review take for an appeal?.....</b>	<b>4</b>
<b>How long does the appeal against a review period take with PPCS?.....</b>	<b>4</b>
<b>Can the Parole Board or probation officer change a sentence plan after a Parole hearing has taken place? .....</b>	<b>4</b>
<b>Glossary.....</b>	<b>7</b>

## Summary of the Current Situation

- Justice Select Committee inquiry in to the IPP sentence: Key timing and a positive step forward.
- Emphasis on people being made aware that less than 1% of those released on an IPP sentence go on to commit a serious further offence.
- Awaiting the results of the Moran evaluation (also known as the NEON evaluation) that was carried out in 2018, on the Offending Personality Disorder Pathway. It has never been published – possibly due to what the results show. It is possible that it shows that the pathway is ineffective reducing risk.
- Section 128 of the LASPO Act (2012) gave powers to alter the test for release, however this has never been enacted.

## Q&A Session

### Are people who are serving an IPP sentence going to be given a fair hearing?

Within the context of the Parole Board, they will try to apply the release test as they see it. In my experience I rarely find an unfair Parole Board when they are given the full picture. This is why it is important to prepare for a Parole hearing thoroughly, gather your own evidence, and have your own experts to give evidence. At hearings to have your IPP sentence removed – you definitely won't have a fair hearing.

### Release was granted at the last Parole hearing but it was cancelled at the last minute due to concerns from one panel member. Since then all courses have been undertaken and behaviour changed. Will this have a positive impact on the next Parole hearing?

It is hard to know for sure without knowing more details of the case. While there is limited research to say that courses do reduce risk, there is still a culture within the Parole Board that courses do help to reduce risk so I always encourage people who I speak to that are stuck to do the courses for the benefit of the Parole hearing.

### Is the campaigning around the IPP being heard and listened to?

The IPP campaign is currently making the most noise that I have heard in a long time and the proof of this is seen in the Justice Select Committee launching an inquiry. The difficulty is the current government being less open to change but by campaigning it is keeping it at the forefront, which is important.

### The Parole Board gives direction to HMPPS. All too often these directions are fully or partially ignored. Why is this allowed to happen? What can be done to ensure HMPPS carry out these directions?

This is a big issue and one that is featured in the root and branch review of the Parole Board that is currently taking place. Unfortunately the Parole Board does not have the ability to hold people to account for not putting things in to place. The best way to get compliance to is to ask the Parole Board to get the other agencies to attend the Parole Hearing where the Parole Board can ask them directly why things have not been put in place. This normally ensures compliance.

### When wrong or false information is included in a dossier, how does one go about holding the author to account in order to have the information redacted to ensure all information is accurate?

The Data Protection Act is clear about this: all information should be up to date and accurate. When inaccurate information is included you can make someone aware of this prior to the Parole hearing and if it is still unchanged, then raise this in the Parole hearing. Using the Parole hearing to raise these issues is particularly important when information is based on an opinion rather than fact.

### What provision is there for those who are still in prison to pursue false report writers for libel, slander and defamation?

There are two main routes. One is to use civil proceedings to have it changed and the second is to seek to have it changed by the Parole Board during a Parole hearing, if you can prove that the information is incorrect.

## Is there any way that an OMU can be required to implement the decision of a Parole panel, that a person in prison be moved from Cat B to a Cat C?

Whenever a person is moved to a new prison a Lsp 4 document is written in order to justify the move. You can obtain this document and challenge it. You can do this either before a Parole hearing by requesting that it be changed by the Secretary of State or you can challenge it during the next Parole hearing. This can also be done if someone is re categorised from a Cat D to a Cat B.

## What can the Parole Board do when they recommend a move from Cat B to Cat C in a previous Parole hearing but this has not happened and the person is still in a Cat B at the next Parole hearing?

When making decisions the Parole Board have three choices – to keep someone in closed, to move them to an open prison and to release them. Outside of this the Parole Board cannot comment on courses, re categorisation and sentence planning. There is scope to raise the issue during the next Parole hearing but if this does not change things then you can also take it up directly with the prison/ Secretary of State. Essentially focusing on how it is hindering a person's ability to progress, which could lead to a letter of claim to the MoJ.

## How long does the review take for an appeal?

A parole hearing reconsideration must be actioned within 21 days and then dealt with by 2-3 weeks thereafter. The time frame for a criminal appeal is in the hands of the court.

## How long does the appeal against a review period take with PPCS?

There is no time frame for this.

## Can the Parole Board or probation officer change a sentence plan after a Parole hearing has taken place?

Yes they can but ultimately the Parole Board decides if the changes are necessary. The Parole Board will always come back to the test for release 'is the person safe to be released' [Full test- Whether It's necessary for the protection of the public that the individual remains confined]. Probation will often say that someone will 'benefit' from doing a course but you can push back on this and ask if it is 'necessary to lower risk'. It is not about benefiting, but what is necessary.

## How important is ROTL from the Parole Board's perspective?

APs have seen limited increase in resources for this in the last 20 years and these resources will have been further impacted by Covid meaning less ROTL and in some cases impacted Parole hearings. ROTLs are not necessary for all people in prison but the Parole Board do usually expect some level of ROTL. However, this can be argued at a Parole hearing.

## Can the Parole Board create their own verdict on a previous allegation?

Yes they can. They do this on the balance of probability test. If it has been adjudicated upon already then they cannot go back on it. There is an allegations policy that gives a wide scope for deciding factors. Unfortunately the Parole Board is given limited training on allegations and some board members will have experience with this but other will not.

When dealing with allegations, Probation rarely use any alternatives to recall and offer little information regarding the recall so the Parole Board then have to delve deeper to explore the reasons for recall, which can take time. The Parole Board is astounded by the level of recalls.

**Is it necessary to have a psychologist report done every year, as asked by the Parole Board?**

No, but there is a culture of doing so. I would recommend that people should get an independent report done themselves. Something that the Parole Board are considering is that if a paper hearing is referred to an oral hearing that the same member attends the oral hearing to try to keep consistency. However, this is not happening yet.

**The Parole Board recommended Cat D but changed it to an 18 month PIPE following the lockdown, which means starting over again and a longer wait. Why is this?**

This may have come from a recommendation from a psychologist report. Unfortunately many prison psychologists are trainees and have had limited experience, particularly outside of the prison estate and will confuse personality disorder traits (which we all have) with a diagnosed disorder. I would highly recommend that people get an independent psychologist with experience from outside of prison to do a report.

**Are their specific independent psychologists you would recommend for parole hearings?**

Ask your solicitor to arrange this, as they will know people with the right level of experience.

**Does the Parole Board prefer prison psychologists?**

My experience is that the Parole Board now sees that many prison psychologists are not fully independent and so they will now give equal weight to independent reports. Something that might help when disputing a psychologist's report is to draw out on the psychologist's experience with the relevant area you are disputing, to try to explore the strength of the report.

**How does the Parole Board deal with someone who has spent most of their time in segregation, and so has made no progression?**

The first question has to be why the person has been there for so long and what is being done to help them. There have been many reports written about the damage prolonged segregation can have on someone.

**Can you challenge the initial IPP sentence?**

Yes you can but the prospects are now greatly reduced. You should seek advice to try to take it forward.

**What happens if you are convicted of a further offence, and the judge states that there were other circumstances surrounding it that are not taken in to consideration because of the IPP?**

If someone is convicted of a further offence then it is normally concluded that all previous courses did not work so they must be competed again. With reference to the judge's comments, it would be helpful to try to get these included in the dossier.

### Why is the Parole hearing process so drawn out?

Because the Parole Board has less power than a court and they have no power to ensure people comply with what they are expected to submit to Parole hearings. If a case gets looked at on the papers, the information that is provided is usually very poor so they cannot make a decision and need to request more information or wait for an oral hearing. This is the same for recalls, which they are vocal about. There is a root and branch review of the Parole Board that is due to be released soon. This will undoubtedly raise this issue.

### What can be done about prisons opening legal post?

As a last resort you could proceed with a judicial review and take them to court. However, you will need to go to the PPO first, who can be a bit hit and miss but they are generally good when it comes to dealing with issues around legal post.

### If you have done everything that was asked of you in the previous Parole hearing, why can't someone be released on a paper hearing?

In theory they can but it goes back to the culture of the Parole Board being risk adverse. Due to previous media backlash about releases they have to ensure they find the balance. Things with the paper hearings are improving. Covid has helped with this as there are now more paper releases happening.

### Since being released, Probation have offered absolutely no support. Why is this?

There has been no investment in resources for support for many years. This alongside the government not documenting the issues with Probation has led to this situation.

### How can you challenge written information that is based on a person's personal judgement, or wrong facts or false allegations that are made by Probation officers?

The most important thing to do is to keep a detailed log yourself about anything regarding your case. This includes the quality of your relationship with Probation, and any calls or emails you have had with them. This will allow you to go in to a Parole hearing fully prepared. You can also challenge it though the PPO complaints procedure.

### How can I best prepare for a Parole hearing?

Keep detailed logs of anything linked to your case, including interactions with Probation and your viewpoint on any logs that may have been entered about you. Ask your solicitor what questions the Parole Board are likely to ask. Ask your solicitor about the panel so you can get to know them a little before hand. As an IPP you are the key witness. Prepare beforehand with your own evidence and documents.

### Can families attend Parole hearings?

Yes.

### How do you find out the date of a Parole hearing once it is deferred?

The Parole Board will re-list it. I think that all October hearings have been listed.

## Glossary

- AP. Approved Premises.** A form of controlled accommodation for people released from prison, under supervision of the Probation Service. They were formerly known as bail hostels or Probation hostels. They allow closer supervision than other forms of accommodation, with restrictions such as curfews, and sign-on times.
- COM. Community Offender Manager.** The Probation Officer who retains overall responsibility for managing a person's sentence, and supervises them when they are released into the community. Formerly, they were simply known as the Offender Manager.
- OASys. Offender Assessment System.** The assessment tool that is used to assess an individual's risk factors, and any needs they have, which are related to their offending behaviour. It has sections to assess risk of harm to specific individuals and to the general public, and to detail sentence plans and risk management plans.
- OPD. Offending Personality Disorder Pathway.** In 2015, the Ministry of Justice and the Department Health agreed to jointly manage people diagnosed with, or showing traits of, personality disorder. This was because previously, such people often fell between the cracks of the two systems. The result was the OPD Pathway. People showing concerning behaviour are screened to see if they are likely to be suffering from personality disorder (a formal diagnosis is not needed to access the pathway). If they pass screening, they may become eligible for a range of interventions on the pathway. This can range from intensive treatment for personality disorder, extra help to consolidate changes they have already made (via a [PIPE](#) unit), specialist accommodation on release, or staff managing them may receive specialist advice on how best to work with their personality traits. The OPD pathway is become a more common sentence plan objective for people who have completed offending behaviour programmes, but are still judged to be at high risk of causing serious harm. However, the term 'personality disorder' has a complex history: some mental health professionals believe it isn't a valid or helpful diagnosis, and directs attention away from the effects of a person's traumatic history or current circumstances. The OPD pathway doesn't require a formal diagnosis of personality disorder in order to access it – a move that is intended to speed up progress, and avoid stigmatising labels. In practice, it means that somebody can be referred and set objectives based on the assessed presence of 'personality traits' that are judged as linked to risk of reoffending.
- OS. Offender Supervisor.** Until recently, this was the term used to describe the professional (usually a Probation Officer or Senior Prison Officer) inside prison who managed a person's sentence, including setting the sentence plan. However, the term has now changed to Prison Offender Manager ([POM](#)).
- POA. Prison Officers Association.** The union for Prison Officers.
- POM. Prison Offender Manager.** The professional (usually a Probation Officer or Senior Prison Officer) inside prison who manages a person's sentence, including setting the sentence plan. Until recently, they were known as the Offender Supervisor ([OS](#)), but POM has now replaced this term.

**PPO. Prison and Probation Ombudsman.** The independent organisation whose duty it is to investigate complaints by prisoners, all deaths that occur in prison, and deaths of recently released prisoners.

**Protective factors.** Factors that are assessed as reducing someone's risk of reoffending. They are a more recent addition to assessments of risk, and are intended to describe what individual characteristics and circumstances will act as a buffer to risk. For example, drugs might be a risk factor for someone, but good links with a substance misuse support group might act as a protective factor in this instance.

**PIPE. Psychologically Informed Planned Environment.** A PIPE unit is a prison wing that is explicitly designed around principles of rehabilitation. It helps people who have completed core risk reduction work (like offending behaviour programmes) put into practice the things they have learnt, with the help of specially trained officers and overseen by a unit psychologist. The units offer both greater support and closer monitoring. The units are influenced by the Enabling Environment principles developed by the Royal College of Psychiatry, which were designed for environments that help people recovering from mental health issues to flourish. They were thought to provide the kind of reinforcement needed to maintain progress made on offending behaviour programmes, which evidence suggested could be short-lived without consolidation.

**PPCS. Public Protection Casework Section.** The administrative unit within the Ministry of Justice that deal with issues of public protection (e.g. the various review and recall processes).

**ROTL. Release on Temporary License.** Overnight releases from prison (generally Category D prisons), to Approved Premises. ROTLs are designed to accustom people to the community, and help them prepare for release by seeking/undertaking work and/or spending time with family. Successfully completed ROTLs can also act as evidence of a person's ability to manage their risk.

**ROSH. Risk of Serious Harm.** An assessment that forms part of the Offender Assessment System (OASys). The available rankings are Very High, High, Medium or Low risk of harm, and separate ratings are made for risk of serious harm to the public, 'known other', and to children.

**SAPROF. Structured Assessment of Protective Factors for violence risk.** An assessment tool used, mainly by psychologists, to judge the factors that reduce a person's risk of reoffending. It is designed to be used alongside risk assessment tools.