

The Lord Atkin Lecture: The Reform Club “Prisons for a Purpose: Reforming our Broken Prison System” – Lord Garnier KC

25 January 2022

I am not sure if Jeffery Onions can remember but it was way back in December 2019 that he and Roger Billis asked me to give the 2020 Atkin Lecture here at the Reform Club. They told me it was an annual event that had been taking place for thirty years or more. The lectures commemorated Lord Atkin, who was for many years a member of the Reform Club and latterly one of its Trustees. In my view, as a Lord of Appeal in Ordinary and as a puisne judge (he confessed he enjoyed his time in the Court of Appeal less) he stands alongside Lords Bingham and Denning as one of the most inventive, compassionate, and finest judges of the last 100 years. These lectures, said Roger and Jeffery, had brought together the large number of the Club’s members who are lawyers, as well as members who are not lawyers, with an interest in the topics discussed in the lecture series. For a long time, I was told, the lectures were organised by Professor Graham Zellick, whom I know well. We were elected Benchers of the Middle Temple on the same evening over 20 years ago and we live not all that far away from each other in the country. In 2019 the lectures were organised by Roger, as you know, a retired commercial solicitor, and the former Chairman of the Reform.

So long ago was it that this invitation was issued that two significant things have happened since: first, the Covid pandemic which has prevented gatherings in any numbers, apart it seems in No 10 Downing Street, and second, Roger has retired as the organiser of the Atkin lectures and Jeffery has taken on that role. The pandemic led to this talk being postponed on several occasions but, at last, we are all here in this great Library in the Reform Club. I should like to thank both Roger and Jeffery very much for inviting me to give this talk and to do so in such distinguished company both in terms of those present in the room and as regards those who have previously given the Atkin Lecture. Talk about standing on the shoulders of giants, Lord Atkin included.

The last Atkin Lecture was given in 2019 by Joshua Rozenberg and was entitled “Enemies of the People: Parliament, the Judiciary, the Press?”. I remember asking Liz Truss, then the Lord Chancellor and Secretary of State of Justice, to dinner in the Middle Temple in November 2016 on the evening before that notorious article attacking the Court of Appeal for its decision in Miller 1 appeared in the Daily Mail. She certainly looked pretty nervous throughout dinner but perhaps that was because she had to sit next to me – or was it because a number of my fellow benchers were senior judges who would not expect to be described as enemies of the people? I had no idea what would appear on the front page of the newspaper the next morning, but I wonder whether she knew what was coming. Nor did I know then that I would appear in Miller 2 in 2019 acting for Sir John Major when he intervened in the judicial review against Boris Johnson to challenge the lawfulness of his advice to the Queen to prorogue Parliament. It is not every day I get to call the Prime Minister and the Leader of my Party “the defendant” – although at the moment that sounds quite polite – or to submit to the Supreme Court that he had not been entirely truthful but that, as we say, is another story for another time.

By chance, I have given a talk in memory of Lord Atkin before. It was 10 years ago at Christ College, Brecon, his old school. I talked about the role of the Law Officers and the relationship between the law and politics. In the late 1970s I was led by a former Law Officer, Lord Rawlinson, for the Daily Mail in their defence of a libel claim brought by the Unification Church, aka the Moonies, in respect of allegations that they brainwashed their recruits and broke up families.

It was a 6-month jury action, possibly the longest civil jury action in the 20th century (and perhaps ever), but during that case I learnt a lot from Peter about the preparation, conduct and management of a long trial, and how to resist with care and grace a disappointed claimant's appeal in the Court of Appeal and in the House of Lords. After the end of the trial, a member of the jury rang my chambers to ask me out for a drink. This, I hasten to add, was before I was married and before the enactment s8 of the Contempt of Court Act 1981 prohibiting discussions about a case with former jurors. She was a New Zealander on the equivalent of a gap year staying with her aunt in London. By some mischance she was on the electoral roll and summonsed for jury service. I rang Peter to ask whether it was a good idea to meet this member of the jury. Of course it is, he said – but take a note. All that was over 40 years ago; the young girl on the jury is probably, like me, a grandparent several times over and sadly Peter Rawlinson is long dead. The only things I can safely tell you about our conversation is that she thought she would do 2 weeks jury service in a Crown court, not 6 months in the RCJ, and that the entire jury thought that Peter Rawlinson was as handsome as a matinee idol. He was though the most delightful advocate and mentor to me.

Peter also taught me about the duties of a government law officer which I hope I was able to put into practice when I became Solicitor General in 2010. In his autobiography, "A price too high", he recounted how he was appointed Solicitor General after the Night of the Long Knives in 1962. Harold Macmillan gave him a seminar on the history and role of the law officers, at the end of which he told Peter that his first duty was to the rule of law, his second was to parliament and his third, and very much his third, was to Macmillan's administration. I was appointed by David Cameron during a three-minute telephone call, but it would do no harm if every Attorney and Solicitor General followed the Macmillan rubric.

Tonight, and this time in the presence of several members of Lord Atkin's family, I am going to say a few words about prisons and, in particular, indeterminate sentences for public protection or IPPs, subjects on which I started to take a detailed interest in 2005 when David Cameron, as the newly elected Leader of the Conservative Party, appointed me Shadow Home Affairs Minister covering the prisons brief, a post I held in between my two stints as Shadow Attorney General.

In those days, as you will perhaps remember, the Home Office was responsible for prisons and the Lord Chancellor's Department was responsible for the courts and the administration of justice. When the Ministry of Justice was set up and took on the prisons' remit, I became the Shadow Minister for Justice and continued with my work on prisons policy. In those days there were about 140 prisons, Young Offender Institutions and Secure Training Units in England and Wales housing about 80,000 adult men and women and teenagers. HMP Gartree, a prison for long term prisoners, was in my constituency and, although a civil law practitioner who at the start of my career had appeared in only three criminal jury trials and a few cases in the magistrates' courts, I had by then sat as a Crown Court Recorder for nearly ten years, so thought I knew a fair bit about the criminal justice system and the role of prisons within it. It soon became clear that I had vastly overestimated my knowledge and understanding of our prisons. I therefore made a point of visiting as many of them as I could. By the time I went back to being Shadow Attorney in 2009, I had been to about half of them, as well as the military prison near Colchester, to find out what happened in our prisons, who was sent there by the courts, and who worked there as governors, prison officers, teachers, medical staff, chaplains and so on. From that experience, and through listening to those more knowledgeable than I, (such as and amongst many others, Lord Ramsbotham and Dame Anne Owers, two Prisons' Inspectors, to Jonathan Aitken, my friend and former parliamentary colleague, who of course served a sentence but has also written extensively on prisons and is now a prison chaplain, to those in the charitable sector who cared for prisoners' families or prisoners about to be or recently released, to employers who had serving and ex-prisoners in their workforce, and to prisoners and ex-prisoners) I learnt a huge amount. In 2008 I wrote a paper called "Prisons with a Purpose", the better to inform my Conservative colleagues and my Party's policy development as we neared the 2010 election. Soon after I left government in 2012, I became a Trustee of the Prison Reform Trust and a Patron of Unlock.

In essence, I learnt that the prison estate in England and Wales was in large part badly maintained (in Norwich the sewage from the upper floors was seeping into some of the cells below); it was overcrowded, frequently with two and

sometimes three prisoners sharing a cell that the Victorians had designed for one. In far too many instances two or more prisoners were essentially eating, sleeping and spending long periods of the day in a lavatory. They had no privacy. Prisons dedicated to the temporary accommodation of foreign national prisoners were holding on to them for years, not months. About 60% of prisoners either had a mental health problem or a drug or alcohol addiction and a fair number had both. There was a high degree of prisoner-on-prisoner violence or bullying and levels of violence against prison officers were significant. Sickness and absence rates amongst wing officers were unacceptably high, staff morale was low and self-harm and suicide rates amongst prisoners, male and female, adults and teenagers, were appalling. There was a growing cohort of very elderly prisoners jailed for historic sex cases in an estate that had few lifts or disabled access; there were people in prison dying of old age in an estate that was built for 20-year-olds. You may have seen the article headlined “Old Lags make up fifth of prison population” in the Sunday Telegraph this Sunday based on a PRT report showing that older prisoners are the fastest growing group in jails. The number of those over 60 has grown from 1511 in 2002 to 5176 today; those between 50-59 with health conditions that have prematurely aged them has gone up from 3300 to 8600. By 2026 they estimate that there will be 17000 prisoners over 50, an increase largely driven by longer sentences for more serious offences such as manslaughter, GBH and money laundering. Unquestionably there needs to be a policy focus on this new aspect of prison management.

There were, I want to be clear, examples of excellence within the Prison Service. I met governors, prison officers, medics, teachers and, indeed, prisoners who were doing amazing work in very difficult circumstances to improve the lives and chances of those in prison. That said, the estate was generally understaffed, noisy, violent, unhappy, unsettled, and dangerous. YOIs and city centre reception prisons were unhappier than prisons catering for long term prisoners; women’s’ prisons were pretty unsettling. Almost worse, the estate was unproductive save in the narrow sense that it kept convicted criminals off the streets for the period of their imprisonment. Far too many short-term prisoners would reoffend within a few weeks of release, affected by the need for drugs, homelessness and unemployment. Doctors’ and drug specialists’ in inner city prisons first job was to prevent people dying of overdoses and traumatic drug withdrawals rather than rehabilitation. Having said that, I should point out that Jonathan Aitken, now a prison chaplain in Pentonville, wrote in an article in the Tablet in March 2021 in which he reported that despite Covid reducing the officer numbers on one day to only 39 in that prison with over 1100 prisoners, and nearly 150 officers being off sick, the levels of violence and self-harm had in fact gone down and it was safer, cleaner and more humane place than it had been before Covid. Of course, most prisoners were locked in their cells for 23 hours a day with no visits and greatly restricted access to activities. Prisoners were also naturally fearful of congregating because of the pandemic.

As David Ramsbotham wrote 25 years ago, what a released prisoner needs if he is to have a better chance of avoiding further crime and a speedy return to prison are a home, a steady relationship and a job. If the average reading ability of an adult male prisoner is less than that of an 11-year-old, and you cannot get even a poorly paid manual job unless you can read the health and safety at work notices, it seems to me that we should be doing more to teach this captive audience to read and write and to add up. It need not be done in classrooms which will be off-putting to young men in their twenties or late teens who may have little experience of formal schooling, but through the practical application of these skills in workshops and with the assistance and encouragement of educated prisoners genuine progress could be made. Schemes like Toe to Toe were making some headway 15 or so years ago and I hope they still are.

We should also be encouraging prisoners to understand the connection between work and reward and the self-respect that comes with having a meaningful job and supporting one’s dependents. Monty Don managed this when, with the agreement of the local magistrates and probation service in the West Midlands he employed drug-addicted recidivist shoplifters in his garden and small holding to grow fruit and vegetables which they sold at the local market. He was much helped by a former army sergeant who drove round in a minibus getting some of them out of bed in the morning and bringing them to his garden, but the newly discovered link between work and cash prevented many of them from going back to shoplifting. I still remember all too clearly, however, going to three prisons where adult men were, I was proudly told by the senior staff, engaged in work that got them out of their cells. In one prison, I saw a shed full of grown-up men making hairnets. No doubt there is a market for hairnets but not one of these prisoners on release was going to

apply to work in a hairnet factory. At another prison I saw prisoners separating out red plastic electric connectors from blue ones. I make the same comment. They would have probably got more benefit from watching daytime television and been just as compliant and far more motivated. And at a third prison, my escort and I surprised a team of men playing cards with a prison officer behind some crates. I was of course told they were on a break.

In many prisons a good day is when nothing happens: no fights, no incidents of self-harm, no escapes and so on, but surely, we can no longer just house people in prison without making a concerted, as opposed to a piecemeal effort to improve their chances on release. Of course, the Covid pandemic has made things more difficult but that will not last forever. Let us plan for prisoners to do real work, not pretend work just so that we can say that they have not spent 23 hours of the day in their cells; let us see if we can pay them, if not a commercial wage, at least something that will enable them to play some part in the support of their dependents. Let us give prisoners, many of whom have never been loved or cherished or respected or relied on, reasons to be so. It's not easy to change things in prisons' policy or practice but one thing that impressed me greatly were the prison farms and nursery gardens, all I believe shut down on grounds of expense – a false economy – save in the military prison in Essex. There I saw young men (quite different I accept to the usual daily intake of young men into Pentonville or Liverpool or Leicester) who'd been convicted of violent offences, often fuelled by drink as opposed to drugs, changed for the better by looking after pigs. I know it's not everyone's choice of career but for the first time in their lives these young men were seeing the connection between hard work and self-respect. They looked after the animals and the animals depended on them. They had a sense of purpose in their lives which was soon reflected in their behaviour such that some on completion of their sentences were able to rejoin the army and others went on to get jobs with a well-known pig-farming company. I saw something similar in a YOI in Suffolk where young, very troubled inner-city teenagers were put in charge of owls and kestrels and their lives and conduct improved as a result. Incidentally, at that YOI the prison staff required their charges to eat communally at tables in the dining hall rather than hiding away, eating alone in their rooms. It taught them how to socialise, to talk to each other and even argue without resorting to violence, often the answer in their previous lives where violence trumped the spoken word. I know that these sorts of solutions will not work for every prisoner, but they will work for many and the benefit for the economy and society as a whole, as well as for the individual offender, is obvious.

The Ministry of Justice needs both a prime minister and a secretary of state to take a close interest in prisons policy. When Douglas Hurd was Home Secretary in the 1980s there were only 45,000 people in prison. The current Justice Secretary, Dominic Raab, needs to bring a sense of purpose to this brief which has been bedevilled by too many justice secretaries since the founding of the MoJ, some of whom could, had they stayed longer in the job, perhaps achieved positive reform. And he needs a prisons minister who has the political clout that comes with seniority within the government, who has the active support of the secretary of state, and who has the interest and ear of the Prime Minister.

The heart of the problem in our prisons lies in overcrowding. The government knows that. What they do about it is the issue. Promising more prison staff is no longer good enough although more staff are necessary. The new recruits are, sadly, often not up to the job and anyway do not stay in the job long enough to be of value. There are more than 85,000 people in custody and not enough people to look after them. As a result, prisoners spend far too much time in their cells doing nothing, a state of affairs understandably but regrettably exacerbated by the pandemic. If they are sharing a cell (and many are sharing cells designed for single occupancy) they have, as I have already mentioned, to defecate in sight and sound of their cellmate.

Prisons are, as Prisons Inspectors have pointed out, unsafe. They are also unproductive. Those who leave them on the completion of short sentences are more likely to reoffend than not; they are more likely to be unemployable than employable. If they went in illiterate, they are likely to be illiterate on release; if they went in with an addiction, they are likely to be addicted on release. If they went in mentally ill, they will probably come out ill and possibly addicted to drugs as well. If a business ran a factory making products over 50 per cent of which broke down within six months of production or never worked in the first place, there would be a shareholders' revolt and the management would be sacked. Years of failure and lack of improvement would not be tolerated. Why though do we tolerate it in our prisons

system? As we saw in the House of Lords yesterday, a Treasury Minister resigned at the despatch box in protest at his department's failure to deal with Covid-related fraud. In January 2019 Rory Stewart said he would resign as prisons' minister if prison violence was not reduced within a year, but he left the government for other reasons before that year was up. In 2018, there were almost 50,000 incidents of self-harm among the 82,500 prisoners in England and Wales. Drug-fuelled violence was at an all-time high, with more than 32,500 assaults, 10,000 of which were against staff. At least 87 prisoners took their own lives, five were murdered and more than 300 died of ill-health or natural causes. The scale of the problem was not lost on Rory Stewart but it does not seem, publicly at least, to have caught the attention of his successors.

One answer to overcrowding is to build more prisons, but we cannot afford that, and ministers would anyway demand they are filled to the brim to justify the capital expenditure. Another answer is to send fewer people to prison. Drug addicts should be rehabilitated outside prison, if necessary in secure units; the mentally ill should be treated and helped within the health system, again if necessary in secure units. Prisons should be reserved for the dangerous, the violent and the criminally depraved. But until we do away with the silo system of departmental spending, one department will not volunteer to take on another's current responsibilities. The government has a lot to do in dealing with Russia and the Ukraine, China and Taiwan, inflation, and the rise in the cost of living, the Northern Ireland Protocol and the needs of our education, transport, and health systems, but government is always difficult. It is not a branch of the entertainment industry or a one trick pony. Ministers should concentrate and deal with our prisons urgently and MoJ ministers should have the scope to be innovative.

Unashamedly borrowing other people's industry and research relating to the period when I was either in shadow or actual government, between June 1993 and June 2012, the prison population in England and Wales increased by 41,800 prisoners to over 86,000. It is almost the same now, still far too high but at least there has not been the dramatic rise we saw up to 2012. Almost all of that increase (98%) took place within two segments of the population – those sentenced to immediate custody (85% of the increase) and those recalled to prison for breaking the conditions of their release (13% of the increase). The sentenced population increased after 1993 because the courts sentenced more offenders to prison each year between 1993 and 2002, and because offenders had been staying in prison for longer. The annual volume sentenced to immediate custody for indictable offences increased by around 36,000 between 1993 and 2002. This was due to increases in both the number of cases sentenced by the courts and the 'custody rate', the proportion of sentences which resulted in custody. From 1999 to 2011, the average time served in prison increased from 8.1 to 9.5 months for those released from determinate sentences. This was due to an increase in the average custodial determinate sentence length handed down by the courts between 2000 and 2005, and a decline in the parole release rate from 2006/07 (which meant that offenders had served longer by the time they were released). The decline in the parole release rate, and the impact of a growing proportion of longer sentences in the prison population, caused a slight increase in the average proportion of determinate sentence served in custody from around 56-57% in 1999-2005 to around 60-61% in 2006-2009, but it fell to 57% in 2010 and 54% in 2011.

The second largest increase was within the recall population. This reflected a higher recall rate caused by changes to the law making it easier to recall prisoners, and changes introduced in the Criminal Justice Act 2003 which lengthened the licence period for most offenders. Recall prisoners also stayed in custody for longer because, prior to the introduction of Fixed Term Recalls (FTRs), under which some offenders are recalled for a fixed 28 day period, the Parole Board were required to review all recall cases. After 2008, use of FTRs increased and the recall population stabilised. Other elements of the prison population account for only 2% of the total increase since 1993. The remand and non-criminal populations both increased, with the remand population relatively stable at around 12-13,000 for most of the period, and non-criminals doubling but remaining small in total, while the fine defaulter population declined sharply from 1993 to 2001 and thereafter remained at very low levels.

What caused the changes? Two factors caused the increase in the prison population of England and Wales from 1993 to 2012: tougher sentencing and enforcement outcomes, and a more serious mix of offence groups coming before the

courts. Legislative and policy changes made sentence lengths longer for certain offences (e.g. through the introduction of indeterminate sentences for public protection about which I will have something to say in a moment, as well as mandatory minimum sentences and increased maximum sentences – and the political fashion for both of those is still alive and well). In addition, there was an increased likelihood of offenders being imprisoned for breach of non-custodial sentences or recalled to custody for failure to comply with licence conditions imposed on release from prison. Three offence groups, violence against the person (VATP), drug offences and sexual offences had a particular impact on the prison population. The numbers in prison serving sentences for offences of violence grew steadily throughout the period. This reflected larger volumes being sentenced at court, a larger proportion of them receiving custodial sentences, an increase in the average custodial sentence length (ACSL) and a growing number receiving indeterminate sentences. The numbers in prison serving sentences for drug offences grew rapidly between 1993 and 2001, reflecting a large increase in offenders being sentenced by the courts, a slight increase in the proportion receiving custodial sentences, and an increase in the average custodial sentence length. After 2001 the sentenced population for drug offences remained fairly stable but the numbers in prison serving sentences for sexual offences grew steadily over the period. While numbers sentenced for sexual offences remained fairly stable between 1993 and 2004, they increased following the introduction of the Sexual Offences Act 2003. At the same time, between 2004 and 2011 the average custodial sentence length rose by over 13 months. The effect of this was a continued rise in the sentenced population for sexual offences.

It is all too easy to describe the problem without attempting an answer; in other words, to suffer from analysis paralysis. What happens in prisons and who is inside, is a mystery of only occasional interest not just in parliament, but amongst the wider public as well. Indeed, it is a truth beyond cliché that those outside the world of prisons rarely hear or read about what happens in prisons – unless there has been a riot or a particularly violent death in custody. We have all seen on the news angry inmates on roofs hurling tiles onto watching police or prison officers; smoke spiralling up from a fire deliberately started by prisoners upset at some real or imagined grievance; we have heard ministers, Conservative and Labour, saying that there will be an inquiry and that lessons will be learned. Then we move on to the next news story and forget about prisons, prisoners, and prison officers, and allow the metaphorical tide to re-cover the metaphorical sand. During the last two years when Covid and Brexit have been the main news items, little has been reported about prisons but in particular we have heard very little about how Covid has affected prisons, the staff and the prisoners. Out of sight; out of mind. What seems to interest politicians is not so much what goes on in prisons but sending more people inside for longer and passing new laws to make criminal acts and omissions which are already criminal. The figures I referred to relating to 1993-2012 and what is going on now tell me that this is a government problem and not one to be laid only at the door of one political party. The message is the policy; the slogan is the action: bang them up and throw away the key because that's what we think our voters demand.

Actually, it is not what all MPs want; and it is not necessarily what the electorate wants. Some voters, propping up the saloon bar, may, but many do not. Given the facts, as opposed to the myths, views are far more nuanced. Of course, the citizen wants criminals to be caught and brought to justice, but they also want to see criminals rehabilitated and reformed, not returning to commit further crimes and further time in jail. What the public lacks, all too often, are the facts. Even when a chief inspector of prisons publishes an annual report, it gets scant attention in the media and still less in parliament. That is almost as great a scandal as the things they write about in their annual reports. You do not have to read very far into these documents to become depressed, both because they report what is true and because it could have been written each year for the last 30 years. To pick one pre-pandemic year at random, Peter Clarke's 2017 report begins:

At the heart of our work is the inspection of adult prisons, which hold more than 81,000 men and nearly 4,000 women. Last year I reported that too many of our prisons had become unacceptably violent and dangerous places. The situation had not improved – in fact, it has become worse. There have been startling increases in all types of violence. The biggest increase is assaults on staff which, in the 12 months to December 2016, rose by 38 per cent to 6,844 incidents. Of these 789 were serious, an increase of 26 per cent. In total there were more than 26,000 assaults, an increase of 27 per cent. Of

the 29 local prisons and training prisons we inspected during the year, we judged 21 of them to be “poor” or “not sufficiently good” in the area of safety.

This is stark stuff. It is evidence of repeated failure on a large scale. It is evidence that should make us ashamed. But it is only part of the picture. This report continues:

By February this year (2017) we had reached the conclusion that there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people... there seems to be something of a vicious circle. Violence leads to a restrictive regime and security measures which in turn frustrate those being held there. We have seen regimes where boys take every meal alone in their cell, where they are locked up for excessive amounts of time, where they do not get enough exercise, education or training, and where there do not appear to be any credible plans to break the cycle of violence.

I think we would be hard pushed to find a better picture in 2022. Since I wrote my paper in 2008 things have not improved. Yet governments, past and present, seem to be unable or unwilling to do anything of a practical nature to repair or reform the system. A current analysis of the facts of prison life and the work done in them by governors, officers, teachers, psychiatrists, drug teams, medics and other professionals would, I suggest, produce the same recommendations I was discovering 15 years ago when I was shadow prisons minister.

Far too many young men in prison were addicted to noxious drugs or alcohol (it is not difficult to get hold of them inside). Far too many of them were mentally unwell (and not just depressed because they were in custody, a long way from home, frightened and isolated, although they were). Far too many of them were ill-nourished and physically unfit and took no or little exercise; far too many of them were functionally illiterate and innumerate; and far too many of them were leading lives devoid of purpose in prisons that were overcrowded and under-staffed. Incidentally, in about 2006 or Lord Ramsbotham, Erwin James, the editor of *Inside Time* and my fellow member of the Westminster Commission into Miscarriages of Justice who has some experience of prison food, and I appeared on BBC Radio 4's Food Programme to talk about the connection between nourishing food and good behaviour in prisons. Filling sedentary prisoners with stodge did not improve things. They were unsafe places to live and to work in. They were holding stations for the more than 80,000 people the rest of us wanted to forget about.

Furthermore, as the 2017 Clarke report also pointed out, the treatment of and regime for those more than 3,000 prisoners on indeterminate sentences for public protection (IPPs) was far from satisfactory. It still is and it is on IPPs that I want to concentrate for a moment.

In 2005-08, I was told by every prison governor whose prison housed IPP prisoners that they were the most difficult cohort to manage. They had no release date, they could not get onto the courses necessary to demonstrate they were no longer a danger to the public, and many of them did not understand the policy behind or the practical effect of their sentence.

When sentenced in court, they had taken in only the number of years of their minimum tariff before they could be considered for release, and it had not dawned on them that they might still be there a decade or more later. In prison, years beyond their tariff, they had become stuck in a hopeless spiral of decline, depression and surliness that would occasionally erupt into violence against staff or other inmates or through self-harm.

In the same week that Peter Clarke's Report was published in 2017, the former chief inspector of prisons and then-chief inspector of probation, Nick Hardwick, published his annual report. It reinforced the Prisons Report. IPP prisoners were still, some years after the sentence was abolished, being held in custody years after their tariffs and there was a long backlog of cases awaiting consideration by the Parole Board. It was, and remains, an appalling state of affairs and one that will only be dealt with if prisons policy gets further up the government's agenda of priorities.

Before Christmas last year, we debated IPPs in the House of Lords during the passage of the Police, Crime, Sentencing and Courts Bill. Bear in mind that Ken Clarke abolished the IPP sentence in 2012 and yet there are hundreds of IPP prisoners still inside well beyond their tariffs. The 8-line long title of the bill contains these words: to make provision about sentencing, detention, release, management and rehabilitation of offenders...” but it is not all that clear, despite the best intentions of the utterly civilised, well-motivated and highly intelligent MoJ minister and Jeff’s fellow barrister at One Essex Court, Lord Wolfson of Tredegar KC, that as far as any still-incarcerated IPP prisoners are concerned the words “release, management and rehabilitation” will have much bearing on their lives.

The Prison Reform Trust, of which I am a trustee, has produced a report: No Life, No Freedom, No Future, the title of which brilliantly encapsulates the Kafkaesque state of affairs that we see when we consider IPPs.

As I have indicated earlier, our prisons are a secret world. When I was a Member of Parliament, I once explained to a local journalist that I thought that all prisons of course needed walls to keep the prisoners in and to protect the public from the prisoners – and even the prisoners from the public. However, these prison walls also needed windows in them so that the public could see in and learn what is being done on their behalf inside the prisons, and so that the prisoners could see out through those windows into the world and society, and so they could understand that if things went well for them and if their life, educational and employment prospects were improved by what they were doing and learning in prison, there was a world out there waiting to welcome them back. The journalist thought for a moment and, having parked his chewing gum behind his molars, said, “I see what you mean but have you ever considered the public expenditure implications of putting all those windows in the prison walls?” It is occasionally possible to lose the will to live when discussing something as complex as the state of our prisons.

Where it is not necessary to lose the will to live is when one listens to David Blunkett, Lord Blunkett, explaining and accepting—very publicly and bravely in the House of Lords last November and December—that he got it wrong on IPPs when Home Secretary. I congratulate him now as I did in the chamber. Most former Home Secretaries—most politicians—spend their post-government life rewriting history. This former Home Secretary has accepted that he got it wrong and he is now trying to assist us in getting it right again. All of us, whether we are interested in this subject directly or indirectly, must set about encouraging this Government to mend this problem, and it is a problem that desperately needs mending. Lord Brown of Eaton under Heywood, the former Law Lord and Supreme Court Justice, has described IPPs as the greatest stain on our justice system, and he is entirely right. However, it is a stain that we can remove.

I want to see the remaining consequences of IPPs abolished. The sentence itself has been abolished but I want to see all those who are still in prison on IPPs either released under supervision or transferred to some other form of more humane sentence which gives them hope, a life, the aspiration of freedom, and a future which they can look forward to. At the minute, they are literally hopeless. I could before Christmas have signed up to any of the amendments on IPPs tabled by Lord Brown, Lord Blunkett, Lord Moylan, Lord Judge and others wanting to see IPPs brought to an end but, in speaking to my amendment, I asked

“whether there are sufficient places available for prisoners serving sentences of IPP on offending behaviour programmes”. No, there are not.

I asked

“whether prisoners serving sentences of IPP are able to complete offending behaviour programmes in appropriate time to aid progression milestones such as parole or recategorisation”.

No, they cannot do that. You may be queuing up for a course while you are in, let us say, Maidstone Prison, and then you are churned—moved to another prison, say, Lewes or Reading—so you go to the back of the queue, or you are moved to a prison which does not have the relevant people to lead you on that particular course. Your mental and physical health

records take months to follow you to your new prison, and when they arrive and when the new governor or the new teaching staff of that prison to which you have been sent catch up with your request—guess what? – you are moved to a prison in Bristol, Leeds, Liverpool or somewhere else. It is a hopeless state of affairs, and we should have done something about it years ago.

It follows that there are not enough places available for prisoners serving IPPs in prisons providing progression regimes, for the practical reasons I have just pointed out. Are there other opportunities for prisoners serving IPP sentences to enable them to progress and demonstrate reduced risk, particularly for those who have completed opportunities afforded to them by offending behaviour programmes and progression regimes? Of course not; it is a shambles—a cruel shambles.

Even on what I call ordinary life sentences, prisoners can do a particular course to demonstrate that, before long, they may become suitable for release on licence. However, if they do them within the first two or three years of their imprisonment, then remain in prison for another 14 or 15 years, all that they may have learned on that course long ago has been forgotten, and all the people who now supervise them in prison have no corporate memory of that prisoner learned all those years ago. So, when they are reassessed after having completed their tariff, they fail the assessment. Can they get on a course again? Of course not. They are told, “You’ve been on one already. You’ll have to wait your turn, after all the other people who haven’t been on a course”. The simple, practical organisation of these things in our prisons is not fit to cope with the problem. Why? Because our prisons are overcrowded.

Soon after its introduction, problems with the sentence began to emerge. In practice, an IPP was often given to people convicted of low-level offences. The criminal justice system was ill-equipped to deal with the large number of people receiving IPPs. The criteria for IPPs were tightened in 2008, and the sentence was abolished in 2012 by the Legal Aid, Sentencing and Punishment of Offenders Act. However, people sentenced to an IPP still face the same release requirements, remain on licence indefinitely, and are subject to indefinite recall. A recent PRT research report called “No life, no freedom, no future” deals with IPPs. Describing in graphic detail the impact of the IPP and the cycle of release and recall on his own mental health and wellbeing, one prisoner said: “So long as I’m under an IPP I have no life, no freedom, no future. I fear my IPP will force me to commit suicide. I have lost all trust and hope in this justice system... Each day I feel more and more fear and dismay and I am starting to dislike life... I have to suffer in prison in silence. Accept it or suicide. They’re my only options left.” A total of 8,711 IPP sentences were handed down. On 30 June 2021 there were still 1,722 people in prison serving an IPP. Almost all (ie 96%) people still in prison serving an IPP sentence have passed their tariff expiry date—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence. 269 people are still in prison despite being given a tariff of less than two years—most of these (207 people) are still in prison over a decade after their original tariff expired.

Over the past few years, the prison service and the Parole Board have increased cooperation and efficiency in the consideration of IPP cases and have introduced reforms to improve readiness for release and made improvements to the assessment of risk. These changes have contributed to a welcome increase in the number of IPP prisoners being released. From 30 September 2015 to 30 June 2021 the number of never-previously-released IPP prisoners has fallen by 61% from 4,431 to 1,722. In more recent years, however, the number of first releases has declined. In 2018, 506 people serving an IPP sentence were released from prison for the first time—by 2020 this number had fallen to 275.

Furthermore, there remains a significant problem of IPP recalls. In June 2021 there were 1,332 people back in prison having previously been released—more than double the number of five years ago. Answering a relatively recent written parliamentary question the MoJ minister, Kit Malthouse MP, said the department expects the number of recalls massively to outstrip releases—3,400 recalls compared to 800 releases in the next 5 years. Recalled IPP prisoners who were re-released during 2020 had spent on average a further 20 months in prison before re-release. Recent research by the Prison Reform Trust has raised concerns regarding the arrangements for the support of IPP prisoners in the community after release. It found that the support on offer did not match the challenge they faced in rebuilding their

lives outside prison. Risk management plans drawn up before release all too often turned out to be unrealistic or inadequately supported after release, leading to recall sometimes within a few weeks of leaving prison, and for some people on multiple occasions. The process of recall also generated a strong sense of unfairness in this troubled and troubling group of prisoners.

The only thing that a convicted defendant on sentence wants to hear is how long they are going inside for. When they were sentenced to an IPP and heard the tariff of two or five or 10 years, that was the number that stuck in their mind. It is only when they get to the prison that it dawns on them that the sentence does not mean two or 5 or 10 years; it means for ever, unless they can do something to help themselves. Of course, because of the factors that I have just addressed, it is almost impossible for that prisoner to help himself to improve, to see some chance of release and to come out as a better citizen again.

This obscenity must now end. Today in the Lords the Government amended the PCSC Bill at Third Reading to impose a duty on the Secretary of State to refer the cases of IPP prisoners released on licence to the Parole Board after ten years and annually thereafter. That's not, in my view, good enough but we agreed to compromise in order to get some improvement. IPPs are, as Lord Brown said, a stain on our justice system. It is, as he said, a life sentence in all but name and if its inventor, David Blunkett, thinks it should end, I think we can all agree with him.

Let me finish by reverting to the wider subject of rehabilitation and place it within the context of the criminal justice system as a whole. The criminal justice system is a process, not an event. Our prisons are part of that process and, for all but the very few prisoners who will live out their lives in custody, they are places of temporary accommodation into which and from which the "community", or "society" – call it what we will – sends and takes them back. For most of those who are sentenced to prison, custody is not the end of the journey but a part of it.

Conversely, for many of us—those of us on the outside—who have no experience of the criminal justice system and who have never been into a prison or met anyone who has been sentenced to a term of custody, prison is society's final answer. That is wrong: prison is itself a process within the wider process of the criminal justice system. It cannot be isolated in a silo from the other parts of the criminal justice system, such as the police, the courts, the probation service, the drug and alcohol abuse programmes and the education, training and diversionary activities that run alongside them.

The value of prison for society, law-abiding and criminal alike, should be that it takes in offenders and releases them reformed and rehabilitated so that they can return whence they came as different and better people, ready to participate as responsible citizens, looking after their dependants, free from drug use, better qualified, earning a living, paying their way and going straight. That is no doubt the unattainable ideal to be placed beside the hope of the crime-free society, but just because we cannot have total success does not mean that we should not strive to do better than we are doing now.

Prison, for most of those who end up inside, is evidence of failure: the offender has failed to look after himself, his family and those he cares for; he has failed to get an education, a job and to maintain his physical and mental well-being; and he has failed to understand, or has simply ignored, the needs and rights of others. For whatever reason, he has failed to take and accept responsibility for himself. In failing in so many ways he has caused incalculable damage to those most close to him and to his immediate and more distant victims. But in sending him to prison and doing nothing with him save incarcerating him—statistically most offenders and prison inmates are male—are we not also failing ourselves, our neighbours, our communities and our country? Prisons, properly understood and properly directed, should be prisons with a purpose that serve the public interest.

The status quo is not an option. Some years ago, the then chief inspector of prisons, Dame Anne Owers, wrote:

“There is a link between humanity and effectiveness.”

Public safety, in her view, hinges on having an effective process, “And this isn’t one”. She was right then, and she is right now.