

insideinformation – fact sheet

IPP

Information courtesy of Katy Cowans of Henry Hyams Solicitors Leeds

The inability of HM Prison Service to cope with the unpredicted influx of around 140 prisoners per month ordered to serve indeterminate sentences for public protection (IPP) has been well documented. In February 2008, in the case of Secretary of State for Justice v Walker and James, the Court of Appeal confirmed that the Secretary of State had acted unlawfully by failing to provide measures to allow and encourage IPP prisoners to demonstrate to the Parole Board that they were no longer dangerous by the time of minimum term expiry.

Essentially, by the time the Parole Board considers the continued detention of an IPP prisoner, it must be presented with material to show whether further detention is necessary or not. That basically means post programme reports for offending behaviour courses or at least verbal accounts of the prisoner's participation on such courses that show to the Parole Board Panel that the prisoner has reduced his risk. If such material is not available a fair review of detention is not possible. Waiting lists for courses have increased and the well reported overcrowding situation has added to the problem, particularly in the high security estate. It has reached the stage where even those recommended for a progressive move within Category B or C are in a state of flux because there are simply insufficient places within those estates to allow transfer.

In December 2007 the Secretary of State for Justice, Jack Straw, made a statement to the House of Commons that there would be amendments to the Criminal Justice and Immigration Bill introducing a minimum tariff of two years for IPP and extended sentences. That Bill became law last year, but the message behind the announcement and the impact of the Walker and James case was reflected in a change in the way IPP prisoners are categorised.

Prison Service Instruction 07/2008 was introduced on 18 February 2008. The categorisation system before this PSI required all IPP prisoners to be categorised initially as B. That resulted in the gridlock that the system is currently attempting to deal with. The PSI recognises that "IPP prisoners now form a significant proportion of our indeterminate sentenced population" and that prior to IPPs similar types of offenders would have been determinate sentence prisoners who fell within Category C.

As of 18 February 2008, newly sentenced IPP prisoners with short tariffs of under 3 years, should be allocated to Category C. Category C prisons cannot limit the number of IPP prisoners they are prepared to accept. IPP prisoners cannot be categorised as Category D immediately when they are sentenced.

As with the old system, the Prison Service has adopted an algorithm, which is basically a checklist of questions designed to place the prisoner in the right category. A determinate sentence prisoner with a sentence over 10 years or an indeterminate sentence prisoner with a tariff over 3 years will initially be categorised as B. The Prison then applies a series of factors to all other long term and IPP/Lifer prisoners to determine the appropriate category. Briefly, if the prisoner has one or more of the following: previous sentences over 10 years; escapes; current or previous sentence involves violence, threat to life, firearms, sex, arson, drugs or robbery - they will be initially categorised to B. All others will be categorised to C.

It is important to note that the OCA department of the prisons will undertake a general risk assessment and if there are any circumstances which indicate that a particular prisoner should be placed in a higher security category than indicated by following the algorithm that will be recommended and passed to a second prison officer of Security level to countersign.

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Following the introduction of the PSI all Governors/Directors are required to ensure that this practice is used with newly sentenced prisoners and that the category reviews of all existing male IPPs in Category B prisons must be done with the new procedure. The PSI does not specifically refer to "lifers", but the algorithm for calculating the initial category refers to IPPs with tariffs over 3 years and "all other indeterminate sentence prisoners", which clearly covers those sentenced to life.

All indeterminate sentence prisoners are released on a life licence. That has not changed and there is no suggestion that it will in the near future. The difference between those sentenced to an IPP and those sentenced to mandatory, discretionary or automatic life sentences is that Section 31A of the Crime (Sentences) Act 1997 states that once the former prisoner has successfully completed the "qualifying period" on licence - currently 10 years - he can apply to the Secretary of State for Justice to have the licence revoked.

It remains to be seen whether the introduction of the new PSI and the Walker and James case will have a positive impact upon the stalemate that many IPP/Lifers have reached, but it does at least seem to be a step in the right direction.

IMPORTANT NOTICE

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