

# **Response to call for evidence**

## **by the Independent Commission on the Experiences of Victims & Long-term Prisoners**

2021-01-19

**Abstract** This document, prepared in response to a call for evidence by an independent commission examining sentencing, examines the mandatory life sentence for murder in England and Wales, analysing its statutory aims, implementation, and lived experience. Drawing on interviews with 66 male life-sentenced prisoners across three prisons, it explores how these sentences are experienced at different stages. It argues that while life sentences effectively deliver retributive punishment, they are less successful in achieving other statutory aims such as deterrence, rehabilitation, and reparation. The research identifies four key phases in how life sentences are served: initial adaptation, core risk reduction work, an often lengthy middle period of “treading water,” and preparation for release through the parole process. The submission suggests that increasingly long tariffs, combined with risk-based release decisions, have led to a significant proportion of prisoners serving well beyond their minimum terms. It questions whether excessively long sentences undermine rehabilitative goals and suggests that current provisions for reparation and dialogue between offenders and victims inadequately realise the aim that sentences should facilitate reparation between offenders and victims. The analysis concludes that finding meaning and purpose during these extremely long sentences presents a fundamental challenge for prisoners, especially given limited opportunities for constructive activity in the middle years of their sentences.

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**i** Note

This document was prepared in response to a call for submissions, available [here](#).

## Introduction

1. I welcome the opportunity to submit a response to the Independent Commission on the Experiences of Victims and Long-Term Prisoners.
2. I am a third-year PhD student in the Prisons Research Centre at the University of Cambridge Institute of Criminology. I previously worked in prisons for around eight years, with two different charities. In one of these roles I worked closely with long-term prisoners before and after their release. This response therefore draws partly on my professional experience, partly on knowledge of the academic literature on long-term imprisonment, but mostly on my research.
3. The research focuses on how men at different stages of serving life sentences for murder evaluate themselves and their situation. It is based on long interviews with 66 participants in three prisons. 18 interviews were done in 2017 during a pilot study at HMP Gartree. 48 further interviews were done in 2019 and 2020 at HMPs Swaleside and Leyhill. All samples were selected to broadly represent the mix of ages, ethnicities and sentence stages in each prison. The research also draws on documents held by HM Prison & Probation Service (HMPPS), relating to interviewees who had consented to my reading and noting them.
4. Three aspects of the research design affect the applicability of the findings and I therefore make them clear here. First, all interviews were done in male prisons. Neither my research nor my professional experience enable me to comment on women's experiences of imprisonment for the most serious crimes. Second, the focus was on mandatory sentences (and therefore on the offence of murder). Murder was chosen both because of its seriousness and the severe sanction, but also because of its variability: legally, it is a broad category (encompassing different kinds of violence and offenders with a broad range of backgrounds). Although it is possible that the research sheds light only on the experiences of those convicted of murder, the sample does not differ systematically from the wider category of men convicted of serious violent offences. Much of what is said here is therefore likely to have broader relevance, particularly to other lifers and indeterminately sentenced prisoners; and to a lesser extent, to those serving long determinate sentences. Third, no participant in the research was serving a whole-life sentence; what is said below about life sentences is all premised on the understanding that release is legally possible.
5. At the time of writing I am still processing and analysing data from the interviews. Because the research is still in progress, the claims in this document are not finished research findings, but personal impressions drawn from the data and selected for what I think is their relevance to the Commission's terms of reference. I expect to have more to say on many of these themes in future, and some of what I do say may change. Quotations from prisoners, where they are used, are illustrative and do not draw on a finished analysis of the interviews. I have also not completed done the parts of the analysis which would enable me to report how widespread particular attitudes and sentiments described here might

be, meaning that there is a certain indefiniteness where terms like ‘most’, ‘some’, and ‘few’ are used. What is said below should be read with these caveats in mind.

6. My focus is principally on the experiences of long-term prisoners rather than those of victims, and I have relatively little to say about the experiences of the families of either group. This is a consequence of my professional and academic background and of the focus of my research.
7. My interest in the Commission’s work is more than professional. My friends and colleagues Jack Merritt and Saskia Jones were murdered at Fishmongers Hall in London in November 2019, during a conference organised by the Learning Together project. Usman Khan, the former Learning Together student who killed Jack and Saskia and injured two others, had been imprisoned at HMP Whitemoor (where I volunteered as a group facilitator).
8. With inquest hearings still pending, the facts about the incident are not straight in my own mind (even though I was there). They are not in the public domain. But I know two things which have been stark to me since this incident:
  - a. First, Usman Khan had already served a long sentence, mostly in high-security prisons. Of its statutory aims, his sentence certainly delivered retributive punishment, and may have temporarily protected the public while he was in prison. But it failed completely in its other aims.
  - b. Second, Usman Khan was shot dead by the police. Violence is never redemptive, and I take no satisfaction whatsoever in his killing. I would prefer that he had lived and been held accountable for his actions—and, if I am honest, that he should suffer in some way as a consequence.
9. There will be no opportunity to hear from Usman what he thought he was doing and why, nor for me to spell out to him how he has hurt me and why it was wrong. He play-acted as a member of the same community as me before killing two of us and hurting many more. His actions were a betrayal. To ask him why, to expect him to be accountable, and to take him seriously as a moral agent (albeit a misguided one) would be to uphold the values we stood for as a community, and to oppose the values he chose to uphold. I do not imagine dialogue of this kind would have been easy (to arrange or participate in), and I doubt I would have felt ready to engage in it before many years had passed. But I would prefer to have had the option, and knowing this can never happen is both painful in itself and impedes the healing process. Usman deserved to be blamed, and to be held accountable, but not to be killed. This insight shapes some of what follows.
10. I have found it easier not to structure this document around the ‘areas for inquiry’ listed in the Commission’s terms of reference. I hope that the information here is usable in this form. The remainder of the response is structured as follows:
  - a. In section 2, I discuss the mandatory life sentences for murder: how it is arrived at, and how well it might fulfil its statutory aims as a sentence. This discussion is mostly theoretical but has some illustrative quotes from prisoners interviewed for my research.
  - b. Section 3 briefly describes the attitudes of the general public to the mandatory life sentence.

- c. Section 4 discusses the sentences actually being served by mandatory lifers resident in the two prisons where I conducted my PhD research.
- d. Section 5 describes how the sentence had actually been spent by the men in my PhD sample. This section is mostly descriptive, and its main aim is to provide the Commission with a ‘worm’s eye’ view of the life sentence, as it appears to those living it.
- e. Section 6 summarises and offers very brief concluding reflections.
- f. An Appendix gives further information on the current sentencing provisions for murder.
- g.

## The mandatory life sentence and its statutory purposes

11. English law defines murder broadly, placing into one legal category events which, while uniformly harmful in terms of lost life, can have very different ramifications for those convicted of them, and very little in common.<sup>1</sup> To convict a defendant (D) of murder, juries need only be satisfied that a) D’s actions caused the death of another person, and b) that D intended to cause the victim ‘really serious harm’. Killing a family member who is suffering unbearably with an incurable illness is murder. So too is a contract killing. So too a drunken fight which some contingency—such as what a victim’s head struck as they fell, or how long an ambulance took to arrive—can cause to be lethal. The rape and torture of a victim who is then killed is also murder. The combination of one ‘degree’ of murder, and one possible sentence, means that murder sentences are relatively even and can be adjusted to fit the ‘seriousness’ of the crime only by adjusting the length of the minimum period to be spent in custody.
12. All life sentences (whether mandatory or discretionary) include a ‘tariff’ or ‘minimum term’ of imprisonment. I use these terms—which respectively have legal and colloquial origins—interchangeably. The minimum term represents the retributive ‘price’ to be paid for the crime. Its length is determined by reference to the ‘seriousness’ of the offence, based on its harmfulness and the degree of culpability. Culpability is inferred from the known facts of the offence, translated into factors which mitigate or aggravate the ‘seriousness’ of individual murders.
13. The translation of culpability into prison time changed significantly because of the 2003 Criminal Justice Act. Schedule 21 of that Act set out detailed sentencing provisions for murder, which Parliament has since further amended.<sup>2</sup> Mostly, Schedule 21 codified guidance which judges had previously applied to sentencing but as a matter of discretion. The factors which, for sentencing purposes, made a murder more or less culpable therefore remained fairly consistent before and after 2003. But the process of setting the sentence changed, in three main ways:

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<sup>1</sup>Catherine Appleton and Dirk van Zyl Smit, ‘The Paradox of Reform: Life Imprisonment in England and Wales’, in *Life Imprisonment and Human Rights*, ed. Dirk Van Zyl Smit and Catherine Appleton, Onati International Series in Law and Society (London: Bloomsbury Academic Press, 2016), 217–40.

<sup>2</sup>See Appendix A for a summary. For a fuller account of how and why these reforms were passed, see Ben Crewe, Susie Hulley, and Serena Wright, *Life Imprisonment from Young Adulthood: Adaptation, Identity, Time* (London: Palgrave Macmillan, 2020), chap. 1.

- a. The judge's discretion to balance different factors in determining culpability was reduced.
  - b. A selection of the aggravating and mitigating factors previously balanced against one another in their totality were now used in a two-step process. Some features of the case were used to generate a 'starting point' (in years) from which the sentence then had to be adjusted using further, secondary kinds of aggravation or mitigation. In effect, this guaranteed that minimum terms would be longer, by linking certain features of an offence to starting points uniformly longer than had previously been the case.
  - c. Murder sentencing became more transparent (in the sense that the judge had to issue detailed sentencing remarks setting out the reasons for the sentence they had chosen), and more technical (in that sentencing remarks were longer, more detailed, and had to do more than simply state the sentence and express moral disapprobation).
14. Factors affecting culpability, though mostly consistent over time, are not consistent in nature. Some depend on observable facts while others depend on inferences concerning unobservable mental states, such as motive and intent. They are summarised more fully in the Appendix, but the factors which aggravate or mitigate culpability mostly fall into one of four categories:
- a. Certain motives on the offender's part, mostly relating to inferences about the reasons behind their actions;
  - b. Certain characteristics relating to the identity of the victim (especially where they suggest the victim's vulnerability);
  - c. Certain characteristics of the offender's actions in carrying out the offence itself, mostly relating to planning and premeditation, or to the extent, nature, or gratuitousness of the violence involved;
  - d. The use of certain kinds of weapon in the offence.
15. As a direct result of the Act, the average minimum terms imposed in mandatory life sentences for murder increased, from 12.5 years in 2003 to 21.3 years in 2016.<sup>3</sup> This figure has continued to rise since 2016. Tariffs for murder are as long now as they have ever been, and the use of whole-life orders (whereby the sentencing judge declares the offence to have been so serious that there must be no possibility of release from prison) has also increased, with 60-70 offenders now serving these sentences.<sup>4</sup>
16. These changes raise questions about the balancing of different objectives in sentencing, for example, how much retributive punishment is enough, and does excessively harsh retribution other aims?

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<sup>3</sup>Prison Reform Trust, 'Bromley Briefings Prison Factfile Autumn 2018', Bromley Briefings (Prison Reform Trust, December 2018), 6–10, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Autumn%202018%20Factfile.pdf>.

<sup>4</sup>Whole-life orders have hitherto only been imposed for murder, but the Crown Prosecution Service recently sought, unsuccessfully but for the first time, to establish their use for offenders convicted of offences other than murder. See Helen Pidd, 'Britain's Most Prolific Rapists Should Never Be Freed from Jail, Appeal Court Told', *The Guardian*, 14 October 2020, Web edition, sec. UK News, <http://www.theguardian.com/uk-news/2020/oct/14/serial-rapists-reynhard-sinaga-and-joseph-mccann-should-not-be-freed-jail-appeal-court-told>.

17. A less obvious though equally important consideration is not the minimum term, but the increasingly complex sentence requirements which make it harder for some lifers to get out (and stay out) of prison after the tariff. Many very significant and consequential sentencing decisions now effectively lie not with judges, but in the hands of HMPPS staff and Parole Board members, who are all concerned in some way with the assessment of risk. The Parole Board, which at its outset in 1967 was charged with deciding whether to grant early release to determinately-sentenced prisoners, now increasingly makes decisions about whether to continue the sentences of indeterminately-sentenced prisoners whose minimum terms have expired, but who are deemed unmanageably risky in the community, whether because they are unreformed or because provision does not exist outside prison to meet their needs. In this regard, the Parole Board increasingly dispenses punishment, as well as granting release.<sup>5</sup>
18. This shift—whereby consequential decisions affecting liberty are taken both at the ‘back door’ and at the ‘front door’ of the sentence, means that many prisoners serve far in excess of their minimum terms. A Parliamentary answer in December 2020 revealed that 1,674 life-sentenced prisoners were in prison after their tariff date. Of these, 690 or 41% were more than ten years over-tariff, and 138 or 8% were more than twenty years over-tariff.<sup>6</sup> For comparison, on 30 September 2020, a total of 6,945 life-sentenced prisoners were in prison.<sup>7</sup> This means that around 24% of all lifers in prison in late 2020 were over-tariff.
19. The **statutory aims of sentencing** are set out in s.57 of the Sentencing Act 2020.<sup>8</sup>
  - a. The punishment of offenders
  - b. The reduction of crime (including by deterrence)
  - c. The reform and rehabilitation of offenders
  - d. The protection of the public
  - e. The making of reparation by offenders to persons affected by their offences.
20. Legal scholars<sup>9</sup> often describe life sentences as being divided into two (or sometimes three) ‘phases’, during which restrictions on liberty vary and have different legal justifications:
  - a. a ‘penalty phase’ of definite length, during which the prisoner is serving a minimum term of imprisonment imposed as retributive punishment;

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<sup>5</sup>See paragraph 22 below.

<sup>6</sup>Hansard, ‘Prison Sentences: Question for Ministry of Justice’, UIN HL10576, tabled on 23 November 2020, 23 November 2020, <https://questions-statements.parliament.uk/written-questions/detail/2020-11-23/HL10576>.

<sup>7</sup>Ministry of Justice, ‘Offender Management Statistics Quarterly: April to June 2020’, Offender Management Statistics Quarterly, GOV.UK, 29 October 2020, <https://www.gov.uk/government/publications/offender-management-statistics-quarterly-april-to-june-2020/offender-management-statistics-quarterly-april-to-june-2020>.

<sup>8</sup>UK Parliament, ‘Sentencing Act 2020’, UK 2020 c.17 § (2020), <https://www.legislation.gov.uk/ukpga/2020/17>.

<sup>9</sup>For example, Jonathan Simon, ‘How Should We Punish Murder?’, *Marquette Law Review* 94, no. 4 (1 July 2011): 1241, <https://scholarship.law.marquette.edu/mulr/vol94/iss4/7>; Barry Mitchell and Julian V. Roberts, ‘Sentencing for Murder: Exploring Public Knowledge and Public Opinion in England and Wales’, *The British Journal of Criminology* 52, no. 1 (1 January 2012): 141–58, <https://doi.org/10/fnvbjn>.

- b. an ‘incapacitative phase’ of indefinite length, during which the prisoner is imprisoned to protect the public, but coming regularly before the Parole Board;
  - c. a lifelong, and conditional, ‘supervised release’ phase, during which the prisoner must comply with conditions, remain in contact with a probation officer, and may be recalled to prison.
21. It does not follow that each different part of the sentence delivers a different aim. The remainder of this section comments on how the different aims of the sentence are achieved, aiming to clear up some common misconceptions and to use the words of lifers themselves to support the points being made.
22. The retributive **punishment** of offenders is most obviously achieved by the penalty phase. However, all parts of the sentence may be experienced as punitive, simply because lifelong restrictions on liberty, disclosure requirements, and so on all communicate censure, and a message that the offender is permanently of lowered moral status than their peers. Assuming that only the first phase of the sentence delivers punishment is false.
23. **The reduction of crime (including by deterrence)** can also, in theory, be achieved by the life sentence, but this statement requires major qualification.
- a. Deterrence theory assumes that people committing crimes are rational actors who weigh up the costs and benefits and consider the likelihood and severity of punishment before acting. This assumption holds only for certain groups of people and certain kinds of offending. It holds least of all for most forms of violence, which are carried out in high states of agitation and arousal and often far from rationally calculated. Space does not permit a full exploration of this point, but there is virtually no empirical evidence that general deterrence—the theory that fear prevents crime, and that the threat of severe punishment will deter potential offenders—is an effective form of crime reduction.<sup>10</sup>
  - b. There is more reason to suppose that life sentences realise the aim of specific deterrence—the theory that the threat of punishment will deter a person from a comparable course of behaviour in future. Again, however, this is difficult to establish from empirical evidence, partly because it is difficult, as a question of knowledge, to be certain why people act as they do. It is common for life-sentenced prisoners to say that they have no wish to return to prison after their release, but this is different from having what it takes to make a success of life after prison. In general, the best available evidence points to the certainty and immediacy of punishment (and not its severity) as the key factors in specific deterrence. There is no reason to suppose that longer sentences are more effective on this basis.
  - c. Though long prison sentences may not be an effective means of crime reduction, the moral seriousness and profound harmfulness of serious violence means that threatening punishment for serious violence is a strategy that will remain appealing, as a means of assuaging moral emotions like anger which arise from these offences. But this is an

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<sup>10</sup>Daniel S. Nagin, ‘Deterrence in the Twenty-First Century’, *Crime and Justice* 42, no. 1 (1 August 2013): 199–263, <https://doi.org/10/gfsmmh>; Andrew Von Hirsch, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Oxford: Hart, 1999).

argument for retributive, not deterrent, punishment, and deterrent rationales should not be taken seriously as a justification for life sentences.

24. The evidence that imprisonment in general **reduces crime** (in comparisons with a specified alternative) is weak.<sup>11</sup> Prisons harm those sentenced to live in them, harm their families and dependents, and harm those who work in them. At best, their effect on reoffending rates is neutral, if they are compared to specified alternatives. Even so, if it is accepted that imprisonment is justified on other grounds, there is robust evidence showing that some prisons can be more harmful (and others more ‘reformative’) than others, and that the harms done by imprisonment are therefore not inevitable or completely intractable.
25. Historically, arguments for the **rehabilitation and reform of offenders** have been made on various grounds, but ways of achieving this aim vary, and care is required to understand what each entails. Resources aiming to bring about ‘reform’ can be directed at shaping the prison environment in general, or at providing specific interventions. Whichever is the focus, most also tend to aim for one of the following objectives:
  - a. identifying and remedying ‘deficits’ in the offender (for example a substance misuse problem, or impulsiveness and an inability to think consequentially).
  - b. furnishing offenders with (and perhaps guiding or directing them towards) opportunities and incentives to ‘work on themselves’ (e.g. education, work, training, pro-social relationships, positive reinforcement).
  - c. Designing risk assessment, surveillance and supervision measures to operate before and after release, monitoring progress and enabling further intervention if necessary.
26. All three objectives are evident to some extent in all prisons, though they are emphasised to different degrees. Such variations matter a great deal in shaping outcomes, but for current purposes the key observation is that different kinds of intervention carry different underlying messages about the status of the person being ‘reformed’: whether they are good, whether they are bad, whether they are dangerous and to be feared, whether they have dignity and are to be valued, and so on. These messages are received in different ways, with implications for the effectiveness of attempts at ‘reform’:
  - a. Prisoners who are more comfortable with the view that their offending makes them ‘deficient’—perhaps because experience deep feelings of shame or remorse about the offence, or because reflection on their circumstances prompts dissatisfaction with themselves—tend to be more receptive to provision (as in 16a) which they believe will help them address these deficiencies.
  - b. Prisoners who are less comfortable with the view of themselves as ‘deficient’ are generally less favourably disposed towards opportunities which they believe seek to ‘fix’ them. Such attitudes come about for various reasons. One is if the individual dissents from the ‘official’ view that the offence was harmful or that they were culpable. Another is if they have already completed a wide range of reformatory ‘work’ on themselves,

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<sup>11</sup>For example, Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Jonson, ‘Imprisonment and Reoffending’, *Crime and Justice* 38, no. 1 (1 January 2009): 115–200, <https://doi.org/10/gfkj9z>; Francis T. Cullen, Cheryl Lero Jonson, and Daniel S. Nagin, ‘Prisons Do Not Reduce Recidivism’, *The Prison Journal* 91, no. 3\_suppl (2011): 48S–65S, <https://doi.org/10/d5t5hm>.

and dissent from the view that more is required. Another is if risk assessment leads to the identification of further sentence plan objectives, to the extent that this feels like a ‘moving of the goalposts’.

- c. While most prisoners may initially be receptive to interventions and opportunities offering to improve their lives in the future (educational opportunities are a good example), they will generally only be receptive to them to the extent that they can be related to goals and projects the individual finds personally meaningful. Numerous lifers in the sample, for example, spoke frustratedly in interviews of having to repeatedly complete low-level English and Maths courses that they were already capable of completing—such requirements can discredit reformative provision if they seem condescending or dictatorial, and especially if they are believed to be driven by official targets.
- 27. The implication is that the concept of ‘reforming offenders’ can be critiqued as a ‘top down’ process, in which the offender is ‘acted upon’ by officials representing the interests of others (perhaps including victims or the wider community). More often, lifers define prison staff to be acting in their own interests, and define their own personal efforts at reform as being in opposition to such groups. These are, of course, perceptions, and ‘reform’ comes from the interaction of individual and environment, not from one or the other.
- 28. While the idea of ‘deficits’ might make more sense in some cases than others, desistance research in criminology suggests that it can be counterproductive to ‘talk down’ to people, since their success in projects of change also depends to some extent on feeling capable and in control of their own lives, rather than disempowered and condemned to endless failure.<sup>12</sup> Many offenders aspire to stop offending, but lack self-insight or the wherewithal to identify and make the changes that would be needed to achieve their goals.<sup>13</sup> This makes some form of outside intervention an unavoidable response to a serious crime. But an excessively ‘top-down’ emphasis can foster dependency.
- 29. The implication of desistance research is therefore that prisons and criminal justice professionals engaged in ‘reform’ should not think of themselves as acting upon offenders, but might more usefully think of themselves as forming an alliance to facilitate, guide, support, and hold them accountable. This is skilled work.
- 30. None of this alters the fact that if wider society withholds ‘reformed’ status, this can undermine progress (or cause ‘reformed’ or ‘ex-’ offenders to select limited goals in the first place). Life-sentenced prisoners are well aware that their sentence imposes barriers to full social participation even after they have ‘repaid their debt [i.e. the penalty phase of the sentence] to society’. Many men in my PhD sample had very limited and achievable goals for the years after release.
- 31. In summary, the idea that prisons ‘reform’ offenders can only be accepted with caution, and there is plentiful evidence that overall, imprisonment does nothing to reduce crime. If someone is in prison for other reasons (e.g. punishment), their reform is a possible side-

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<sup>12</sup>Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* (Washington, DC: American Psychological Association, 2001).

<sup>13</sup>Anthony Bottoms and Joanna Shapland, ‘Can Persistent Offenders Acquire Virtue?’, *Studies in Christian Ethics* 27, no. 3 (August 2014): 318–33, <https://doi.org/10/gf5bx>.

effect of the sentence, but this does not mean a long time in prison was the best or the most efficient way of achieving that outcome.

32. The protection of the public is achieved, in theory, by depriving a ‘dangerous’ person of liberty by holding them where they can no longer harm others. Secondarily, it is achieved through the imposition of restrictions on their liberty after release. It is unquestionable that removing an active offender from their social setting prevents them from continuing their offending, and thus unquestionable that a life sentence achieves this aim. Most reservations about this aim of sentencing arise from questions about proportionality and the extent to which the offender’s rights may justifiably be sidelined, and about who exactly is protected and at what cost.
33. The notion of imprisonment as public protection rests on the idea that the harms and wrongs done by and within prisons do not ‘count’, and that prisoners (or staff) who are victimised or harmed by other prisoners are not members of ‘the public’. Nor are the families of prisoners, whose interests may be irremediably harmed by the sentence, along with those of their family member who was actually convicted of a crime. With these caveats in mind, however, ‘incapacitation’ remains a straightforward and relatively obvious justification for imprisonment, and imprisonment can be said to ‘protect the public’, though only for as long and to the extent that the offender remains ‘dangerous’, something which is difficult to assess.
34. The making of reparations by the offender to persons affected by their offences is the statutory aim least addressed by a life sentence. The harms done by the most serious offences cannot usually be directly repaired, so that healing over the long term may be the best that victims and their families can hope for. Restorative justice interventions are offered mainly for less serious offences, though results for victims and offenders are consistently better in cases of violent crime, and existing evidence suggests that ‘banishing [RJ] to low-seriousness crimes is a wasted opportunity’.<sup>14</sup>
35. The life sentence for murder currently does little to remedy this shortcoming, however, unless we accept prison time as the currency of reparation and healing. Prisons do not seek to bring life-sentenced offenders and those they have harmed into direct forms of dialogue. To be clear, this is not something that can be coerced or required, and in particular it is never something that should be pushed on victims or their families. But to my knowledge it is never offered, and this fails to achieve one purpose of the sentence.
36. Some ‘victim awareness’ courses are provided in prisons, offering both an instructive contrast with official risk-reducing provision, and suggestive glimpses of what might appeal to prisoners about further similar options.
37. Most commonly, victim awareness courses are run by external organisations. At least one (the Sycamore Tree course) brings offenders convicted of serious violence into dialogue with people harmed or bereaved by serious violence. It invites offenders in the group to produce some creative or artistic response concerning their intentions for the future, arising from the encounter. Although I have not yet analysed all interviews, and therefore must re-emphasise that this is an impression from memory and not a finding from my

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<sup>14</sup>Heather Strang et al., ‘Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review’, *Campbell Systematic Reviews* 9, no. 1 (2013): 48, <https://doi.org/10/ghjv5k>.

research, I did observe that those who have completed the Sycamore Tree course (or have had other similar kinds of face-to-face encounter in other contexts) are strikingly and unequivocally positive about them.

38. I can only offer a speculative interpretation of the reasons why this might be. My opinion is that by putting violent offenders and those harmed by violent offences into dialogue, they humanise both sides, emphasising commonality and undermining fear and othering. It appears, from the testimony of participants like Frank (quoted on the previous page), that these encounters hold out tangible, embodied evidence that even those members of the wider community with no reason to be positively disposed towards offenders might, under some circumstances, be prepared to offer their moral recognition. Volunteers like those Frank describes quotation are credible messengers of hope, something that was equally clear in other interviews.<sup>15</sup>
39. Although I have selected two quotations about the Sycamore Tree course, my intention is to point to what it seems to represent for the men who spoke about it: an unmediated experience, not necessarily of forgiveness, but of being recognised as a person with dignity, moral agency and the capacity to change. This offers more hope than the impression that one is simply and only an incorrigibly ‘risky being’ because it separates the definition of the person from the definition of the offence. It disrupts the countervailing impression which participants sometimes sensed coming from other forms of rehabilitative provision. And it makes clear to offenders who are not already willing to acknowledge this that those harmed by crime are living, breathing, actually existing people, not distant shadows beyond the prison walls, or rhetorical abstractions (e.g. ‘preventing future victims’) such as those emblazoned on motivational posters, logos, and used in courses.
40. Some similar quality—of dignity, accomplishment, and achievement unrelated to criminalised (or ‘reformed’) status was evident among those who had made significant achievements in a field not related to their offending, for example by completing degrees or other higher educational qualifications. These diluted the ‘criminal’ in their identity, as well as offering constructive and challenging ways to use time. However, such opportunities are few, receive little recognition, and can be difficult to access.<sup>16</sup>
41. In summary:
  - a. Life sentences for murder are highly effective as retributive punishment, in the sense that they impose a painful consequence for those convicted of a serious crime. They often appear to do this at the cost of the sentence’s other aims, and (as may become clear below) not all lifers find the sentence similarly painful.
  - b. Life sentences for murder are minimally effective as a form of crime reduction, including through deterrence. Though imprisonment may reform offenders, the absence of evidence that it is more effective than any alternative fatally undermines arguments based on deterrence, particularly in most crimes of violence.

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<sup>15</sup>It should be noted that not all lifers I interviewed said they had participated in these courses.

<sup>16</sup>For example, life-sentenced prisoners must fund higher education privately, or by using a student loan they can only apply for during the last six years of the tariff. Leon began his degree just before these funding changes were brought in, in the early- to mid-stages of a 30-year minimum term.

- c. Rehabilitation and reform can, in principle, be achieved during a prison sentence, but do not necessarily require the spans of imprisonment now common in the penalty phase of a life sentence. Reform is liable to become a ‘top-down’ enterprise, seeking to remedy deficits in offenders and to direct their lives, rather than a constructive partnership seeking to develop fuller moral agency and the social capital required to achieve its aims. Even the most effective forms of prison rehabilitation cannot on their own counteract dynamics of exclusion in a wider society, so that gains made during the sentence can be undermined without challenging the formal and informal exclusions and ostracisms which commonly continue after release.
- d. The public may be protected from offenders by their imprisonment, but only to the extent that they are truly ‘dangerous’, and only to the extent that offenders, their dependents, and prison staff are not ‘the public’. All are exposed to the dangers created by prisons, and all are generally excluded from discourses of ‘public protection’. This omission mirrors the ways in which the criminal justice process dismisses and marginalises the needs of those most directly affected by any given offence, along with safe, defensible and low-risk alternatives to punishment.
- e. The reparation of harms—which in serious offences is difficult (perhaps impossible) to accomplish directly—is usually only achieved to the extent that prison time is what those affected by a crime want in recompense for their suffering and losses. There is good reason to suppose that this is true in the majority of cases at the time of sentencing, but how this develops during the sentence is not clear, and the delivery of life sentences currently includes very little emphasis on reparation and how it might be achieved

## **What are the attitudes of the public to murder sentencing?**

- 42. Legal scholars and the Law Commission have both pointed to inconsistencies and problems with the mandatory life sentence for murder, including that it does not align very well with what can be inferred about public attitudes to culpability. Even so, the recent agendas for reform have not been successful, and the mandatory life sentence in its current form is often defended on the basis that it upholds public confidence in the criminal justice system, by ensuring the strongest punishments are meted out to those who commit the most serious offences. Evidence on the attitudes of the general public to murder sentencing is limited. The Independent Commission has not indicated a specific interest in the attitudes of the wider public to murder sentencing, but any suggestions for reform are likely to come up against the objection that the public would not support change, so it is worth pausing to point out that, at least in the case of murder sentencing, this is not correct.
- 43. The most comprehensive recent research on this topic in England and Wales was based on survey research conducted with a representative sample. It was published by Mitchell and Roberts in 2012.<sup>17</sup> They found that public understanding of how the life sentence worked was limited. Although public attitudes were notably punitive when questions about how to sentence murders were asked in the abstract, they softened considerably

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<sup>17</sup> Mitchell, Barry, and Julian V. Roberts. 2012. Exploring the Mandatory Life Sentence for Murder. Hart. <https://doi.org/10.5040/9781472561213>.

when more specific information about the circumstances of the case and the background of the offence and the person convicted were supplied. In general, despite the common assumption that members of the public strongly support the mandatory life sentence and oppose all alternatives, Mitchell and Roberts summarise their own findings as follows:

- a. The public supports a move to a sentencing regime whereby the life sentence remains available for the most serious cases but is replaced by long-term, determinate custodial sentence in many less serious cases;
- b. The public is significantly less punitive than the law in cases of murder where important mitigation exists;
- c. There is very little public support for mandatory life sentences in cases of joint enterprise murder, for those participants whose role was relatively peripheral, and the law is in fact 'clearly at odds with community views' (2012: 3);
- d. The current sentencing arrangements<sup>18</sup> 'create injustice and undermine public confidence [with] no offsetting benefit in terms of crime control', so that 'a thorough review [is] clearly necessary [...] to devise a sentencing scheme which reflects proportionality in sentencing' (*ibid.*).

## **What sentences were being served by the research sample?**

44. Table 1 summarises the sentences of *all* mandatory lifers held at HMPs Swaleside and Leyhill on the first day of PhD fieldwork in each prison. Data from both prisons are aggregated and tabulated to compare sentences imposed before and after the 2003 Criminal Justice Act.
45. Lifers in the two groups were of a similar average age at the time of their conviction (30.0 years before 2003, 32.8 after 2003), but those sentenced after 2003 received longer minimum terms on average than those sentenced before 2003 (19.6 years vs. 15.5 years), and their minimum terms represented a greater proportion of their lifespans at the time (69% vs. 55%).
46. It should also be noted that these figures relate to *minimum* terms of imprisonment, not to time *actually served*. 67 (26%) of the mandatory lifers resident in these two prisons at the time of the research were over-tariff, a similar proportion to the national figure (24%) mentioned in paragraph 18 above.<sup>19</sup>

	Offences after 2003 CJA (n=193)	Offences before 2003 CJA (n=64)	
	Avg.	Min Max Avg.	Min Max
Age when sentenced (years)	32.8	16 82 30.0	17 63
Age at tariff expiry (years)	51.8	27 92 45.6	27 83

<sup>18</sup>Which remain mostly unchanged since Mitchell and Roberts' work was published.

<sup>19</sup>Only lifers who had not been released and subsequently recalled were interviewed; those who had are not included in these figures at all. The true number of lifers resident in these two prisons after the expiry of their tariffs would therefore have been higher.

Tariff (years)	19.6	7 35 15.5	9 27
Tariff as % of age when sentenced (i.e. tariff in years/age in years)	69%	11% 150% 55%	18% 123%
Time actually served (years)	7.2	2 15 23.8	13 44
Time actually served as % of tariff (i.e. time served in years/tariff in years)	41%	6% 115% 62%	59% 420%

47. Recent developments in murder sentencing pose fundamental questions of meaning, associated with the rupture from life as it was lived before the sentence was imposed. These questions arise because of the nature of the sanction, and are separate, though not unconnected to, from questions arising from the conviction or the offence in themselves.
48. For most lifers, especially those sentenced at anything other than a very young age,<sup>20</sup> it is unrealistic to think of imprisonment as simply a hiatus in the normal life course, such that life can simply be resumed after release. On the contrary: sentences now averaging more than two decades wreck the lives that were being lived before. The outside world and the individual may both change drastically during the sentence, which can only be seen as a major rupture.
49. In one recent study, this situation appeared to have pushed some lifers to seek a ‘cause, vocation or ideal’<sup>21</sup> capable of redeeming their losses and investing their predicament with some meaning. But this study was based only on participants aged under 25 at conviction. Others—perhaps those older when sentenced, who now, with longer tariffs, face the onset of old age and infirmity in prison—can find it hard to envisage a worthwhile life afterwards, or to discover opportunities during the sentence which would enable a redemptive story to be told. Recent findings about hope may depend on the perception that there is a viable life to prepare for after prison, and a visible path leading to it. It is not hard to imagine that those with less to look forward to after prison might feel more ambivalent about their release or might focus instead on achievable goals, such as making life in prison as tolerable as possible.
50. How people experience the sentence and what sense they make of it will vary significantly. Those who feel, for example, that their legal responsibility outweighs their moral responsibility, might experience differing degrees of guilt, shame or grief. Similarly, those holding different views about the legitimacy of the state generally and the criminal justice system specifically might think about their punishment in different ways. And those who can envisage a worthwhile life after prison and a way to work towards it will feel differently to those who cannot. Any of these matters can shape whether the sentence feels hopeful or hopeless, tolerable or intolerable, meaningful or meaningless, constructive or destructive, an experience of redemptive suffering or one of gratuitous pain, and so on.

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<sup>20</sup>For those sentenced in childhood, for example, tariffs are generally shorter, and hence it is not unrealistic to hope for release in one’s twenties or thirties.

<sup>21</sup>Ben Crewe, Susie Hulley, and Serena Wright, ‘Swimming with the Tide: Adapting to Long-Term Imprisonment’, *Justice Quarterly* 34, no. 3 (16 April 2017): 536, <https://doi.org/10/gfkdpd>.

## **How had the respondents in the research actually spent their sentences?**

51. Participants in my PhD research had received their convictions over nearly a thirty-five-year period, beginning in 1983 and ending in 2017. They had had very varied prison experiences, and the administration of the prison system and of the life sentence itself had changed dramatically during this period. It is therefore somewhat artificial to describe a ‘general’ or ‘typical’ experience holding true for the entire sample, and this section of my response should be read with this in mind. Nevertheless, the Commission has asked for information about how the sentence is served, and points in its terms of reference to victims feeling in the dark about ‘how time in prison is spent’, and I have therefore tried to write an overview representing the key themes in how participants talked about their prison sentences as they had so far experienced them.
52. I have chosen to represent ‘how the sentence is actually spent’ under four headings, as follows:<sup>22</sup>
  - a. Adapting to and planning the sentence
  - b. Core risk reduction
  - c. Killing time or ‘treading water’
  - d. The parole cycle, and preparing for release
53. These headings are a device to simplify the task of writing about how lives develop (and stand still) over periods lasting decades, not a representation of how people progress (or are expected to progress) through the sentence. Three common threads run throughout them all:
  - a. the experience of time passing
  - b. the experience of relative powerlessness over the conditions of one’s existence.
  - c. the need to defend against the feeling that life is being wasted
54. Although I describe stages of the sentence under each of these headings in turn below, they are better understood as a conceptual aid, and a structure for this submission, not as a ‘story of the sentence’: they make clear what lifers must ‘get through’ in order to progress towards their release, but they only hint at how varied their experiences of doing so will be.

### **Adapting to and planning the sentence**

55. Lifers generally spend the early years of the sentence in prisons in the long-term and high-security estate (LTHSE). The challenge during this period is to stabilise themselves, come to terms with the conviction and the sentence, and become accustomed to prison life.
56. They are also expected to be assessed for (and to begin to undertake) offence-related work. To do this, they have to work with prison staff to produce a sentence plan setting objectives that map out a template for progression for the rest of the sentence.

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<sup>22</sup>This pattern does not apply to those given whole-life tariffs, because eliminating the possibility of release changes the parameters of the sentence entirely.

57. The challenges of adaptation and the strategies that life-sentenced prisoners use to meet them have been comprehensively described by a recent study of prisoners given life sentences when aged 25 or less.<sup>23</sup> There is no need to repeat that analysis, except to reiterate that ‘adapting’ involves:
- learning to ‘let go’ of feelings and attachments relating to life before prison
  - accepting that prison is now where life has to be lived
  - finding outlets for the feelings of anger and despair that this process entails
  - seeking ways in which the experiences of the sentence can be reframed as some kind of preparation for the future
58. I do, however, make two additional observations about ‘adaptation’ among lifers in my PhD sample:
- ‘Adapting’ in the early stages of the sentence a very different challenge for those convicted in middle age or in later life. These men would be released past retirement age, and their thoughts about the future differed. Many had had careers and families before prison, so prison was not blocking them from achieving these goals. Though some regretted their loss of social status, the sentence had freed them of responsibilities, and afforded them time to pursue opportunities (such as exploring artistic talent or practising meditation) that had never been priorities before. Matt (quoted above) was convicted in his fifties and was less than two years into a thirty-year tariff. He said he was thinking of the sentence as ‘early retirement’.
  - Some participants described their sentences as featuring more than one period of adaptation. In particular, bereavements outside prison were consistently reported as calling other priorities into question, prompting prolonged feelings of dislocation and distress, which were not easily resolved.
59. The challenges of this stage of the sentence mostly related to finding it difficult to understand how to progress, but they also related to difficulties relinquishing the relationships and the social status that the prisoner had enjoyed before their conviction.
- Some were confused about how the sentence worked, and even such basic matters as what the tariff meant. One man at Swaleside appeared to believe, two years into his sentence, that the tariff meant he would definitely be released after a fixed number of years. Basic misunderstandings about how the sentence works among lifers at these early stages are obviously a serious concern. Others said they had had limited communications with staff responsible for their sentence planning, and/or that they had no idea what was on their sentence plan. The impression this gave was those who were not driving forward with their own plans would not be pushed to develop any. Both factors suggest a wider confusion, expressed particularly by those who were younger and angrier about the conviction, about what was expected of them and how they might progress.

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<sup>23</sup>Crewe, Hulley, and Wright, *Life Imprisonment from Young Adulthood: Adaptation, Identity, Time*; Serena Wright, Ben Crewe, and Susie Hulley, ‘Suppression, Denial, Sublimation: Defending against the Initial Pains of Very Long Life Sentences’, *Theoretical Criminology* 21, no. 2 (May 2017): 225–46, <https://doi.org/10/f967sr>.

- b. A second group who had found adapting and progressing in the early years of the sentence were those for whom the sentence had created particularly large disruptions to family contact. They had had close family relationships before imprisonment, but were usually either foreign nationals, or had risk assessments that placed conditions and blocks on family contact which they found hard to accept. These difficulties showed either as distress and hopelessness, or as anger and complaint, with one man (Janusz, quoted on this page) having represented himself in the family courts. Family contact had become a major sticking point in their relationship with the sentence, standing in the way of adaptation and accepting their position.
- c. A third group who struggled with adapting to prison in the initial stages of the sentence —who were not ‘getting on with it’—were those who had enjoyed relatively high social status before prison, and who found it hard to accept their loss of status, as well as often finding the environment itself frightening and unsafe. Among this subgroup expressions of distaste or even disdain for other prisoners whom they described using words such as ‘rowdy’ or ‘criminal’ were common, as was the perception that rehabilitative provision was aimed at these men, not at them. Further, they often measured their own moral worth not with reference to the offence or the conviction, but with reference to norms of interpersonal behaviour, pointing to these as evidence that they were not in need of reformative work, or that what was on offer was not capable of rehabilitating them or meeting their needs.

### **Core risk reduction**

60. Beginning in the LTHSE and continuing sometimes long afterwards, lifers are expected to undertake offence-related work aiming to ‘reduce their risk’. The nature of this core offence-focused work varies widely; for some it may be completed in the first few years of the sentence, while for others it might not even begin until much later.
61. Core risk reduction work varies significantly in scope and intensity. ‘Offending behaviour programmes’ or more colloquially, ‘courses’ are prominent. Participation in courses is not mandatory, but most lifers understand their centrality to the prison’s rehabilitative ‘offer’, and that it will be difficult for them to progress or pass the Parole Board’s release test without completing courses; most therefore see them as mandatory even though this is not strictly so. A given individual might do both cognitive-behavioural courses and therapeutic groupwork at different sentence stages, depending on the aims of the course, the content of the individual’s sentence plan and risk and needs assessments, and the content of reports about how they have performed in other contexts already. Behaviour in custody (for example a record of violence) can lead additional risks and needs to be identified, so that it is possible for new risk-reducing work to arise which is not connected with the original offence.<sup>24</sup>
62. Courses typically involve classroom-based groupwork based on cognitive-behavioural techniques, but forms of longer-term therapy (typically in groups, but much less commonly one-to-one) also exist and count as risk-reducing work.

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<sup>24</sup>This was the case, for example, with a lifer in the sample who had disclosed sexual offences in therapy which had never come to the attention of the police. This had led to the recommendation that he undertake sexual offending courses as well as those recommended for the murder which had originally led to his sentence.

- a. Cognitive-behavioural courses vary substantially in aims, content, length and intensity: from low-intensity courses, targeted at those prisoners assessed as posing a lower risk of future harm and usually delivered with a session or two a week over a number of weeks; to high-intensity courses offered to those believed to pose a higher risk of harm, and delivered three or more days a week over many months. The main subdivisions are among courses addressing general violence, domestic violence, and sexual offending.
  - b. Therapeutic interventions last longer, are somewhat more open-ended, and involve a more holistic approach. They also address the offence, but treat it as part of a longer and more holistic story, for example enabling those with histories of significant childhood adversity and complex trauma to explore how their pasts may have contributed to their development as a person and to their eventual offending and conviction, or seeking to induce those who have been violent or have struggled to adapt in prison to reflect on the reasons for their lack of integration.
63. Regardless of intensity and length, most cognitive-behavioural programmes share the aim of helping the prisoner explore the attitudes and thinking that led to his offending behaviour, and to teach him 'skills' by which he might better understand and manage his emotions in future, and thereby also 'manage his risk'. The implication throughout is that the prisoner, once convicted, remains in some sense 'risky' for life, otherwise 'skills' would not be required.
64. Where a lifer's risk is relatively low to begin with, sentence plans typically set relatively few objectives for 'offence-focused work'. One consequence is that those assessed as low-risk often encounter relatively little intervention, and that this is predicated on future risk and not past actions. Some lifers (like Terry, quoted on this page) find this perplexing, because what makes them eligible for courses is not clear to them. They link eligibility to being willing to take responsibility for the offence, whereas eligibility appears instead to be linked to being willing to work with prison staff to discuss how the probability of future offending might be reduced.
65. Where risk is relatively high to begin with, sentence plans are often more detailed and more complex, involving longer lists of more intensive interventions, and also often targets which aim to support (and surveil) lifers' use of risk-managing 'skills' in relatively more controlled and supervised prison settings, such as Psychologically Informed Planned Environments (PIPEs). Core risk reduction work should therefore be understood as being concentrated in the earlier parts of the sentence, but with consequences that extend throughout the sentence and indeed after release, because of how risk assessments, behavioural expectations and licence conditions are formulated.
66. Core risk reduction work is offered in LTHSE prisons, but also in prisons with specialist roles, particularly where the offence featured a sexual motive, or where the individual in question has specific needs (e.g. a learning disability or a personality disorder).
67. Core risk reduction work challenged different people in the sample in different ways. Those who were deeply ashamed of the offence (and hence, on some level, agreed that they deserved punishment) usually tackled sentence plan requirements willingly, though most confronted deep distress as a consequence. Those who admitted responsibility but felt less ashamed (often having committed murder in the context of wider criminality), seemed less troubled by the offence itself, but generally were willing to engage in risk-

reducing work as a way of working towards release and a better future. They were often less troubled by grappling with the ‘deep’ psychological roots of their violence and were drawn to the language of learning ‘skills’ to improve their lives in future.<sup>25</sup>

68. The group of participants who found core risk reduction work the most challenging were, uniformly, those who did not fully accept they were as culpable as the conviction declared them to have been. For these men risk reduction work entailed significant cognitive effort and worry, because they believed that what they said about the offence and what the official record declared about the offence would be compared, with discrepancies potentially having consequences for risk scores, sentence plans, security categorisations, and so on, as well as highlighting the potential that they were being dishonest. Some found themselves unable or unwilling to reach a public position which would enable them to get what they could from risk-reducing work (see paragraph 69.d below). I am unable to form an opinion about the justifiability or otherwise of these claims not to have been culpable, but it was clear that, however well-founded, they had felt like a barrier to making progress with the sentence.
69. Those who could not accept the degree of culpability implied by the conviction were in a broad and varied category, not simply confined to those who said they were completely innocent, but encompassing a wide and nuanced range of public stances in relation to the offence, including the following:
  - a. Men who said they had had no involvement at all in the events leading up to their index offence (or maintained that the index offence had not occurred at all, for example because the court had accepted an incorrect account of how the victim’s death was caused);
  - b. Men who admitted involvement in events leading to the index offence, but said their involvement was peripheral, that others (who may or may not have been prosecuted alongside them) had been involved, and that those others were equally or more culpable;
  - c. Men who admitted sole responsibility for the harms involved in the offence, but questioned the degree of culpability this implied;<sup>26</sup>
  - d. Men who remained silent and therefore took no *public* stance about the offence, for example by declining to participate in sentence planning meetings or to participate in courses.
70. Risk reduction strongly incentivises self-disclosure. It also, however, transfers the risks of self-disclosure onto the individual, often with the consequence that if they decline to cooperate, they might appear ‘risky’, since it appears to mean they are ‘not taking responsibility’ for the offence. Those with particular offences or histories can be exposed to a higher risk of violence, or may simply have life experiences that cause them to be cautious

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<sup>25</sup>For further detail on this point, see Ben Jarman, ‘Turning Points or Dead Ends? Identity, Desistance and the Experience of Imprisonment’ (MPhil, Cambridge, University of Cambridge, 2017), <https://doi.org/10/c688>; Ben Jarman, ‘Only One Way to Swim? The Offence and the Life Course in Accounts of Adaptation to Life Imprisonment’, *The British Journal of Criminology* 60, no. 6 (21 October 2020): 1460–79, <https://doi.org/10/ggs23w>.

<sup>26</sup>This included the common (but legally incorrect) contention that ‘I was guilty of manslaughter, but I didn’t mean to kill the victim, so I was not guilty of murder’.

in trusting others. Some participants explicitly linked selectiveness in self-disclosure—about their offence and about their lives generally—to their safety. For Billy, for example, self-disclosure in a small group setting risked unacceptable consequences in his day-to-day life. He said at the time he had left therapy, the reasons for his non-cooperation had not been clear to the prison authorities, so that it was not until years later that an alternative to group therapy was recommended for him. In the meantime, he had not done any risk-reducing work. This connection between ‘denial’ and safety in prison means that we should be sceptical of a straightforward link between denial and risk.

71. Indeed, a straightforward connection between ‘denial’ (or other forms of minimising blame) and ‘risk’ is poorly supported by empirical evidence. The connection between the two appears in fact to be far more complex, sometimes pointing in the opposite direction, and suggesting that individuals may have a wide range of reasons for ‘denial’, often connected not with their attitudes to the past, but instead to their future relationships with others (and their relationship with themselves). ‘Denial’ may just as well be a way to manage shame and ostracism among people who privately might accept guilt, but feel unable for whatever reason to make this a public stance.<sup>27</sup>
72. Although lifers in my research have said that disputing their blameworthiness has made smooth progress through their sentences more difficult, a recent change in how HMPPS psychology and programmes staff approach denial may have somewhat altered this picture in ways that would not be clear through the interviews, meaning that a brief qualification is required for what goes above. Since the mid-2010s, the approach to denial in HMPPS offending behaviour programmes has shifted subtly, away from a strict focus on accountability for the past harms of the index offence, and towards an approach emphasising the reduction and management of future risk. This means that an individual who disputes their responsibility for and/or culpability in the index offence, but who is willing to discuss other similar offending (or other non-offending behaviour relevant to the ‘criminogenic needs’ suggested by the offence), may still progress satisfactorily through an offending behaviour course. Conversely, if they deny the index offence (or are unwilling to discuss it in a course) but are also unwilling or unable to identify a relevant pattern of behaviour which they can then discuss in a course, it can still be difficult for them to perform satisfactorily against the expectation that they must learn ‘skills’ that manage or reduce risk.
73. The recency of this shift in provision (combined with the fact that most participants had done their offending behaviour work before it occurred) makes it difficult to gauge the impact of this shift in emphasis.<sup>28</sup> But several men in the sample, who had either maintained a nuanced position regarding the offence, or disputed their relative culpability in relation to co-defendants, did explicitly say that their ‘denial’ had delayed their progress, for example because differences between their account and the official account of the offence had become a point of conflict with staff, causing them to be written off as untrustworthy, argumentative, or ‘deniers’. Some felt marginalised and alienated by this, because they felt an incomplete admission of guilt had been used to prolong their punishment.<sup>29</sup>

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<sup>27</sup> See, for example Jayson Ware and Nicholas Blagden, ‘Men with Sexual Convictions and Denial’, *Current Psychiatry Reports* 22, no. 9 (September 2020): 51, <https://doi.org/10/gg53tn>; Jayson Ware and Ruth E. Mann, ‘How Should “Acceptance of Responsibility” Be Addressed in Sexual Offending Treatment Programs?’, *Aggression and Violent Behavior* 17, no. 4 (July 2012): 279–88, <https://doi.org/10/f342n7>.

<sup>28</sup> It is possible that this shift accounts for the difficulty Terry (quoted above) had found in getting onto courses.

## **Passing time, using time, or ‘treading water’**

74. At a point usually coming after some or all the core risk reduction work is complete, and usually after at least a third of the tariff has been completed, lifers transfer from their ‘original’ prison, either to another prison within the LTHSE, or to a prison offering specialist rehabilitative provision, or to a prison with a lower security category (reflecting a reduced security categorisation and altered levels of risk). Given the length of minimum terms, recategorisations and transfers can be multiple and this phase last for more than a decade.<sup>30</sup>
75. Although the sentence plan continues to be reviewed regularly, sentence plan objectives set at this time tend to frame these periods as a time of ‘developing skills’—during which, in theory, the individual is being monitored for their ability to use the risk management ‘skills’ that they have learned while doing offending behaviour work. This appears meaningful for some, particularly those who have undergone profound personal changes as a consequence of intensive risk-reducing interventions. But many lifers in this stage of the sentence whose core risk reduction targets have been met struggle to recall the objectives on the sentence plan, or speak of them in terms other than ‘developing my skills’; they understand this stage of the sentence as a question of consuming years while also ‘staying out of trouble’.
76. For many, there was what might be called a fallow period in the sentence, during which years and sometimes more than a decade passed without the individual in question feeling like they were making progress. This was especially common among those with tariffs exceeding 20 years, for whom there were simply more years to get through.<sup>31</sup> For many, this period came in the middle stretches of the sentence, after they had adjusted to prison life and completed the offending behaviour work on their sentence plan, but before they were close enough to their tariff date to be considered for a move to an open prison. For a few, long fallow periods occurred nearer the start of the sentence, especially if they were appealing the conviction or the sentence (and were therefore unwilling to undertake offending behaviour work).
77. A very small number of men in the sample said they had decided on long-term objectives for the middle years of the sentence, and they had pursued these determinedly. These men saw stagnation as a risk to their wellbeing and had made significant achievements such as completing Open University degrees or had become involved in projects seeking to improve the quality of the prison community (for example by working as Samaritans-trained prison Listeners, or by working in other highly responsible roles). These activities were often described explicitly as ways to ‘do good’ or to ‘use time’ well. Such purposefulness brought its own risks, particularly if resources required to pursue these ambitions

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<sup>29</sup>This phenomenon, that it can be better in some ways to be guilty than to be innocent, has been noted for a long time in relation to prisons, risk assessment and parole, for example by Alec Samuels, ‘In Denial of Murder: No Parole’, *The Howard Journal of Criminal Justice* 42, no. 2 (2003): 176–80, <https://doi.org/10/bcxknb>.

<sup>30</sup>The boundary between this and the ‘risk reduction’ phase of the sentence is indistinct and highly variable, influenced by factors like security categorisation, the offence, risk levels, and the individual’s record of compliance (or otherwise) in prison. In my research sample, there were, for example, men who had not got out of the maximum-security prisons until *after* their tariff had expired; and there were others who moved from category-B to category-C (and awaited a first transfer away from the LTHSE) only two years into the sentence.

<sup>31</sup>William, quoted next to this paragraph, had over 20 years left to serve, and disclosed that he had become addicted to heroin while in the prison where he was interviewed.

were contingent on residing in a particular prison, holding particular jobs, or having good relationships with particular members of staff. Any of these meant that things they valued could also easily be lost to security restrictions or changes of policy and the like, unless the individual concerned was prepared to fight. This in turn brought risks in terms of conflict with key prison staff, and required careful balancing on behalf of the lifer in question.

78. However, strategising of this kind, whereby lifers planned ahead and formulated goals of their own for the rest of the sentence, was uncommon. More individuals in the sample saw progression towards release as a mysterious and essentially unknowable process, tracking not their priorities for their own lives, but HMPPS's priorities for them. They cultivated either limited ambitions, or an ethic of passivity and an attitude of non-attachment, which rather than exerting great effort towards ambitions of self-betterment, sought friendship, ease and enjoyment as common themes. Many in this group sought out niches of greater material comfort (a single cell and self-cook facilities were often specific wishes). Some also preferred to be in a particular prison because it was closer to family. Some in Swaleside said they were trying to delay their recategorisation, so that they could remain for longer in the LTHSE (which afforded them more of these comforts). The phrase 'limbo' was used by Leon (quoted on this page), but 'treading water' was more common. It was used both by prisoners and by an officer at Swaleside, and well captures the challenges of the middle reaches of the sentence: keeping one's head above water, not wasting energy pursuing objectives one might be disappointed not to achieve, and waiting for the tide to pull back towards the shore.
79. In terms of reform and rehabilitative aims, prisoners in this stage of the sentence said they felt slightly left to their own devices, without necessarily having a clear sense of what their priorities should be or what their time was to be used for. This was less true of those who still had core risk-reduction work to complete, because sentence plan targets tended to be more specific (and more intelligible to the prisoner) when they related to courses, and less specific or non-existent if it came to coaching life-sentenced prisoners to develop themselves after their core risk reduction work was done. The effect is that prisoners in this stage of the sentence generally only describe having a strong sense of purpose and of *using* time (rather than *passing* or *killing* it) if they have either found their own goals to pursue, or are being steered towards further risk reduction work. Many were content to work in whatever prison jobs were available and to enjoy what they could about the prison environment. Frustration was less likely among this subgroup, though the usage of terms such as 'groundhog day' to describe the texture of their daily lives hinted at the feeling that time was passing without any real sense of personally meaningful progress.
80. Lifers who have completed their core risk reduction work have, in many cases, done what the prison expects them to do, in terms of coming to terms with the past and with their offence, and thinking ahead to the future. In this stage of the sentence, their focus appears to turn to preparing for the future. However, life sentences are now very long indeed, with rehabilitative provision that seems more built to 'fix' them than to encourage them to push on. The post-release future can still be as much as a decade or more distant when core risk reduction work is complete. For many (and in my opinion eventually for most) the idea that the period after core risk reduction work is for 'developing skills' loses its meaning. So many lifers reach this point long before their tariff date, and the limited opportunities on offer mean that it is difficult to experience this period of their lives as 'progressive' in the

same way that risk reduction work is for many. If prison is still frustrating or obstructing the realisation of their future plans, then ‘developing skills’ is a way to ward off the worry that life is being wasted. The essence of this stage of the sentence is working out how to use, pass, or waste time.

### **The parole cycle, and preparing for release**

81. Usually around three years before the tariff expires, lifers first encounter the parole process, whereby assessments begin to decide whether they are suitable for transfer to an open prison. Because this decision is taken by a panel of independent Parole Board members, and premised fundamentally on risk assessment, each parole window entails the preparation of a dossier of evidence often hundreds of pages in length. It therefore also involves fresh eyes on the individual’s prison record.
82. The difficulties associated with the parole process are associated with hope and impatience (on the one hand), and with the intensifying of the prison’s gaze and focus on the individual (on the other). The preparation of written reports<sup>32</sup> by forensic psychologists and others, including sometimes a lifer’s legal representative, can be a stressful process and contain some surprises, particularly for those whose custodial record has been patchy, whose offence was shocking, or who are seen potentially risky after release (this will include most mandatory lifers). Elevated levels of scrutiny, more so than in recent years of the sentence, can result in new sentence plan requirements, usually aiming at further recommendations for core risk reduction work. These in turn can mean more years in prison. Conversely, a recommendation for a move to open conditions, or even for release, can bring significant worry and uncertainty. Many lifers in the sample therefore described this period as characterised by significant anxiety. Some said that it also made them feel more accountable to loved ones outside prison, with a ‘knockback’ decision often causing them to have to explain to family members why they had not progressed, when they were often unsure as to the reasons, because the decision had come as a surprise. The parole process also brought home feelings of powerlessness regarding the outcome of decisions.
83. Many of the difficulties of this period in the sentence concerned release and the uncertainty of the parole process, and were particularly centred on key relationships, particularly that with the offender manager. Good relationships with these staff members often offered greater confidence at seeing what might be around the corner, but the relationship seemed, like many between prisoners and staff, when each side understood the pressures the other was under and knew how to ask for things persistently without becoming confrontational. Staff shortages and changes of personnel in the offender management units at both research prisons were a subject of frequent complaint, because a new offender manager (or offender supervisor) could mean greater uncertainty and potentially a new relationship to relearn. All of these are ordinary features about human social interaction but the power imbalance and the amount that was at stake in decision-making meant that some described life while in a parole window using metaphors like ‘thin ice’ and ‘walking on eggshells’, suggesting the delicacy of their position.
84. Lifers in the sample who had gone over tariff<sup>33</sup> were, of course, all ‘in the parole process’, though some appeared to be closer to the ‘exit’ than others. Generally and unsurprisingly,

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<sup>32</sup>For many lifers this will be the first such report, but for some, especially those who have been in Category-A or who have been previously categorised as high-risk, psychological reports will be more familiar.

those who had been through the process more times without being released were less favourably disposed towards it, and some found the cycle of hope and disappointment hard to endure. Those who were only one or two hearings past the tariff generally said they were happy to wait and were in no hurry. They mostly identified closely with the notion that they were ‘risky’ and agreed that their risks required testing through home leaves and ROTLs. However, those who were further past the tariff more frequently expressed sentiments of indifference, frustration or cynicism about their situation, and also struggled to see how further interventions would improve their situation.

## Concluding reflections

85. This submission has identified the key features of the mandatory sentence and how it is set, discussed its statutory aims and its public perception, and then attempted to relate these objectives to the sentences that were actually being served by participants in my PhD interviews. It must be reiterated that the experiences described here relate to lifers who have been in prison during profound changes both in the administration of the sentence, and in the nature of imprisonment itself. It therefore cannot be said with certainty that the experiences described here—which are those of early-stage lifers convicted in the 2010s, mid-stage lifers convicted mostly in the 2000s, and late-stage and over-tariff lifers convicted between the 1980s and the early 2000s—will be similar to the experiences of those who are convicted in 2021 and afterwards.
86. Nevertheless, the relevant changes over time relate to the administration of the sentence, the nature of risk assessment and the way in which lifers’ progression is managed. The central challenge involved in living the sentence arguably remains similar: it is to find a way to think about the experience that does not render it intolerable and meaningless. The nature of this challenge shifts as time passes, in tune with shifts in the world outside prison and changes in the individual, but the challenge itself is to find meaning. For some mandatory lifers, meaning is tied up with understanding the past; for others, it is connected with the feeling that they need to use the sentence to secure themselves a better future. For all, it relates to the need to use up the time of the sentence in a constructive way, without stagnation.
87. The Commission is tasked with forming a view on whether sentences imposed for the most serious crimes are a) proportionate, b) achieving their statutory aims, and c) effectively serve the public interest, or the interests of victims, prisoners, and their families. My research cannot pre-empt the answers and I have not tried to do so, but in presenting information from my research as it appears to me now, I hope to have provided material that the Commission can use in carrying out its work.

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<sup>33</sup>Fifteen lifers interviewed for the PhD were between one and twenty-two years over tariff at the time of the interview.