



LEGAL FRAMEWORK OF IPPs

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This talk will deal with the legal framework of sentences of Imprisonment for Public Protection, [IPPs].

It will cover the relevant statutory provisions of the Criminal Justice Act 2003 [CJA] as well as recent and relevant Court of Appeal judgments.

Flow Charts will assist you to understand the relevant statutory provisions and how they work in practice.

The CJA has been described as a 'minefield,' a 'labyrinth,' a 'spider's web' and 'something of a mess' by the judiciary [and the rest of the legal profession].....whatever words we choose to describe the CJA, there can be no doubt that none of us can go to Court today without having the dangerousness provisions at our fingertips, without knowing the relevant sections by heart as well as the main Court of Appeal judgments.....so if I said to you, what does s.225 of the CJA say, you'd all be able to answer me without hesitation.....!

What is an IPP sentence?

Under s.225 CJA 2003, a sentence of imprisonment for public protection [IPP] is a sentence of imprisonment for an indeterminate period, whereby the Court fixes a minimum term the offender has to serve in custody before being considered for release by the Parole Board.

Offenders sentenced to an IPP may be detained in prison for longer than the maximum term normally permissible for the offence of which they have been convicted, if the Parole Board considers that their continued detention is necessary for the protection of the public. When the offender is released he is potentially on licence for life, unless he applies for it to cease after 10 years and the Parole Board decides that it is not necessary for the protection of the public.

Under section 225, the Court will impose an indeterminate sentence of IPP when:

- the offence was committed after 4th April 2005
- the offender is 18 or over on the date of conviction
- the offence is a serious specified offence for which the sentence is 10 years or more
- in the Court's opinion, the offender is considered to be 'dangerous.' In other words: he/she poses a significant risk to the public of serious harm caused by the commission of further specified offences.

Let's deal with each of these conditions in turn.....please refer to the Flow Charts attached.....

- DATE of OFFENCE – might sound obvious, but if the offence was committed before 4/4/05 – you don't need to worry about the CJA at all ! Always check – Probation sometimes make that mistake.
- AGE- if the offender is under 18 on the date of conviction, but the other conditions are satisfied, the Court must impose Detention for Public Protection under s.226 CJA, not IPP
- SERIOUS SPECIFIED OFFENCE -
 - Offence is Specified if it is in Schedule 15 of the CJA.
 - It is a Serious Specified Offence if it carries a sentence of 10 years or more or a life sentence
 - Please See LISTS of OFFENCES attached

Please note, some Specified Offences are not so obvious.....like Affray, Racially Aggravated Assault, Harassment, Keeping a Brothel, Indecent Exposure....Intercourse with an Animal...

- DANGEROUSNESS: s. 229: 2 part test:

- there must be a significant risk of the offender committing further specified offences [whether serious or not]

And

- there must be a significant risk of serious harm to members of the public being caused by such offences

The Court must give REASONS for finding that an offender is or is not a dangerous offender.

ASSUMPTION of DANGEROUSNESS: s.229(3)

- If the specified offence [which he stands to be sentenced for] was committed when he was aged 18 or over

And

- he has been previously convicted of a Relevant Offence [ie Specified Offence]

The Court MUST assume that the offender is dangerous UNLESS IT WOULD BE UNREASONABLE TO DO SO.

RELEVANT FACTORS in ASSESSING DANGEROUSNESS:

In assessing whether the offender is dangerous or not, the Court under s.229(2):

(a) must take into account all such information as is available to it about the nature and circumstances of the offence,

(b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part, and

(c) may take into account any information about the offender which is before it.

RELEVANT CASE LAW on DANGEROUSNESS

R v LANG [2005] EWCA Crim 2864, CA

When assessing whether the offender presents a 'significant risk,' the following nine matters are to be borne in mind:

(i) "significant" is a higher threshold than mere possibility of occurrence, and it can be taken to mean "noteworthy, of considerable amount or importance";

(ii) as to assessing the risk of further offences being committed, the Court should take into account the nature and circumstances of the current offence, the offender's history of offending (including kind of offence, its circumstances, sentence passed, whether offending demonstrates any pattern), social and economic FACTORS in relation to the offender (including accommodation, employability, education, associates, relationships and drug and alcohol abuse), and the offender's thinking/attitude towards offending and supervision and emotional state; such information most readily, though not exclusively, should come from antecedents (the detail of which must be provided by the prosecution) and pre-sentence probation and medical reports; in relation to such reports, the Court will be guided, but not bound, by any assessment of risk, but if departure from any such assessment is contemplated, both counsel should be given the opportunity of addressing the point;

(iii) as to assessing the risk of serious harm, Courts must guard against assuming there to be a significant risk of serious harm merely because the foreseen specified offence is serious; a pre-sentence report (and in the small number of cases where the circumstances of the current offence or the history of the offender suggest mental abnormality, a medical report) should usually be obtained before any sentence is passed which is based on significant risk of serious harm;

(iv) where the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant; repetitive violent or sexual offending at a relatively low level without serious harm does not of itself give rise to a significant risk of serious harm in the future (there may in such cases, be some risk of future victims being more adversely affected than past victims but this, of itself, does not give rise to significant risk of serious harm);

(v) as to the rebuttable assumption of significant risk to members of the public to which section 229(3) gives rise, it will usually be unreasonable to conclude that there is such a risk unless information about the offences, pattern of behaviour and offender show a significant risk of serious harm from further offences; whether the assumption is rebutted is a matter of judgment for the Court, in relation to which the statute is silent as to burden or standard of proof;

(vi) as to the Court's discretion under section 229(2) in relation to offenders under 18 and adults with no relevant previous convictions when the specified offence was committed, this is not constrained by any initial assumption such as, under section 229(3), applies to adults with previous convictions; and in relation to young offenders, it is still necessary to bear in mind that, within a shorter time than adults, they may change and develop (which might, together with their level of maturity, be highly pertinent when assessing what their future conduct may be and whether it may give rise to a significant risk of serious harm);

(vii) as to a particularly young offender, an indeterminate sentence may be inappropriate even where a serious offence has been committed and there is a significant risk of serious harm from further offences;

(viii) Parliament's intention was to protect the public from serious harm, not to require the imposition of indeterminate sentences for the commission of relatively minor offences;

(ix) sentencers should usually give reasons (briefly identifying the information which they have taken into account) for all their conclusions, particularly as to whether there is or is not a significant risk of further offences or serious harm, and, in a case falling within section 229(3), for concluding either that the assumption does or that it does not apply, and also for not imposing an extended sentence under section 227 or 228 where this is available.

R v JOHNSON [2006] EWCA Crim 2486, CA

In R. v. Johnson, further guidance was given in relation to the criteria of dangerousness when imposing a sentence of imprisonment for public protection. The Court said that it is important to remember that whilst the judgment in R. v. Lang was given in clear and trenchant terms, it should not be treated as a statute. It is plain that an indeterminate sentence is concerned with future risk

and the future protection of the public and, although punitive in EFFECT, with far reaching consequences for the offender on whom it is imposed, it does not, strictly speaking, represent punishment for past offending.

(1) As to the significance of previous convictions, the Court said that section 229(2) highlights that it is not a prerequisite to a finding of dangerousness that the offender should be an individual with previous convictions. A person of previous good character may properly qualify for this sentence. Where the offender has previous convictions for specified offences in accordance with section 229(3), the EFFECT of Lang is that the question of whether it is unreasonable to make the assumption of dangerousness is left to the judgment of the Court; just as the absence of previous convictions does not preclude a finding of dangerousness, the existence of previous convictions for specified offences does not compel such a finding. There is a presumption that it does so, which may be rebutted. The Court added that if a finding of dangerousness can be made against an offender without previous specified convictions, it followed that previous offences, not in factor specified for the purposes of section 229, are not disqualified from consideration. Thus, for example, as the statute recognises, a pattern of minor previous offences of gradually escalating seriousness may be significant. In other words, it is not right, that unless the previous offences are specified offences, they are irrelevant.

(2) As to the significance of the offender not having caused any harm, where the factors of the instant offence or any previous specified offences are examined, it may emerge that no harm has actually occurred. That may be advantageous to the offender. On the other hand, the absence of harm may be entirely fortuitous. The sentencer may wish to reflect on the likely response of the offender, if his victim, instead of surrendering, resolutely defended himself. It does not, therefore, follow from the absence of actual harm caused by the offender to date, that the risk that he will cause serious harm in the future is negligible.

(3) Characteristics of the offender such as inadequacy, suggestibility or vulnerability may serve to mitigate his culpability; but they may also serve to produce or reinforce the conclusion that he is dangerous. A sentencer is right to be alert to risks of aberrant moments in the future, and their consequences.

(4) The Court said that it is plainly desirable, as was suggested in Lang, that the prosecution should be in a position to describe the factors of previous specified offences, but that this is not always practicable. There is no reason why the prosecution's culpable failure to comply with this practice, should either make an adjournment obligatory, or indeed preclude the imposition of an indeterminate sentence, where appropriate. In any such case, counsel for the defendant should be in a position to explain the circumstances of previous offences, on the basis of his instructions.

(5) As to the giving of reasons for an indeterminate sentence, it is not obligatory for the Court to spell out all the details of all the earlier specified offences. To the extent that a judge is minded to rely upon a disputed factor in reaching a finding of dangerousness, he should not rely on that factor unless the dispute can fairly be resolved adversely to the defendant. In the end, the requirement is that the sentencing remarks should explain the reasoning which has led the Court to its conclusion.

(6) As to the role of the Court of Appeal, the Court will not normally interfere with the conclusions reached by a sentencer who has accurately identified the relevant principles, and applied his mind to the relevant factors.

R v TERRELL [2007] EWCA Crim 3079 CA

Recent Court of Appeal judgment dealing with a 21 year old appellant who was sentenced to an IPP with a minimum term of five months concurrent on four counts of Making Indecent Photographs of Children. He had pleaded Guilty at the first opportunity. He asked for 36 similar offences to be taken into consideration. He had also been convicted of 26 similar offences when he was 16 years old. A Pre-Sentence Report indicated that the appellant posed a medium risk of reoffending.

The Judge concluded that the offences were serious specified sexual offences and, because of the previous conviction, that he was obliged to consider the application of s.225 in light of the presumption of dangerousness in s.229. He found that the images were for the most part at the lowest level and in none of the moving images he had seen did the children appear under coercion or distress; and that, but for the sentence for public protection, he would have passed a sentence of 10 months' imprisonment.

The Court of Appeal held that it had not been Parliament's intention to require the imposition of indeterminate sentences for relatively minor offences, R v Lang applied. The fact that an offence was a serious specified sexual offence did not mean that its commission inevitably involved serious harm to the public. It could not reasonably be said that there was a significant risk of the appellant's reoffending occasioning harm to a child or children whether through perpetuating the market, or through further indecent images being taken, or through a child becoming aware of the indecent purposes to which the photographs might be put.

The link between the offending act of downloading the images and the possible harm that might be done to children was too remote to satisfy the requirement that it would be the appellant's reoffending that would cause the serious harm. The imprisonment for public protection provisions of the Criminal Justice Act did not apply in the circumstances, where simply as a matter of generalisation, a small, uncertain and indirect contribution to harm might be made by a repeat of appellant's offending. The reoffending at risk did not involve any particular children, or a progression in terms of contact or gravity of image, or of the offender widening the network. It was appropriate to quash the sentence of imprisonment for public protection and impose a determinate sentence of 10 months.

So, the appellant went from an IPP with a minimum term of five months to be served before being considered for release by the Parole Board, with a minimum 10 year licence period, to a determinate sentence: 10 months, whereby he would be guaranteed release after half, if not less than half, with the remainder of the 10 months to be served on licence.

PLEASE be AWARE:

- Offenders with previous convictions will not necessarily be presumed dangerous;
- It is not necessary to have previous convictions for the Court to find an offender dangerous;
- Previous convictions don't have to be Specified Offences for an offender to be found dangerous – if they are Specified, then the presumption is raised;
- The factors of the previous convictions are crucial + the Prosecution should have them at Court. If not, the Court may proceed on the basis of the offender's instructions;
- The Court MUST obtain a PSR unless it considers it unnecessary, s.156(3) and (4) CJA, but it is not bound by any assessments made therein;
- The presumption of dangerousness does not apply to youths – the Court must be particularly rigorous before concluding that a youth is a dangerous offender.

The EFFECT of an INDETERMINATE SENTENCE

EXTENDED SENTENCE: The Court fixes an 'appropriate custodial term' – which is the maximum time the offender spends in custody. The Court must also fix an 'extension period'. The combined length of the two components must not exceed the maximum sentence for the offence.

Once the offender has served half of the appropriate custodial term, they are not automatically released as in a normal sentence of imprisonment. Instead, the offender is only released on licence if the Parole Board decides that it is no longer necessary for the protection of the public that he should be confined. If the Parole Board does not direct his release, he must be released when he has served the whole of the appropriate custodial term.

The extension period is the period of licence which is 'of such length as the Court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission of further specified offences.'

It must not be more than five years in the case of a Specified violent offence or eight years in the case of a Specified sexual offence.

Life: An offender sentenced to Life Imprisonment will remain on licence for the rest of his life.

IPPs: An offender sentenced to an IPP will remain on licence for a minimum of 10 years. After this period has expired, the Parole Board may direct that his licence shall cease to have effect. If the Parole Board does not give such a direction, he will remain on licence for the rest of his life.

The only difference in practice between a sentence of Life Imprisonment and an IPP, is the power of the Parole Board in the case of an IPP [or Detention for Public Protection in the case of a young offender], to direct that the licence shall cease to have effect after a period of 10 years following release from custody.

The Court must set a minimum term or TARIFF which the offender will serve in custody before the Parole Board can consider whether to release him/her: [section 82A Powers Criminal Courts (Sentencing) Act 2000].

This period is calculated by deciding what determinate term of imprisonment would have been appropriate if a sentence of Life Imprisonment had not been passed, [the notional determinate sentence] and then specify a period equal to between one-half and one-third of that term. Normally, the period should be equal to one-half of the term.

In fixing the notional determinate term, the Court should give appropriate credit for any guilty plea.

If the offender has spent time in custody on remand, the sentencer should deduct an appropriate amount of time from the specified period.

For EXAMPLE:

I recently prosecuted a case of Conspiracy to Commit Robbery and Possession of a Firearm With Intent to Commit an Indictable Offence. The Defendant was convicted after trial. He had four previous convictions of Robbery, some of which involved a knife. The facts of the previous convictions were opened and not in dispute. The offences for which the Defendant was convicted after trial were Serious Specified Offences. He had previous convictions for Serious Specified Offences.

The presumption of dangerousness was raised.

The Pre-Sentence Report concluded that the Defendant was a dangerous offender. The Judge agreed, after considering the PSR, authorities and having heard the Defendant give evidence. The offending behaviour had escalated considerably, from knifepoint Robberies of pizza hut and news-agents.....to armed Robbery of a Securicor van carrying millions of £!

The sentence was as follows:

- IPP sentence on each count concurrent
- In calculating the Minimum Term, the Judge stated that if he had given the Defendant a determinate sentence, it would have been 18 years on the Conspiracy + 10 years on the 2 Firearms offences
- The Minimum Term was half of this period
- Therefore 9 years minus 500 days spent on remand
- Total sentence: 7yrs 230 days

The above talk was prepared and delivered by:

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In preparing this talk, material from the Sentencing Guidelines Council website was of great assistance: www.sentencing-guidelines.gov.uk