What to do about long sentences: Learning lessons from abroad

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Acronyms and abbreviations

CEP – The European Organisation for Probation

CCC - Community Correctional Centres

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment

CRF - Community Residential Facilities

CSC – Correctional Services Canada

DGRS - Direção-Geral de Reinserção Social

ECtHR – European Court of Human Rights

ETA – Escorted Temporary Absenses

HMIP – Her Majesty's Inspectorate of Prisons

IMB – Independent Monitoring Board

IPP/ISP – Indeterminate Sentence for Public Protection/Indeterminate Sentence Prisoner

IPO – Institutional Parole Officer

MOJ – Ministry of Justice

NGO – Non-Governmental Organisation

ROTL – Release on Temporary Licence

RSJ - Raad voor Strafrechtstoepassing en Jeugdbescherming

UTA – Unescorted Temporary Absenses

Executive Summary

This report aims to address the problem of the ever-growing prison population with long indeterminate sentences in England and Wales by examining how Canada, Portugal and the Netherlands respond to serious offences and the use of the most severe sentences available under their respective laws. Through research, interviews with key stakeholders and observations of resettlement planning and parole board hearings, it highlights best practice and develops policy recommendations for England and Wales. The report found:

- Other jurisdictions prevented an ever-growing prison population by, in part, exercising greater restraint in sentencing and using the most severe sentence available less frequently than England and Wales.
- Adapting prison regimes and developing specialist services to those serving long-indeterminate sentences resulted in more compliant and engaged prisoners who were more likely to be released at or near to their earliest possible release date.
- Multiple opportunities for release can incentivise those serving long sentences to work to turn their lives around and facilitate the early release of those who have made exceptional efforts to rehabilitate themselves. Ensuring there are several opportunities for release can also save substantial costs without threatening public safety.
- The parole process in England and Wales has been criticised for being overly risk averse with an onus on the prisoner to 'prove' they are safe to release and not be detained further, but evidence from the Netherlands and Portugal shows a greater focus on release at the earliest eligibility date is more effective.
- High use of recall to prison is not necessary, shown by the fact that whilst the Netherlands and Portugal were able to recall those on licence/under supervision for technical breaches - rather than a further offence - they did so very rarely.

And the report recommends: sentence inflation should be reversed and a review of recommended tariff lengths for life sentences should be undertaken; a 'faint hope' law should be introduced; recall policy and practice should undergo a major overhaul; the onus should be upon the state to demonstrate continued imprisonment is necessary after a minimum period has been served; and prison regimes and interventions should be better tailored to long-term prisoners' needs.

1. Introduction

One of the most pressing, but difficult to tackle, penal reform issues is the huge number of people serving long indeterminate sentences in England and Wales. There are currently 11,675 people serving life and IPP sentences (Ministry of Justice 2016a), this compares to 5,150 in 2002 and 2,994 in 1992 (Home Office 2001). England and Wales has more indeterminately sentenced prisoners than the remaining 46 Council of Europe countries combined (Council of Europe 2015).

As the number of people serving indeterminate sentences has increased so too has the length of time they spend in prison. In 2005 the average minimum tariff for a mandatory life sentence was 15.7 years, by 2014 the average minimum tariff was 20.7 years – a 32 per cent increase in less than a decade (Ministry of Justice 2015a). The average tariff for non-mandatory life sentences increased by an astonishing 75 per cent over the same time period, from 6.1 years to 10.7 (ibid). There does not appear to be any explanation for these significant increases in tariff length other than sentence inflation. There is no evidence that murders have become more sadistic or brutal or, that reoffending rates for those who have committed serious offences have increased. On the contrary, reoffending rates of those released from the custodial part of a life sentence have continued to be very low – latest figures show that 4.7 per cent of released mandatory lifers reoffend, compared to a prison population average of 45.8 per cent (Ministry of Justice 2016b). Rather, tariff lengths have gradually, and largely unintentionally, risen in a punitive penal climate.

Further, delays in access to offender management programmes, fewer releases on temporary licence and an under staffed and under resourced Parole Board have led to those with indeterminate sentences remaining in prison for significant periods after the expiry date of their already-long tariffs. Overcrowding as well as limited places on prison-based programmes and activities required to demonstrate readiness for release mean that prisoners with an indeterminate sentence remain in custody post tariff waiting to complete courses, or get stuck in a prison that doesn't offer the courses, work and education opportunities they require. This impacts the speed with which they can move to lower security prisons, become eligible for Release on Temporary Licence (ROTL) and go before the Parole Board with a persuavive case for release.

The Parole Board is struggling with fewer staff members and a greater number of cases (The Parole Board 2015), and as a result many hearings do not take place until life and IPP prisoners are significantly beyond tariff. In February 2016 the High Court found that the delay in Parole Board hearings breached the public law duty to 'ensure that an ISP (Indeterminate Sentence Prisoner) has an opportunity to rehabilitate himself and to demonstrate that he no longer presents an unacceptable danger to the public' (R v The Parole Board for England and Wales 2016). The overly risk averse decision making of the Parole Board compounds the problem. In 2000, Hood and Schute found that the Parole Board were highly risk aversive and as a result were not releasing many people who posed a low risk of reoffending or causing harm (Hood and Shute 2000). More recently, the outgoing chair of the

Parole Board criticised members for continuing detain those who pose little or no risk to the public (*The Guardian* 2010).

The huge number of people serving increasingly long sentences is one of the key drivers of the prison population (Ministry of Justice 2013). Whilst there has been debate and discussion amongst politicians, officials and penal reform organisations about reducing the use of short sentences, there is little discussion and debate about whether the increases in the number and length of indeterminate sentences is desirable and what policy changes would be needed to reverse the tide of evermore indeterminate sentences. The aim of this Winston Churchill Memorial Trust Fellowship is to stimulate debate around the overuse of life and other long sentences through the analysis of how other jurisdictions tackle this issue and to learn lessons from abroad.

Canada, the Netherlands and Portugal were selected as the jurisdictions to examine as they all employed significantly different approaches to the use and management of long sentences, yet had sufficient similarities to the system in England and Wales to generate applicable lessons. Canada is characterised by a fairly low use of imprisonment overall, but a higher than average use of long indeterminate sentences. Until recently numerous mechanisms were employed to enable those serving long sentences to be released on or near to their earliest eligibility date when it was safe to do so, however some of those were in the process of being disbanded under then Prime Minister Stephen Harper's 'tough on crime' approach. The Netherlands employs the most extreme form of life sentence, the whole life term. However, it does so under a system that otherwise exercises much restraint in its use of incarceration. Portugal was the first country in the world to abolish life sentences, doing so in 1884. It therefore operates its justice system without recourse to life or other indeterminate sentences, in contrast to the approach in England and Wales.

2. Approach and Methodology

The Fellowship aimed to broadly answer two questions: what is the approach to long-term incarceration in each jurisdiction?; and how are long-sentenced prisoners managed and released in each jurisdiction? It also aimed to collect examples of best practice. Policy recommendations for England and Wales were developed from the findings.

The same methodology was applied to each jurisdiction. Firstly, a stake-holder mapping exercise was completed, identifying those relevant to policy and practice around life and other long sentenced prisoners in each jurisdiction. Secondly, all stakeholders were contacted with details of the Fellowship and the research aims and were asked to participate in an interview. Stakeholders were also asked to recommend other individuals or organisations that were relevant to the project. Thirdly, semi-structured interviews were used to question each stakeholder. Where possible, interviews were audio recorded. Where this was not possible, notes were taken during the interview and a full note written shortly afterwards. In some circumstances, the semi-structured interview was not appropriate (for example, Parole Board hearing observations and prison visits), in those circumstances detailed notes were taken and written up shortly after the visit or observation had taken place.

3. Short overview of the jurisdictions examined

Canada

Canada, like England and Wales, is a common law jurisdiction. It has a two-tiered prison system, with those on remand and those serving sentences of two years or less held in provincial jails and those serving two years to life imprisonment held in the federal prison system. Historically, Canada has been viewed as restrained and moderate in its approach to penal policy, in stark contrast to its closest neighbour, the United States (Webster and Doob 2015). One of the primary factors for studying long-term incarceration in Canada was the way in which it coupled a relatively high use of indeterminate sentences with innovative policies to help and assist with the rehabilitation and release of those serving them, the 'Faint Hope' clause and the Lifeline program being the most notable. However, during Stephen Harper's premiership (2006-2015) a much more punitive approach was implemented. As a result the prison population rose and many of the rehabilitation focused programmes were rolled back or abolished altogether (Doob and Webster 2015). In October 2015, Justin Trudeau was elected Prime Minister of Canada, pledging to reinstate a more moderate rehabilitation-focussed penal system.

The Netherlands

The Netherlands has a turbulent history in relation to its approach to and use of imprisonment. In the 1970s it had one of the lowest rates of imprisonment in the developed world with 23 prisoners per 100,000 of the population (Allen 2012). In the 1980s and 1990s the prison population grew steadily, before rocketing in the early 2000s. Between 2000 and 2006 the prison population increased from 13,847 (87 per 100,000 population) to 20,463 (125 per 100,000 population) (Walmsley 2010). This increase is attributed to both a rise in violent crime and a greater use of imprisonment (Allen 2012). Since 2006, the prison population has plummeted. In September 2015 it stood at 11,603 (69 per 100,000). This is largely due to a reduction in crime and greater use of alternatives to custody. Some experts fear that the Netherlands is on the brink of a punitive turn with the current administration stating that it will reduce reintegration programs, restrict temporary release and house more prisoners in shared cells (Government of the Netherlands 2013). However, despite this the prison population is falling, prisons are closing (or being rented to the overcrowded Belgians and Norwegians) and conditions are still distinctly humane and liberal by most comparisons. It is therefore incongruous that the Netherlands employ the harshest form of indeterminate sentence – the whole life tariff, making it an outlier in Europe, along with England and Wales. However, it has resisted a race to the top in sentencing policy terms and the most severe sentence remains a rare occurrence, with approximately 33 people currently serving a life sentence (van Hattum and Meijer, forthcoming).

Portugal

Portugal was one of the first countries in the world to abolish life imprisonment, doing so in 1884 – only a few years after ending the death penalty. Until recently the maximum sentence of imprisonment was 25 years. It is therefore a system that operates without any form of

indeterminate sentence. The whole prison system is, theoretically at least, focused on rehabilitation and reintegration with the law prohibiting sentences for purely punitive reasons (see Antunes and Horta Pinto 2013). Portugal also has extensive criminal and civil codes dictating the rights and responsibilities of those in custody, and tasks numerous bodies and institutions with inspecting prison conditions and protecting the rights of prisoners. However, there is a sharp contrast between Portugal's comprehensive and liberal legislation and the far from adequate conditions in its prisons. A recent report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found that some prisons were grossly overcrowded and a large number of inmates reported being beaten and abused by prison staff (CPT 2013).

4. Findings

The research findings can be broadly separated into five key themes: approach to long-term incarceration; treatment and conditions for long-sentenced prisoners; release; support in the community; and recall.

In the initial design of the Fellowship research, treatment and conditions in custody were not going to be the subject of much focus, rather, greater attention would be put on the release process. However, it quickly became apparent that it would be artificial to separate the earlier and later stages of custody of those serving long sentences, particularly as the most inspiring and successful approaches looked towards release as soon as a person entered the prison system.

The findings are discussed thematically with reference to England and Wales. Subsequently the applicability of the examples of best practice to England and Wales are discussed. The report concludes with policy recommendations for the Ministry of Justice.

4.1. Approach to long-term incarceration

There was greater awareness of the significance of a long prison sentence and the importance of restricting the use of the most severe sentences in all the other jurisdictions examined, compared to England and Wales. All three systems were to differing extents, more moderate and restrained, particularly in regard to longer sentences.

Portugal

Recently the maximum sentence available to the courts was increased from 20 to 25 years (although there is argument about a small number of concurrent sentences (see Dores, Pontes and Loureiro 2013). However, few sentences above 20 years have been handed down. The idea of a life sentence is anathema to the Portuguese system which forbids purely punitive sentences and places a legal duty upon the state to provide opportunities for rehabilitation and reintegration. Furthermore, there was a much greater realisation of the limits of what imprisonment could achieve. A senior prison guard in a Portuguese prison responded to a question about the maximum sentence being increased to 25 years imprisonment by saying, 'I don't know what they expect us to do with a person for that long. It doesn't make sense.'

Canada

Of the jurisdictions examined, Canada had the highest use of life sentences. Recent figures show that there were 5,347 people serving an indeterminate sentence in 2013 – almost a quarter of the federal prison population (Public Safety Canada 2013). The number of life sentences had increased rapidly in recent years – rising almost 10 per cent between 2008 and 2013 (ibid). This was due to a distinctly different approach to crime and justice policy employed by the then Prime Minister Stephen Harper, compared to his predecessors. Prominent academics described the sharp change in approach in the following terms: '[I]n the past, Canadian governments and policies reflected the view that those who committed offences needed to be held accountable (or punished) for their deeds, then reintegrated into

Canadian society. In the Harper Decade our collective voice of reason and moderation in criminal justice, which had served us reasonably well in the past, has faded.' (*Ottawa Citizen* 2015). Despite these circumstances, the use of indeterminate sentences has remained lower than in England and Wales, with approximately 0.15 indeterminate sentences per 100,000 population in Canada, compared to 0.20 per 100,000 in England and Wales.

For decades prior to 2006 both Liberal and Conservative Canadian governments generally had the same broad outlook on imprisonment - 'high imprisonment rates were perceived as problems to be addressed. Indeed, prisons were seen as necessary but unproductive parts of society whose use was to be minimized to curtail their damaging effects' (Webster and Doob 2015). Canada was internationally regarded as possessing a moderate and stable penal system, which seemed to have shielded itself from the 'tough on crime' rhetoric and ratcheting up of punishments that had gripped the United States and England and Wales over the same period (ibid). The imprisonment rate barely changed in half a century during the 1990s, at a time where rates in England and Wales, the United States and several other developed western nations were growing rapidly.

The election of Justin Trudeu in 2015 on a platform of a more moderate and rehabilitative response to law breaking is expected to mark the return of a much more 'traditionally Canadian' penal policy. So far Trudeu has tasked his Attorney General with reviewing the myriad of criminal justice and sentencing changes introduced under the Harper administration and determining whether they work, provide value for money and advance the aims of the Canadian criminal justice system (Prime Minister of Canada 2015). Commentators expect the prison population to fall under Trudeau's tenure.

The Netherlands

The only form of life sentence available in the Netherlands is the most severe form – the whole life tariff. However, they are used very sparingly; latest figures show that 33 people are currently serving this sentence (van Hattum & Meijer, forthcoming). Since 2005, between one and five life sentences have been handed down each year – this is considered a historically and worryingly high number in the Netherlands, where no life sentences were handed down in the 1980s and seven in the 1990s (ibid). As a result of the spike in life sentences, and following several adverse decisions regarding whole life tariffs from the European Court of Human Rights, the Dutch Government is considering changing their approach to life-long imprisonment (ibid).

It is argued that the whole life sentence in the Netherlands is, in a sense, a modern invention. Whilst the punishment has been available under Dutch law since the 1870s, until the late 1980s there was a functioning pardon procedure. People serving a life sentence could apply to the monarch at any time to have their sentence converted to a determinate one, the Ministry of Justice had a proactive role in this procedure and would begin investigating a life-sentenced prisoner's progress and risk level after ten years in prison and would recommend release to the Secretary of State and the King accordingly (ibid). The general principle was that prisoners should be released 'before the detrimental effects of the sentence or the

prisoner's advanced age nullified the chance of social rehabilitation' (ibid). The pardon procedure was largely irrelevant for several decades as no life sentences were handed down between 1969 and 1982. Lifers sentenced in the 1980s began working towards their release in the early 2000s and one prisoner was granted temporary leave by the Ministry of Justice. However, in 2004 the Dutch government, when debating sentence lengths, denied that a pardon policy existed and told parliament that pardons were almost never granted (van Hattum 2013). In 2009 they went further to say that the social rehabilitation principle laid down by statutory law did not apply to life-sentenced prisoners, and as a result they were not eligible for interventions aimed at release and rehabilitation (ibid). The penitentiary judicial system, The Raad voor Strafrechtstoepassing en Jeugdbescherming (RSJ) – which translates to the Appeals Commission of the Dutch Council for the Administration of Criminal Justice and Youth Protection, have disputed this interpretation and ordered for a life-sentenced prisoner to be allowed temporary releases (van Hattum and Meijer, forthcoming). However, the current situation appears to be that the only avenue for permanent release is a political pardon procedure, which the government have stated that they are unlikely to consider.

Outside of the limited, but extreme, approach to life imprisonment the overall approach to sentencing in the Netherlands is one of restraint. The vast majority of sentences are determinate and short. Further, there are no mandatory sentences and there is almost unlimited judicial discretion. For example, when sentencing a person for the offence of murder a judge can impose a sentence as short as one day imprisonment and as long as a life sentence. With the 33 cases that have been responded to with a life sentence aside, even the most serious offences are met with relatively short determinate sentences – the average sentence for homicide is nine years for example (Ganpat and Liem 2012).

4.2. Treatment and conditions for long-sentenced prisoners

Like England and Wales, all of the jurisdictions studied were facing pressures caused by budget cuts and in Canada's case both budget cuts and rising numbers. However, none of the prison systems studied had seen the same level of decline in purposeful activity and increases in time locked in cells that has characterised prison conditions in England and Wales in recent years (HMIP 2015). In Canada, the Netherlands and Portugal, participation in work, education and offender behaviour programmes occupied much of both shorter and longer sentenced prisoners' time. This was a crucial issue for long-termers, as in every jurisdiction examined, involvement and commitment to 'purposeful activity' whilst incarcerated was a very important factor in conditional release decisions and seen as essential to being able to cope with a long prison sentence. In addition, both Canada and the Netherlands had developed particular programmes and regimes for those serving very long prison sentences – something almost completely absent in England and Wales.

Canada

The Canadian prison system faced challenges with overcrowding and a lack of resources for purposeful activity. Moreover, the political focus on incapacitation at the expense of rehabilitation had a negative impact on the quality and quantity of work, education and

offender behaviour programmes (see Auditor General of Canada 2015). Despite this, there remained a fairly strong emphasis on providing rehabilitative-related activity inside prisons. This activity, termed 'programming' was a central plank of the prison system, with all correctional plans (which every federal prisoner had) largely concerned with what programming should be completed during the sentence and in which order. The parole system was also heavily focused on programming undertaken, and the extent to which the lessons taught during programming had been understood and applied within the prison were central when making decisions around release. In the interviews conducted, even the fiercest critics of the Canadian system and the policy direction being taken acknowledged that some of the programming available to prisoners was impressive and of high quality.

Prisoners, former prisoners and Institutional Parole Officers (IPOs - equivalent to an Offender Manager in England and Wales) all highlighted that the programming-focused system was not particularly well suited to those serving long sentences of over ten years. Those who were, or had been, in prison unanimously described a system in which they were largely warehoused for the first seven to ten years of their sentence, before beginning a fairly intense period of programming in the years prior to parole eligibility. IPOs acknowledged that they often had little to do with life-sentenced prisoners during their first years in prison and the correctional plans they developed for lifers were often sparse in the earlier years. Instead those serving long sentences were directed towards work or education placements, although these options were criticised by both prisoners and staff for being menial, basic and repetitive and therefore unsuitable for those serving long sentences.

Lifeline

In the provinces in which it continued to operate, the Lifeline Programme was essential in keeping life sentenced prisoners on track during the early years in which the prison regime did not cater for them.

As John Rives, Director of the Ontario division of Lifeline explained, the programme began in 1991 and assists life-sentenced prisoners with four main aspects of their sentences: adaptation; integration; preparation; and reintegration (for further detail on the latter two aspects, see *Lifeline and release*). The Lifeline project aims to help achieve Correction Services Canada's goal of gradual, supported and supervised release (CSC 2008), but argues that for lifers this must begin at the beginning of a sentence. Lifeline, whose employees are predominantly former prisoners, works to help those with very long sentences accept their sentence and adapt to prison life. Rives explained that many lifers are sentenced as very young men and can be overwhelmed by the sentence, and as a result become non-compliant and get involved in prison violence. Lifeline helps them understand how the prison system works and how to develop a positive, meaningful life in the long years ahead. Key is keeping prisoners motivated and hopeful, this could be through education, work, volunteering or a Lifeline-designed programme.

Lifeline workers also discussed the important role they have in preventing institutionalisation. They did this through assisting lifers maintain family relationships (a challenge in a country

where prisons and their families can be separated by thousands of miles and several time zones), and ensuring they did not become completely alienated and out of touch with the way the outside world was changing. Informing prisoners about key changes in society and helping them develop essential skills was a vital but often overlooked service. Lifeline was the only organisation able to provide this. Further, Lifeline workers emphasised that if the end goal was to release a productive, law-abiding citizen into the community after 20 years spent in prison, they had to be helped to understand and be equipped to participate in the community they would be released into.

The Netherlands

A strong ethos of rehabilitation and productive, purposeful activity runs through the Dutch prison system. The Penitentiary Principles Act requires that sentences of imprisonment 'shall be aimed at preparing the person involved as much as possible for reintegration in the community.' In all of the prisons visited during the research period, the vast majority were occupied with education, work or leisure activities of a much higher quality than usually seen in prisons in England and Wales. A prison governor explained that he pursued a 'skills not deficits' approach, and aimed to provide opportunities that matched skills and interests and enabled prisoners with expertise in a particular area to teach others. However, there was debate over whether or not the small number of life-sentenced prisoners could participate in these programmes and opportunities, as they were designed to aid rehabilitation and reintegration and therefore technically did not apply to those who would not be released (van Hattum and Meijer, forthcoming). However, prison governors, prisoners and officials all stated that most purposeful activity was generally viewed as having a broader remit than just release and rehabilitation and therefore life-sentenced prisoners were rarely excluded.

Dutch policy makers and prison governors had recognised that there were a small number of people serving long and life-long sentences who would require something different or at least additional to the usual regime which was largely designed for fairly short determinate sentences. The small size of the system and lack of overcrowding facilitated localised creative and innovative thinking. In one prison a special unit had been developed, in another a life-sentenced prisoner had been given great freedom to lead a purporseful life in prison.

The very small number of life-sentenced prisoners enabled individual prison governors to adapt regimes and tailor privileges to assist those with a whole life term develop a meaningful life in prison. In one prison visited, a life sentenced prison who had spent over 20 years in prison had been given responsibility for the prison gardens. He was able to hire other prisoners to work in the garden and was permitted to come and go from the gardens at any time he wished. He had built a greenhouse, was growing vegetables for the kitchen and had built a pond equipped with a solar-powered fountain which was home to dozens of large koi carp – all donated by the local community. He was also trusted with a ride-on lawn mower and a chain saw, which were stored in a large, two-storey shed which he had built with other prisoners. He explained that the level of trust and freedom was greater than he had experienced in any other prison, which he put down to the humane attitude of the governor of the prison as well as the years of demonstrating that he was trustworthy and responsible.

However, he had received similar opportunities to be creative and to largely decide how he would spend his time in the other prisons he had been to. He credited the work he was allowed to do in the garden with helping him cope with his sentence.

Another Dutch prison had introduced a pilot wing for life and other long sentenced prisoners in which they were allowed to live as autonomously and self-sufficiently as a medium-secure prison would allow. The eight men, who had been selected by staff to reside on the wing were all serving sentences of at least ten years, two had life sentences. The wing was completely unstaffed. The door connecting the wing to the rest of the prison had a call bell, which staff would answer to let the residents on and off – within the confines of the wing the men were largely left to their own devices. Two residents of the pilot wing were interviewed, they described the wing as the least tense and most relaxed prison experiences they had had. Seven of the men worked in prison jobs, with the eighth paid by the others to cook for the group and to look after the unit. The men were in the process of applying to have a rescue dog come and live with them, which they would look after and train. One of the residents commented that the ability to make day to day decisions and be responsible for how he lived with others had led to a great improvement in his relationships with his family. The residents highlighted the claustrophobia they felt on the wing, which to an extent excluded them from the rest of the prison but both stated that the positives of life on the unit dramatically outweighed this. The governor explained that he had fought with officials for a long time to establish the wing, but now plans were in place to develop similar schemes in other prisons.

There was debate about whether the Netherlands had pursued a policy of a specifically adapted prison for those with long-sentences. Norgerhaven prison, recently rented to Norway to help ease its overcrowding crisis, previously held several of the Netherlands' life and long sentenced population (Liem and Elbers 2015). Prisoners and their lawyers argued that those serving long sentences were given an option about whether they wanted to be held in a long-termers unit in Norgerhaven. The regime was then adapted for longer term occupation – prisoners kept chickens, grew and cooked their own food, had plenty of access to exercise outside and could make some decisions about how the cells and communal spaces were decorated. There was less focus on short education and skills courses and much more on developing a way to live in prison long-term. However, senior officials at the Dienst Justitiële Inrichtingen (Ministry for Justice and Security) disputed that this was official policy, they argued that the Norgerhaven 'experiment' had largely come about through coincidence when several long-termers were placed in the same prison. They said that they did not pursue a policy of segregating according to sentence length. Following the announcement that the prison would be rented to the Norwegians, several prisoners at Norgerhaven sued the government over their forced relocation. The District Court of The Hague found against the prisoners, but held that although the hiring out of the Norgerhaven prison to Norwegian authorities to house Norwegian prisoners was not unlawful, the government must "present the plaintiffs with an adequate alternative," which would "focus on the same special detention regime for long-term prisoners should they be transferred there." (Rechtbank den Haag 2015 – and report on the case in English - Library of Congress 2015). Wiene van Hattum, Director of Forum Levanstrang, an organisation of academics and lawyers which campaigns to change

law and policy around life-sentences was concerned that the prisoners formerly held in Norgerhaven had been dispersed around the prison estate and were not all receiving the specialist provision they were entitled to.

Portugal

The theory and practice about the type of regime and the conditions long-sentenced prisoners should be held under differed greatly. In theory, there was no need to have a specialist regime for long-sentenced prisoners as all sentenced prisoners were entitled to an individualised reintegration plan which took into account their sentence length, causes of offending behaviour and skills and interests. Senior officials and both the Constitutional Court and the Direção-Geral da Administração da Justiça (Directorate General of the Administration of Justice – which has similar responsibilities to the Ministry of Justice and National Offender Management Service) explained that the only aim of punishment in Portugal is rehabilitation and this, coupled with the prohibition on indeterminate sentences, meant that the whole prison regime was focused on reintegration and rehabilitation. Under the Portuguese Penal Code all prisoners serving a sentence of over four months are entitled to work if they choose to. The law also states that an employment programme which suits the interests and skills of the prisoner and complements their treatment plan and economic needs must be provided (Antunes and Horta Pinto 2013). Policy officials added that all staff received specific training on how to motivate long termers to participate in work and education.

At the time of the research visit, the prison service was developing plans to expand the availability of offender behaviour programmes and interventions, which were a relatively new addition to the Portuguese system, as well as develop 'through the gate' services. In Autumn 2015, the first sex offender treatment programmes were being piloted and assessed, these were mostly directed towards those serving longer sentences for serious offences. This, in part, was designed to improve the prison regime for the relatively small number who were serving long sentences. Officials wanted to create a more therapeutic regime that looked at behaviour and mental health, rather than focus only on work and skills.

However, in practice the prison system was struggling with shrinking resources. As a result there were insufficient work and education places and prisoners were often locked in their cells for long periods. The European Committee for the Prevention of Torture raised issues about the lack of purposeful activity in many establishments in its reports in 2012 and 2013 (CPT 2012, CPT 2013), challenging the Portuguese Government to improve access to and remuneration of work in prison. Although official data wasn't available, the CPT estimated that around a third of prisoners in Portugal were not engaged in purposeful activity. Representatives from the Justice Ombudsman and Prison Inspectorate also argued that prison regimes did not yet meet the high standards set out in Portuguese law.

During a visit to Carregueira prison, near Sintra, I was shown several large workshops which employed hundreds of prisoners. However, all the work was very low level and repetitive – far from the individualised and skilled labour the law mandates. Art and music classes were also offered, and the prison was one of the pilot sites for the recently developed offender

behaviour programmes. The governor of the establishment said that around half of the prisoners at Carregueira were fully occupied, with those serving long sentences more likely to be in the more senior and responsible roles available due to their experience in the various workshops.

Of all the jurisdictions looked at Portugal had the most developed rules around family contact and visits. Under the penal code, all prisoners were entitled to a visit each week. Prison service officials said that visits were always available on weekends so as to cause minimal disruption to families and schooling. Furthermore, extended family visits were available every three months, subject to risk assessment. These involved three to five hours in a private visiting suite equipped with a bed, television, kitchen and bathroom facilities. These were regarded as particularly important for long-term sentenced prisoners who needed to maintain quality family contact.

4.3. Releasing long-sentenced prisoners

The key feature that linked the Canadian, Dutch and Portuguese systems was the potential for release at several different stages of a sentence. In Canada and Portugal in particular, this prevented those who posed a low risk and who had made exceptional efforts to rehabilitate, from spending further decades in prison unnecessarily. Providing several opportunities for release was also regarded as crucial to keeping long-sentenced prisoners motivated and engaged in prison life.

Canada

The Canadian penal system aimed to achieve a gradual, controlled and supervised release for those serving life sentences. The release process was therefore a very long one. During the minimum tariff set by the trial judge, prisoners were expected to 'cascade' through the prison estate to minimum security conditions and complete all the programming required in their correctional plans. Three years prior to their first parole eligibility date lifers were permitted to apply to the Parole Board of Canada for escorted or unescorted temporary absences (ETA and UTAs). These could be authorised for up to 15 days at a time, but in practice tended to be approved for single days or weekends. For life-sentenced prisoners any ETAs or UTAs were generally used to establish links with half-way houses, employers or drug and alcohol treatment services in preparation for eventual release on parole (Correctional Service Canada 2010a).

Life-sentenced prisoners could also begin applying to the parole board for Day Parole three years before the end of their minimum tariff, but both lifers and IPOs stated that Day Parole was very unlikely to be granted with successful completion of several ETAs and UTAs. Day Parole meant that lifers would be released but had to reside at an approved location, usually between the hours of 7am and 7pm. Almost all approved locations were 'half-way houses', the majority of which were operated by non-profit organisations. Day Parole was a crucial part of the release process for lifers and in many cases would last for several years, far beyond the first full parole eligibility date. Life-sentenced prisoners were to a large extent expected to organise their own place in a half-way house, and would have to apply to one in

the area in which they hoped to be released (see *Pre-release fair* for more detail about this issue.) The Parole Board could also attach conditions in addition to the residential requirement, for example to continue to complete programming or attend alcohol or drug treatment.

After six months of Day Parole, those on life sentences were required to apply again to the Parole Board for either an extension of Day Parole or for Full Parole. Full Parole operated in a similar way to parole in England and Wales, with the probation service responsible for supervising lifers in the community and recalling them to custody if they breached the terms of their licence.

All stakeholders interviewed generally agreed that the Canadian approach of a gradual, controlled release was the right one and that the half-way house programme was beneficial in easing people back into the community after a long period of incarceration. However, several criticised the Day Parole process for elongating the release process, contrary to the original intention of policy which was to increase the likelihood that lifers would be ready for full parole when they became eligible. An academic at Queens University, Kingston, explained that Parole Boards were very reluctant to release people with life sentences who hadn't first completed ETAs, UTAs and many months of Day Parole. The three years prior to the first parole eligibility date during which life-sentenced prisoners were eligible to apply for various forms of release was insufficient for the majority to work their way through the process. For example, supposing a person was successful in their first application for an ETA, they might be able to go on one every three to six months and the Parole Board would often expect at least three or four successful ETAs before a UTA was considered. This process therefore meant that few had a realistic chance of full parole at the earliest eligible date.

Parole Board of Canada

Two parole board hearings were observed during the research visit. Two Parole Board members form the panel in each hearing, and all parole board members are selected and appointed by the government of the day, serving terms of between three and ten years (Government of Canada 2016). The hearings largely follow the same format as those in England and Wales, but appeared to be more informal with applicants encouraged to treat it as a conversation rather than a quasi-judicial process. Parole Board members explained that the most important factors in whether or not to approve applications for Day Parole or Full Parole were remorse and understanding of the impact of the initial offence, completion of programming and evidence of applying the lessons taught in programming, a realistic release plan and motivation to be a productive member of society.

It appeared that the most important actor in the parole process was the Institutional Parole Officer, who would make a statement about whether they supported the type of release being applied for. They would often also give evidence during the oral hearing. Critics of the parole system and many prisoners interviewed argued that the judgement of the IPO carried too much weight and that it was almost unheard of for a Parole Board to go against an IPO recommendation. Several prisoners raised the issue that there was a high turnover amongst

IPOs, and as a result prisoners would sometimes approach parole hearings with an IPO that they had only met a handful of times. This placed enormous pressure on 'making a good impression' on a new IPO. Several prisoners suggested that parole was a like lottery – wholly dependent on the character of an IPO and whether there was time to develop a relationship.

Few of those going before the Parole Board had legal representation or had been helped to prepare by anybody aside from their IPO. Parole Board members said that this was to be welcomed as in Canada parole hearings were not 'an argument' but a discussion about release plans, risk and safety. Many prisoners interviewed said that having legal representation at a parole hearing would be an unwise thing to do, sending signals to the Parole Board that you had something to hide. However, this varied greatly between provinces. In Winnipeg, Manitoba, those serving life sentences laughed at the idea of having legal representation at a Parole Board hearing, arguing that if you were going to do that you might as well just not apply. Those held in prisons around the Kingston, Ontario area were much more likely to have legal assistance as Queen's University Law School specialised in this work as part of their pro bono programme.

A large number of academics, policy experts and those working with former prisoners in the community were highly critical of the Parole Board of Canada and the direction it was moving in. One of the key criticisms was that the appointments process had become politicised, with the majority of recent appointees being former police officers with political allegiance to the Conservative Party. The Board was also criticised as being highly risk averse, granting release to so few that there appeared little reason for it to continue to exist. Professor Antony Doob argued that the original aim of parole – to facilitate, gradual release to achieve successful reintegration – had been replaced with highly risk averse decision making which kept people in prison as long as possible. Doob argues that release on parole has 'withered' whilst the public still believes that prisoners are likely to be released at their earliest parole eligibility date leaving 'the worst of all possible worlds…on the one hand, a misperception of substantial sentence reductions as a product of systemic leniency and, on the other hand, a de-emphasis of re-intregration in favour of risk averse decision making.' (Doob, Webster and Manson (2014) p. 327-8).

Lifeline and release

Lifeline workers and prisoners involved in the programme highlighted the importance of the scheme in regard to parole. Lifeline workers ensured those they worked with understood the long journey to release, when they would be eligible to go before the Board to apply for ETAs, UTAs, Day Parole and Full Parole and what would be expected of them. Many life-sentenced prisoners reported that Lifeline workers had helped them to prepare for Parole Board hearings and often accompanied them at the hearings as their 'support' (all those before the board were allowed to bring a support person, usually a lawyer, family member, friend or Lifeline worker). Lifeline workers also often accompanied prisoners on ETAs and UTAs, increasing the likelihood permission would be granted and assisting prisoners to deal with the outside world. Lifeline workers explained that in relation to parole that their job was not to always support and encourage release - if they did not think a person was ready for a

particular stage of the release process, they would say that to the Parole Board and then continue working with the individual to help them be ready at the next opportunity to apply.

Under the Harper administration, funding for Lifeline was cut significantly and it had ceased operating in several provinces. In Ontario, non-profit organisations had taken over the funding and Lifeline continued to operate, albeit on a smaller scale. The decision to cut Lifeline funding was heavily criticised. Skip Graham, a pioneer of the approach argued that Lifeline is 'the most practical, humane program that has proven itself, and it's the one they've decided to eliminate, so it's just politics…the Lifeline program is really the [Correctional Service Canada's] only strategy in addressing the long-term offender, which makes up about 20 per cent of the population.' (CBC News 2012). The Correctional Investigator of Canada also condemned the move, stating 'the end of funding for Lifeline, a program that provided inreach and outreach services and support to life sentenced offenders, appears unwarranted and contrary to long-established practice…these measures reflect a narrowing of the rehabilitative potential of corrections.' (Office of the Correctional Investigator 2013). Those involved in Lifeline were optimistic that the election of Justin Trudeau as Prime Minister as well as a report by the Auditor General concluding that the slowing down of the release process was contributing to increased imprisonment costs and higher risks to public safety (Auditor General of Canada 2015) would lead to an increase in funding in the coming years.

Faint Hope Clause

Canadian life sentences follow a similar structure to those in England and Wales – a minimum tariff set by the sentencing judge must be served before a person can apply for release to the Parole Board of Canada. The guidelines for tariff lengths are fairly rigid, 10-25 years for second degree homicide and at least 25 years for first degree (Criminal Code of Canada). However, innovative policies facilitate earlier release in certain circumstances, the most notable being the 'faint hope clause'.

Section 745.6 of the Canadian Criminal Code, colloquially known as the 'faint hope clause' allows those sentenced to life with a minimum of 15 years, to apply to have a jury examine the progress they have made in prison and review parole eligibility. The thinking behind the clause, which came into force in 1976, was that it was contrary to the public interest to continue to detain a person who had already served a significant period of time in custody, had made exceptional efforts to rehabilitate themselves and posed a low risk of harm. Further, there was also recognition that by international standards those serving life sentences in Canada spent a very long time in prison and there ought to be mechanisms to identify persons who no longer needed to be incarcerated (John Howard Societies of Canada and Ontario 2010). Most importantly, the policy enhances democratic input in the penal process, enabling ordinary citizens to have a say on the sentence lengths of those convicted of the most serious crimes. Theoretically, any person serving life with a minimum 15 year tariff can apply for a jury to consider their case. However, in practice the majority of lifers who had not made efforts to rehabilitate themselves or had a poor record of behaviour in prison excluded themselves from the process. All applications submitted will go through judicial pre-screening and only those judged as having a reasonable prospect of success will proceed to a

full jury hearing. The decision of the jury to reduce the number of years before parole eligibility must be unanimous (Roberts 2009).

The 'faint hope clause' has been successful in releasing rehabilitated prisoners back into the community. Between 1987 (when the first hearing took place) and 2010, 173 applicants received a full jury hearing. Of these 143 (82.7 per cent) had their parole eligibility dates reduced and 130 were subsequently released by the Parole Board of Canada. Of these only four have been returned to custody, three for a drugs offence and one for robbery (John Howard Societies of Canada and Ontario 2010). Despite opposition, former Canadian Prime Minister, Stephen Harper, abolished the faint hope clause in 2011. However, this change was not applied retrospectively so it will remain a part of Canadian policy until at least 2026, when those sentenced in 2011 prior to abolition will be able to apply having served 15 years in prison. It is currently unclear whether the new administration will reverse the abolition.

Portugal

In Portugal, a large emphasis was placed on ensuring decision-making in the prison system was legitimate. There was also a recognition that prison systems could easily be corrupted and it would be beneficial for prisoners to be able to appeal against decisions made in prison to an independent outside body. Therefore a separate court system, the Tribunal de Execucao de Penas (which roughly translates as the Court of Implementation of Sentences) had been established to review and approve sentence plans, review the legality and legitimacy of punishments and, most importantly, frequently review whether a person should be released.

As a judge and prosecutor working at the court explained, specialist judges and prosecutors with knowledge and experience of prison law and the prison system staff the court. All persons sentenced to over two years in custody are first considered for release after serving one sixth of their sentence. If they are not released at that early stage, release will be considered again at the half-way and two-thirds point (or each year, depending on which is the shortest time period). If a person is still detained after having served five-sixths of their sentence release is practically automatic. This is due to the important principle of a right to parole under Portuguese law - a proportion of the sentence must be reserved for reintegration and support. In practice, the five-sixths rule acts as a vital safeguard but the vast majority of people are released before this stage of the sentence. Those serving sentences for non-violent offences are often released at the earliest possible stage.

Some prisoners and prison staff criticised the specialist court, arguing that rather than act as an independent appeals court and ensuring decisions are legitimate and follow correct processes, it merely acts as a rubber stamp, upholding the decisions made by prison governors and guards. Prisoners, and some prison service officials, criticised the way in which a prosecutor on the Court of Implementation of Sentences was appointed to a particular prison, arguing that this engendered too close a working relationship with prison staff and made them reluctant to challenge decisions or take allegations of ill treatment seriously. The sheer workload of each judge and prosecutor was also flagged as a problem, with such high caseloads and long working hours meaning that few cases could be

investigated properly, instead decisions were made very quickly according to the paperwork submitted.

The Netherlands

Under the current system the only realistic chance of release for prisoners with life-sentences is for compassionate reasons when they are nearing the end of a terminal illness. The last pardon aimed at social rehabilitation was granted in 1986.

Whilst life-sentenced prisoners are technically able to still apply to the monarch for a pardon, via the Minister of Justice, the government have made it clear that they are extremely unlikely to recommend a person be released and are of the view that a life sentence in the Netherlands should last until the end of a prisoner's life (van Hattum and Meijer, forthcoming). There is some debate about the extent to which life-sentenced prisoners are able to work towards release whilst in prison. As stated above, the Dutch Government have argued that any activitives aimed at social reintregration should not be available to life-sentenced prisoners. However the RSJ – a body with two branches (one is a final appeals court for penitentiary law issues, the other draws up advice for the government around justice policy issues) have disputed this and have granted temporary release to life-sentenced prisoners in some circumstances. Further, the RSJ has recommended that the Dutch Government introduce a periodic review for life-sentenced prisoners and have suggested that this begin after a period of 15 years (RSJ 2008). This combined with the case before the European Court of Human Rights regarding life imprisonment in the Netherlands (for example ECtHR, Murray v The Netherlands), has led several experts interviewed to expect that the strict whole life term approach to life sentences will be altered in the coming years.

However, for the 99.9 per cent of prisoners in the Netherlands who are not serving life sentences, release planning begins early on in their sentence. Both of the prisons visited had reintegration centres, staffed with prison service employees or volunteers. They would work with the person in prison to ensure their local authority was aware of the duration of their sentence and what their needs would be when they were released. Local authorities were responsible for ensuring that those released from prison into their areas would be housed, helped to find employment and assisted in accessing the benefits they were entitled too. Staff and volunteers in the reintegration centres noted that some local authorities were provided with higher quality services and were more engaged in prisoner rehabilitation than others, but generally the system of devolved responsibility worked well. Like in England and Wales, housing was frequently mentioned by staff and prisoners alike as the most important element of successful reintegration. Staff in Dutch prisons said that the first thing they aimed to do when somebody came into prison was to get them on the relevant housing list, or if their sentence was short enough, to contact the local authority and negotiate to keep housing available when that person came out of prison. One prisoner interviewed who was nearing the end of a three year sentence, said that he had previously been homeless but the prison staff put him on the housing register within two weeks of being in prison. The local authority had recently contacted him to say that housing would be available when he was released.

Compared to Canada and Portugal, there were fewer opportunities for release in the Netherlands, everyone serving a determinate sentence was eligible for release at the two-thirds point. Although detention until the end of the sentence was possible, it was very rare. A prison governor explained that there was a strong presumption in favour of release at the earliest eligibility date. The prison service would always have to put forward evidence to justify detention beyond the earliest eligibility date, the onus was not on the prisoner to demonstrate that they were no longer a risk.

4.4. Support in the community

In all the jurisdictions studied, once released from prison almost all of those serving life or long-term sentences were supervised by a form of probation service in the community.

Canada

In Canada, parole officers would supervise those released from federal prisons in the community. Unlike in England and Wales where there is a slightly greater emphasis on supporting a person to succeed in the community, the main role of the community parole officer was to supervise those on licence and ensure that the terms of their parole were adhered to. Support and reintegration services were primarily left to the non-profit sector.

Many non-profit projects and services were visited during the research trip. They were provided by a range of organisations, including the larger providers like the John Howard Society of Canada (and its affiliate branches in each province), St Leonards House and the Elizabeth Fry Society (See John Howard Society of Canada website for examples and further detail). Smaller organisations provided niche services for particular groups such as young people in gangs and indigenous Canadians (the latter group being vastly overrepresented in the prison system).

A wide range of residential services were also supplied by non-profit organisations, including half-way houses. These were key to the release process for many life and other long-sentenced prisoners. Half-way houses were split into two subgroups: Community Residential Facilities (CRFs) run by non-government organisations; and Community Correctional Centres (CCCs), run by Correctional Services Canada. All prisoners interviewed highlighted the importance of applying and being accepted into a CRF. They were all of the view that failure to be accepted into one would reduce chances of parole and described being released to CCC as being set up to fail. CRFs were much smaller, better staffed units. Residents described them as having a different ethos to CCCs, in CRFs NGO staff wanted people to succeed and helped them to do so. They provided a wide range of ancillary services, including specialised employment support (the John Howard Society in Kingston had developed its own employment agency to work exclusively with those with criminal records, for example), mentoring, life skills and drug and alcohol treatment. Contrastingly, CCCs provided few of these services and were generally more chaotic and violent.

Pre-release fair

There appeared to be a huge reliance on NGOs to provide support in the community and through the gate services. The state merely provided backstop options for when NGO places were oversubscribed or if a person was too violent to be accepted into an NGO programme. The state run facilities were of notably lower quality. To a large extent, those preparing for release were expected to be proactive in organising their community support once they were released if they wanted the benefits of the higher quality NGO provided services. Many IPOs would assist with this, but much emphasis was placed on prisoners obtaining information themselves or NGOs visiting prisons to explain their services and how to apply.

In Kingston, Ontario, a small city which contained 12 per cent of the federal prisons in the country, had developed an innovative approach to helping people plan their support system in the community known as the pre-release fair. This took place twice a year in every prison in the Kingston area. Organisations providing various forms of support to people leaving prison would attend and provide information and contact details about the services they offered. The pre-release fair functioned much like a careers fair might at a university, with prisoners able to wander around the stands talking to service providers and sometimes filling out applications on the spot. Those who presented their services at the fair described it as the most important in-reach they were involved in. Prisoners who attended the fair described it as crucial to developing a support plan that would help them reintegrate into the community.

The key problem with the way support in the community was run in Canada was that it was highly dependent on the people who needed the services being proactive and finding out what was available and having the ability to approach organisations to ask for assistance. Many of those working for NGOs explained that many prisoners do not have these abilities and find it difficult to approach organisations. This was apparent when attending pre-release fairs. At every event there was a sizeable group who stood at the back and did not communicate with any of the staff or pick up information leaflets. When staff approached them and explained how the fair worked and who they should speak to, they often became more engaged and frequently disclosed several community support related problems. NGO staff noted that it was impossible for them to help all prisoners who lacked the skills to put together their own community support plan, and as a result some would not access the services they need.

Another issue highlighted, both by people in prison or on licence and by CSC and NGO staff, was that many of the community support services were provided by religious groups, which inherently excluded or alienated some people. For example, I observed a lifers support group in Winnipeg, Manitoba, which provided high quality support to those recently released and soon to be released lifers (those yet to be released attended sessions whilst on UTAs). This group was run by a group of nuns and church volunteers and each session started with prayer. Those who attended said that they would recommend the support of the group to others but flagged that there was no alternative provision for those of different faiths or those who did not feel comfortable in a religious group.

The Netherlands

There was a much greater focus on support rather than supervision in the Netherlands. Support and supervision in the community was outsourced to three different organisations, Reclassering Nederland (the Dutch Probation Foundation), SVG Verslavingsreclassering (Probation Service for addicted offenders) and Leger des Heils Reclassering (Salvation Army Probation Service). The latter two catered for homeless or addicted persons following release from prison, whilst the former provided more general support (CEP 2010).

In addition, much of the support services for those released from prison were devolved to local authorities. For example, certain responsibilities around housing, education and employment skills resided with the local authority into which people were released from custody. Prison staff commented that the probation system generally worked well, but its fragmented nature meant that sometimes confusion arose about which agencies were responsible for meeting particular needs.

Portugal

All those incarcerated had a right to assistance with reintegration and rehabilitation under the penal code. This community support was provided by the Direção-Geral de Reinserção Social (DGRS) – which translates as Directorate General of Social Reintegration. The DGRS was tasked with providing holistic support around reintegration needs, including building family relations, education and employment skills.

Both prisoners and prison staff highlighted that the probation service was under-resourced, and as a result few people received holistic services post release. Instead, the probation service was described as largely a signposting service that put people in touch with other government organisations or charity providers.

4.5. Recall

A key component in England and Wales' high life imprisonment rate is the ease with which people are pulled back into prisons following release. Longer sentence lengths and increased recall account for up to 85 per cent of the increase in the prison population since 1993 (Ministry of Justice 2013).

Recall, whilst technically possible in the Netherlands and Portugal, was virtually unknown in practice. Any further offences committed whilst under supervision in the community were always prosecuted and sentenced separately. Recalls for technical breaches of conditions were very rarely used. Senior officials in both the Dutch and Portuguese Departments of Justice confirmed that they expected non-criminal violations of parole to be dealt with by probation services in the community.

Conversely, for the last ten years Canada has had a relatively high rate of recall, termed parole revocation. Between 2003 and 2008 revocations gradually increased – at the highest level in 2008 they made up 40 per cent of all admissions to federal prisons (Public Safety Canada 2013). Numbers have declined slightly since then, with latest figures showing 37 per cent of admissions are revocations (Public Safety Canada 2015). Further, an increasing proportion of revocations are for a breach of conditions, not the commission of an offence, 9

per cent of those on federal Day Parole and 14 per cent of those on federal Full Parole were returned to custody for technical breaches of licence conditions (ibid). Several interviewees who were in the community on licence noted that the increase in recalls as well as the general tough on crime, anti-prisoner rhetoric had had a real impact on their lives. They felt that they were being set up to fail and it was almost inevitable they would have their parole revoked and be returned to prison. One person on life licence who had been in the community for over 20 years said the recent changes had made him feel deeply insecure, and he was constantly worried that something small like having a faulty brake light on his car could result in him going back to prison for years. Similarly, some interviewees who were still serving the custodial part of their sentence had waived the right to go before the Parole Board. They said they had seen too many friends released, only to be quickly revoked on a technicality. Therefore they would rather stay in prison for longer than risk the psychological challenge of being rapidly returned to custody.

5. Discussion in relation to England and Wales

5.1. Use of long sentences is a policy decision

The clearest message from the Fellowship research was that the level of use of long indeterminate sentences in England and Wales is not necessary. When compared to all the other jurisdictions examined, it is an extreme use of an extreme version of imprisonment, and should be viewed as such. Similarly, the research demonstrated that a high use of long-term indeterminate sentences is a policy choice, and not simply a reflection of levels of serious crime. The lack of debate around the longest sentences in England and Wales appears to an extent to be because there is a consensus that this group need to be in prison, so the usual debates around community alternatives do not apply. Just a glance at how Portugal, the Netherlands and Canada respond to those who commit the most serious offences shows that even when imprisonment is inevitable there are still many choices to be made about the length of a sentence, experience of imprisonment and how to distinguish between those who no longer pose a risk and those who do.

A striking similarity between almost all of the people interviewed for this project was the surprise they expressed when told about the number of people serving indeterminate sentences in England and Wales and the lengths of minimum tariffs. Even in Canada where people were familiar with a large number of long indeterminate sentences, those working in prisons, probation, academia and the NGO sector all commented that the use of indeterminate sentences appeared excessive and misguided.

Whilst the high use of long indeterminate sentences is a policy choice, it appears that to a large extent it is one that has been sleepwalked into. For example, the number of IPPs, which now form a third of indeterminate sentences in England and Wales, is the result of rushed and poorly drafted policy making and legislation. When the new sentence was devised, it was expected that the number handed down would be in the hundreds, rather than many thousands (Prison Reform Trust 2005). Further, the dramatic increase in mandatory and non-mandatory tariff lengths was not purposeful, rather tariff lengths have slowly crept up as sentencers respond to punitive political rhetoric. With this in mind, the Ministry of Justice ought to embark on a review of sentencing with the aim to reverse sentence inflation, review the number of sentences which attract an indeterminate sentence and evaluate minimum tariff lengths with regard to European averages.

The recent policy changes in Canada clearly demonstrate the consequences of increasing sentence lengths whilst neglecting the experience of prison and the release process. The Auditor General of Canada in his 2015 report on the prison system highlighted that over the last ten years crime in Canada had fallen and so too had the number of admissions to federal custody – yet the prison population had grown. This was wholly due to people serving longer proportions of their sentences in custody (Auditor General of Canada 2015). The Auditor General concluded that this was counterproductive in both budgetary and rehabilitative terms. He found that almost half of those being detained for longer periods had been classified as low risk, despite Correctional Service Canada's own evidence that ‘the supervised release of offenders who have demonstrated responsibility to change contributes to public safety and the

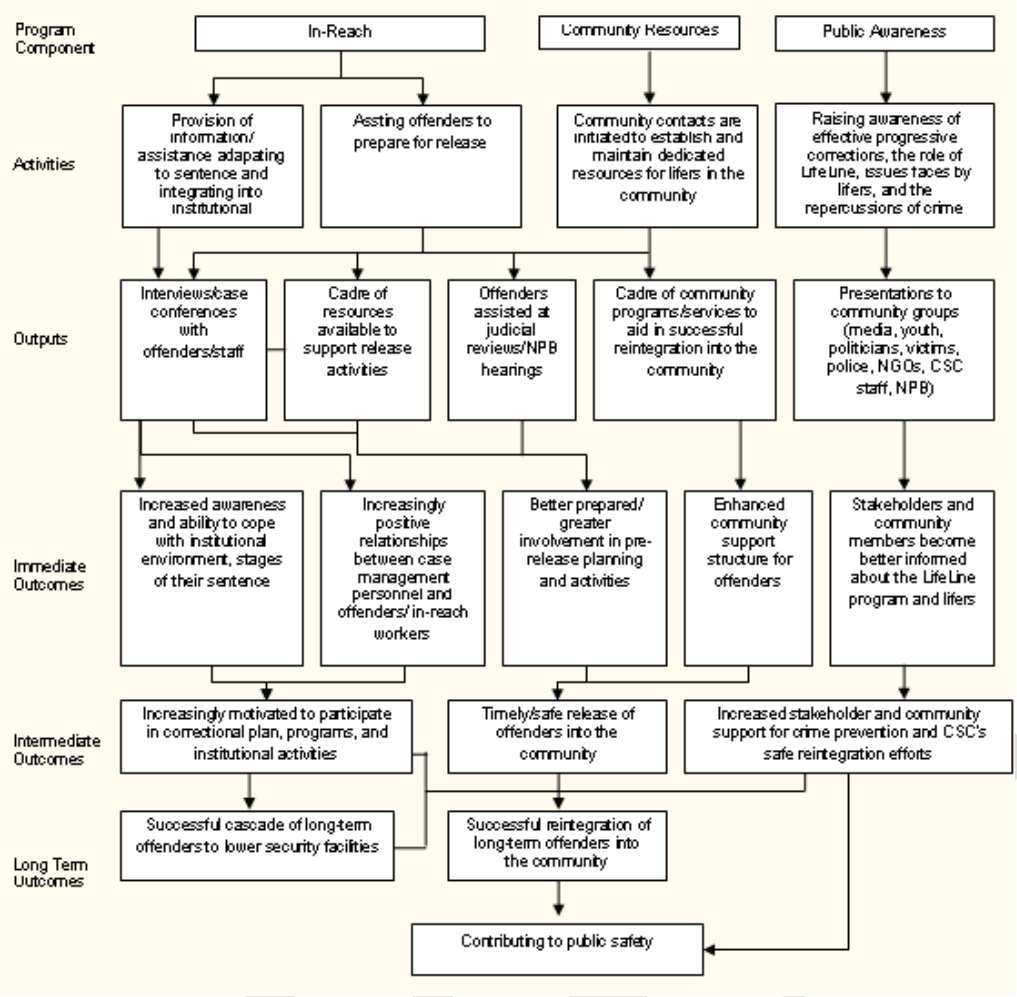
successful reintegration of offenders into the community' (ibid pp. 3) and that despite stripping back purposeful activity in order to make budget cuts, 'since March 2011 CSC costs of custody have increased by $91 million because of increased numbers in custody' (ibid pp. 5–6). The approach adopted by England and Wales, later adopted by Canada, of allowing or encouraging sentence inflation and rising numbers whilst reducing funding for prison regimes and purposeful activity is both expensive and contrary to what works to reduce reoffending.

5.2. Long-termers require specialist services

An indeterminate sentence is fundamentally different to a determinate one. However they are labelled, an indeterminate sentence is potentially a life sentence which has significant implications for how prisoners must 'do their time' and the psychological impact of their sentence (HMIP 2013). Whilst the prison system in England and Wales does not ignore the different nature of an indeterminate sentence, provision is limited. For example, HMIP and IMB reports occasionally note a lifers group or that certain prisons are better equipped for dealing with those with long sentences (For example, see IMB (2014)), however overall provision is not extensive or consistent and prisoners with indeterminate sentences are generally treated the same as other types of prisoner (HMIP 2013).

The benefits of specialised services and support for those serving life and long sentences were apparent in both Canada and the Netherlands. Lifeline, in Canada, was the most impressive model – recognising that those with life sentences needed different levels and forms of support at different stages in their sentences. An evaluation of the programme showed that 'the Lifeline Programme increased lifers' ability to cope with their sentence, adapt to the institutional environment, and participate actively in the institutional environment.' (CSC 2010). There was also evidence to suggest that those involved in the Lifeline programme reached minimum security more quickly and were more likely to be conditionally released than those who were not receiving services (ibid).

The funding cuts Lifeline has sustained over the last few years has resulted in a much smaller service which largely operates only in Ontario. This is regrettable as Lifeline is a humane and practical programme that saves money, improves behaviour whilst in prison and facilitates timely, supported, gradual release – all linked to improved public safety outcomes. The Ministry of Justice should assess how a similar programme could be developed in England and Wales.



Lifeline Program Map (Image source - CSC 2010)

Despite the controversy around whether or not life-sentenced prisoners were able to access rehabilitative programming, prisons in the Netherlands were largely able to create living conditions which gave life-sentenced prisoners purpose and helped them cope with their sentence. This was possible due to the very small number of life-sentenced prisoners and the substantial discretion prison governors had to run their prisons in the way they saw fit. A Dutch model would not be possible in England and Wales due to the sheer number of life-sentenced prisoners, but increasing governor autonomy, as the current administration has stated it intends to do, could facilitate some specific freedoms or conditions for lifers.

5.3. Multiple opportunities for release

There were clear benefits to the multiple opportunities for release for those serving long sentences in Canada and Portugal. Despite the large gaps between policy and practice in parts of the Portuguese Penal System, the Court of Implementation of Sentences system was significant in that it was clearly linked to the principle that imprisonment must always be justified and that frequent sentence reviews were needed to achieve this. The 'faint hope clause' in Canada, although less profound, recognised both that it is important to motivate and give hope to people serving potentially life-long sentences and that if a system is going to

rehabilitate and reward progress it needs to be flexible enough to do so. These ideas are lacking in the system in England and Wales.

Crucially, multiple opportunities for release also recognise that people can change and that prisons, particularly for long-termers, can have a rehabilitative impact.

Like many of the suggested changes around long sentences, increasing opportunities for release would help save costs, improve institutional behaviour and improve public safety. Whilst the Portuguese system is arguably the more progressive in this regard, the Canadian 'faint hope' policy could be incorporated into domestic penal policy with greater ease. Further, it brings the benefits of enhancing democratic input into the sentencing of those who have committed the most serious crimes against society, which can in turn enhance public confidence in sentencing. The Ministry of Justice should therefore consider implementing its own 'faint hope' policy.

5.4. Parole is crucial

Any penal system which utilises indeterminate sentences must have an effective body for determining when they should be released. There has been far too little focus on the resourcing and decision-making of the Parole Board in England and Wales in recent years. There are many lessons to be learned from the European jurisdictions examined as to how the Parole Board could be made more fit for purpose. Firstly, in both Portugal and the Netherlands, those making decisions around release approached cases with the assumption that a person would be released unless there was a convincing reason as to why they should not be. The duty was placed on the state to justify continued detention, rather than on the individual to prove that they would not reoffend. England and Wales need to move towards this position. For example, the injustices caused by the IPP sentence are, in large part, caused by the fact a prisoner serving an IPP must prove they are no longer dangerous – an extremely difficult thing to prove in a prison where there is little opportunity for responsibility or autonomy (which is compounded by the lack of availability of offender behaviour courses, jobs and education courses). Reversing that presumption so that once a minimum tariff has expired a person should be released unless there is good reason to suggest they remain dangerous would go far to reduce the ever increasing length of indeterminate sentences.

Like Canada, the Parole Board in England and Wales has become overly risk averse. As one interviewee stated, 'the Parole Board of Canada is putting itself out of business. It exists to release people safely and gradually and it has just stopped doing that, so there is no longer a reason to have one'. The Parole Board in England and Wales is in danger of becoming so concerned about being blamed for an offence committed by a person on licence that they are keeping low risk prisoners in custody longer than they need to be. Former Chair of the Parole Board, Sir David Latham, described the problem in the following terms:

> "Our release rates have reduced in the last few years in a way which is arguably an overreaction to public concern about the reoffending by released prisoners…actually, the serious further offending rate of released prisoners is just 1-2%, a level that has remained stable for many years.

> "It is grotesquely unfair because in relation to a prisoner for whom there's a one in 10 risk of him committing a future offence but a nine in 10 chance of him not, if you're risk averse, you keep those nine in prison for significantly longer than you should do." (*The Guardian* 2010).

The approach of the Parole Board should therefore be reorientated so that keeping a person in prison when they pose a low risk and are unlikely to reoffend is also viewed as a failure. As well as learning lessons and taking stock when a serious further offence is committed by somebody on licence, a mechanism should be put in place to assess and learn from cases where low risk prisoners are detained long after their tariff expiry date. People with life sentences have the lowest reoffending rates of any group (Ministry of Justice 2016b), the Parole Board should seek to release a greater number of life-sentenced prisoners on or near to their minimum tariff expiry date, where it is safe to do so.

5.5. Reintegration not recall

The Netherlands and Portugal demonstrate that a high use of recall is not a necessity for a functioning penal system. Use of recall in England and Wales is excessive – having increased by 55 times since 1993 (Ministry of Justice 2013). Whilst recall for technical breaches of conditions, rather than commission of further offences is sometimes justifiable, it should be the exception rather than the rule. There should be an expectation that technical breaches will be responded to in the community by the National Probation Service unless exceptional circumstances require a return to custody. Further research is needed on the reasons behind the surge in the use of recall in recent years and what additional powers, if any, parole and judicial staff in jurisdictions with a minimal use of recall have in order to respond to technical breaches of licence conditions.

6. Policy recommendations for England and Wales

1. Sentence inflation should be reversed. Unnecessary sentence inflation is a major contributor to overcrowding and excessively long sentences can undermine any rehabilitative potential of imprisonment. Life sentences should be reserved for the most serious offences only. A review of recommended tariff lengths for life sentences should be undertaken, including an examination of tariff lengths in other European jurisdictions.
2. A 'faint hope'-type provision should be introduced in England and Wales. Such a policy would not only prevent those who had made substantial progress whilst in prison spending additional decades in custody, it would also save millions of pounds, enhance democratic input in the sentencing process, bolster public confidence in sentencing and provide an incentive for good behaviour in the difficult early years of a long sentence. If, under a 'faint hope' policy, only 1 per cent of those serving an indeterminate sentence were released five years earlier than they otherwise would have been (a conservative estimate), this would amount to 592 fewer years in prison saving approximately £21.5 million in imprisonment costs.
3. Measures should be introduced to improve the efficiency with which prisoners with an indeterminate term move through the prison system. The Ministry of Justice should explore whether a Canadian-style 'Lifeline' mentoring and support service is the best model to pursue.
4. Once a prisoner is eligible for release, there should be a presumption in favour of release. The onus should be on the representatives of the State to demonstrate that continued detention is necessary, rather on the prisoner to prove they pose no risk.
5. Recall policy and practice requires a major overhaul. The number of people recalled each year should be dramatically reduced. All technical breaches of licence conditions should be responded to in the community save in exceptional circumstances.

7. Next steps

Some of the findings of this research project were published by the Howard League for Penal Reform in a report entitled 'Faint Hope: What to do about long sentences.' The findings have also been presented at an academic conference at Oxford University. Since the publication of the Howard League report, I have met with several key stakeholders to discuss the policy implications of the research in greater detail. I plan to conduct more stakeholder meetings in the future. A new prisons bill, due to be published this spring, ought to provide some scope to change and improve the regime and the release process for long-sentenced prisoners. I will work to ensure that the findings of this research and the lessons learnt from other jurisdictions are considered and acted upon during the legislative process, with the aim of securing the implementation of some of the policy suggestions set out above.

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