

Exploring and Explaining the Use and Proliferation of Whole Life Orders in England and Wales

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Abstract

Whole life orders (WLOs) represent the power of the state to inflict harm at its most extreme, with such sentences being found to be in breach of the European Convention on Human Rights. However, very little research has endeavoured to understand the use of WLOs. This article presents the findings from analysis of data that were generated via freedom of information requests and archival research. We identify an initial gradual increase in the use of the sentence, followed by a sharp rise in the number of people serving WLOs after 2003. We seek to explain these changes with reference to criminological literature on preventive justice, penal populism, and the risk society and make comparisons between the use of WLOs and the indeterminate sentence of Imprisonment for Public Protection (IPP). We conclude that work is needed to better understand and constrain further growth of this sentence.

Introduction

In England and Wales, a whole life order (WLO) is the harshest sanction that any court can impose upon a person. The sanction was introduced under Schedule 21, Paragraph 4 of the Criminal Justice Act 2003 and ensures that a person will stay incarcerated for the remainder of their natural life, without any possibility of release. WLOs represent state power at its most extreme and – as such – are reserved solely for crimes which are considered by the government and the judiciary to be ‘exceptionally’ (Sentencing Act 2020 sch.21, para.2(1)(a)) serious. Whole life sentences (e.g., life without parole (LWOP)) are fast becoming an increasingly favoured sanction across the globe (Nellis, 2021; Kleinstuber et al., 2022). It is therefore important to understand how WLOs are being used within England and Wales, especially given the argument that lifelong imprisonment can be understood to be unethical, nonconstitutional, and a breach of human rights (*Vinter v The UK* [2013]; *Matiošaitis and Others v Lithuania* [2017]). Thus, this article presents analysis of data on the use and proliferation of WLOs since their advent in the aftermath of the abolition of capital punishment in 1965, thereby making an original contribution to existing research, knowledge, and literature concerning whole life imprisonment within England and Wales, and internationally.

Whole Life Orders: Historical and Legislative Context

Whole life tariffs (now whole life orders) gradually emerged in the years following the enactment of the Murder (Abolition of Death Penalty) Act 1965, whereby capital punishment for murder was abolished and substituted with the mandatory sentence of ‘imprisonment for life’. Whole life tariffs were introduced by Home Secretary Douglas Hurd in 1988, and were subsequently imposed by successive Home Secretaries for several years. However, a series of legal contestations during the 1990s chipped away at the Home Secretary’s power, with *Anderson* questioning whether the Home Secretary was ‘entitled to fix the minimum period of imprisonment to be served by a mandatory life prisoner to meet the requirements of retribution

and deterrence', or whether his power to do so constituted a breach of Article 6 of the ECHR (*R (Anderson) v Secretary of State for the Home Department* [2002], n.p). The courts ultimately determined that the 'fixing of the tariff is a sentencing exercise which should be carried out by a judge or judicial tribunal and [is] not an administrative exercise to be carried out by a government minister' (*R (Anderson) v Secretary of State for the Home Department* [2002], n.p). As a result, the authority to impose a whole life sentence was transferred to the judiciary under Schedule 21, Paragraph 4 of the Criminal Justice Act 2003, creating a judicially recognised and administered whole life order.

When imposing a mandatory life sentence, the judiciary must either specify a minimum period of incarceration which the person must serve before they can be considered for release by the Parole Board, or order that the 'early release provisions are not to apply to the offender' (Criminal Justice Act 2003, s.269(4)), essentially condemning a person to remain incarcerated for the remainder of their natural life. Whilst life sentences are mandatory for murder in England and Wales, the Criminal Justice Act 2003 states that WLOs should be considered the mandatory minimum starting point for a life sentence if the offender was twenty-one-years of age or over when he committed the crime (sch.21, para.4(1)(b)) and the judiciary 'considers that the seriousness of the offence ... is exceptionally high' (sch.21, para.4(1)(a)). Schedule 21, Paragraph 4 (2) of the Criminal Justice Act 2003 determines that such offences may include:

'the murder of two or more persons' (sch.21, para.4(2)(a))

'the murder of a child if involving the abduction of the child or a sexual or sadistic motivation' (sch.21, para.4(2)(b))

'a murder done for the purpose of advancing a political, religious or ideological cause' (sch.21, para.4(2)(c)) or

'a murder by an offender previously convicted of murder' (sch.21, para.4(2)(d)).

WLOs remove individuals from the jurisdiction of the Home Secretary and the Parole Board, primarily because WLO prisoners are (by their very nature) never post-tariff, but also because the Criminal Justice Act 2003 revoked the Secretary of State's power to review a life sentence. Thus, WLO prisoners are not typically subjected to review at any stage of the sentence (Van Zyl Smit, Weatherby and Creighton, 2014). The Criminal Justice Act 2003 does not allow for any reduction or review of a WLO, partly because one of the intentions of the Act was to judicialise sentencing decisions (*R (Anderson) v Secretary of State for the Home Department* [2002], n.p). The sole exception to this is contained within the Crime (Sentences) Act 1997, which empowers the Secretary of State to maintain authority to release a WLO prisoner 'if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds' (s.30(1)). At the time of writing, this power remains unused (*Vinter (and others) v United Kingdom* [2013]).

The Criminal Justice Act 2003 is the most recent significant legislative change regarding WLOs with subsequent minor amendments focusing largely on broadening the variety of offences for which a WLO may be received (Sentencing Academy Briefing: Criminal Justice Bill and Sentencing Bill; Sentencing Act 2020 sch.21 para.2(2)(d)), as well as broadening the age range to include persons over the age of eighteen in exceptional circumstances (Police, Crime, Sentencing and Courts Act 2022 s.126). More recently, high profile events such as the killing of three girls in Southport in the summer of 2024 by Axel Rudakubana led to a debate about whether WLOs should be introduced for under 18s, despite this being prohibited by Article 37 of the UNCRC. The sentencing judge made it clear that, had Rudakubana been over the age of 18, he

‘would have been compelled to impose on him, life imprisonment without a minimum term’ (*R v Axel Rudakubana* [2025], p.6). Other significant developments have occurred largely in the context of human rights challenges, with *Vinter (and others) v United Kingdom* [2013] questioning the legitimacy of WLOs. Here, the courts determined that life sentences (including whole life) must be “de facto and de jure reducible” insofar as they must provide a reasonable opportunity for review and release (*Vinter (and others) v United Kingdom* [2013]) in order to be compliant with relevant human rights legislation. However, this determination was quickly challenged by *R v McLoughlin* [2014], in which it was determined that WLO prisoners remained subject to reconsideration by the Secretary of State, whose decision could be judicially reviewed by a court, thus providing the possibility of release. This determination was likewise upheld in *Hutchinson v The United Kingdom* [2017], with the Grand Chamber accepting the UK’s argument that whole life orders could be considered reducible. Nevertheless, The Secretary of State for Justice’s (Liz Truss) immediate response to the *Hutchinson* determination made clear that WLOs would remain irreducible. Truss embraced the *Hutchinson* judgment, stating that it is “right that those who commit the most heinous crimes spend *the rest of their lives* behind bars” (Warnes, 2017, n.p, emphasis added). The *Hutchinson* decision continues to receive considerable criticism, particularly as the most recent European determinations (*Matiošaitis and Others v Lithuania* [2017]; *Sanchez-Sanchez v United Kingdom* (2023)) continually refer back to *Vinter*. Thus, although WLOs have been subjected to a number of legal challenges in domestic and international courts, these cases – individually or collectively – have not impacted, in material terms, on legislation, policies, or practices that govern the imposition of WLOs in England and Wales.

The Purpose and Impact of WLOs

The WLO is the harshest sanction available to sentencers in England and Wales, and – as such – they are (or ought to be) reserved for the severest of crimes (Criminal Justice Act 2003). The aim of such a sanction is to protect the general public, by ensuring that the most dangerous offenders are removed from society and never released (Sentencing Academy Briefing: Criminal Justice Bill and Sentencing Bill). The most simplistic justification for the sentence is that some crimes are considered by society to be so serious that no sentence other than one which guarantees a person’s lifelong imprisonment (thus ensuring that they will die in prison) is considered to be sufficiently severe (Van Zyl Smit and Appleton, 2019). It is likewise also argued (typically by politicians (Warnes, 2017; Rt Hon Rishi Sunak MP, 2023)) that some offenders are so dangerous that they should never be set free, and so it follows that there simply is no need for a mechanism to review their suitability for release (Van Zyl Smit and Appleton, 2019). This idea was recently reiterated by former Prime Minister Rishi Sunak who – following the sentencing of Lucy Letby – pledged to introduce ‘mandatory whole-life orders for the heinous criminals who commit the most horrific types of murder’, thus ensuring that such offenders would ‘never walk free’ (Rt Hon Rishi Sunak MP, 2023; Hammond, Thatcher and Fido, 2024).

Prisoners suffer limitations to their human rights whilst they are incarcerated (Prison Reform Trust, 2014). However, the human rights of WLO prisoners are arguably curtailed more so than they are for other prisoners (i.e., because their loss of liberty of imprisonment is permanent) but also in ways that are different to prisoners who have a possibility of release, which results in human rights related harms (Vannier, 2016). For example, WLOs deny a person the possibility of re-entering society, contrary to Article 10(3) of the ICCPR. Furthermore, under the Constitution of the World Health Organisation (WHO) 1946 and Article 12 of the ICESCR 1966, access to healthcare should be fully inclusive and non-discriminatory, and yet the female life without parole prisoners of Vannier’s (2016b, p.333; p.334) study described how they were exposed to ‘dire’ medical care, and officials who ‘do not care whether they live or die’. It is precisely these

ethical and empirical critiques of WLOs which demand a deeper understanding of how they are being used in England and Wales.

WLOs express one of two sentiments; from a retributivist perspective, WLOs communicate that a person's crime warrants death by imprisonment due to the harm caused and so they are beyond redemption, whereas from a utilitarian perspective, WLOs are justified on the basis that the person is deemed to be incorrigible and therefore the harm caused by keeping them imprisoned is outweighed by the benefits to society that come from doing so (Berry, 2015; The Economist, 2021). In Hartman's (2013, n.p) *Too Cruel, Not Unusual Enough* (a collection of essays written by prisoners serving LWOP sentences in the US) Wayne Kramer – an activist and former prisoner – argues that life without parole sentences are 'barbaric beyond the definition of the word', whilst Liebling (2017, p.20) argues that 'these forms of death in custody challenge the "legitimate penological purposes of imprisonment"', as such a sentence forecloses any future consideration of the prisoner as a person (Berry, 2015). Van Zyl Smit and Appleton (2019, p.45) argue that this aspect of WLOs – the lack of opportunity for redemption and possible release (contrary to Article 10(3) of the ICCPR) – is an 'assault on the human dignity of life-sentenced prisoners' and can therefore be considered a form of inhuman or degrading punishment or treatment. Following the emergence of such arguments in the jurisprudence of the ECtHR in the 1990s, Van Zyl Smit and Appleton (2019) raise the possibility that the imposition of a whole life sentence could constitute a breach of the prohibition of inhuman or degrading punishment, contrary to Article 3 of the ECHR.

Indeed, the harshest impacts of life imprisonment are suffered by those serving irreducible (whole) life sentences, whose sentence is comparable to a death sentence in that they will never again experience freedom within their lifetime. Johnson and McGunigall-Smith (2008) suggest that a more appropriate name for life without parole might be 'death by incarceration' (p.328); LWOP and WLO prisoners will usually die whilst incarcerated and understand this to be their reality, even though in theory (and sometimes in practice) it is possible for their sentence to be quashed or reduced via a successful appeal, or for a change in legislation to occur (*Miller v Alabama* 567 U.S. 460 (2012)). The pains of serving long-term and life sentences are aggravated for this particular subgroup of life-sentenced prisoners who find themselves having to accept both the reality of serving a very long sentence, as well as the prospect of dying in prison.

Despite this, there is a lack of empirical research surrounding the experiences of WLO prisoners within England and Wales, and research which is specific to whole life imprisonment internationally is limited. It is necessary to acknowledge that comparable sentences (such as LWOP) are operationally different to WLOs, and so the experiences of such prisoners would also differ. Nevertheless, LWOP prisoners have received some scholarly attention in the US, where 55,945 people were serving life without parole sentences in 2020 (Kleinstuber et al., 2022). Descriptions of serving a death sentence occur frequently throughout the literature, so much so that Villaume (2005) suggested that life without parole was a 'virtual death sentence' (p.274), whilst Johnson and McGunigall-Smith (2008) suggest that the impacts of such a sanction are as harmful as the death sentence, though in very different ways. Johnson and McGunigall-Smith (2008) identified living a 'life of unrelenting loneliness', the fear of one day being 'entirely alone, bereft of outside support or concern', the realisation that family relationships are likely to 'wither' and that family members (most notably their parents) are likely to die whilst they are incarcerated, and being 'permanently separated from ... family' (p.337) as amongst the primary concerns for life without parole prisoners, and determined that the lives of life without parole prisoners are 'steeped in suffering. The prison is their cemetery, a cell their tomb' (p.329). The works contained within Hartman's (2013) afore identified anthology are replete with descriptions of serving a death sentence, with life without parole prisoners themselves referring to their

sanction as ‘the other death penalty’ (p.173), ‘a slow death row’ (p.29), and even as a fate ‘worse than death’ (p.125).

A similar sentiment was expressed by participants in McGunigall-Smith’s (2005) study concerning death row prisoners, who stated ‘I’m not scared about the time between now and my execution. It’s easy. The hard part is living every day here’ (p.138) and

I can’t think of anything worse than this ... to me, in my situation that I am in right now, this is the worst it could possibly be so it’s a relief to know that I’m not going to be here no more ... the next journey has got to be better than this one. All my bad karma came and hit me hard in this lifetime. I believe in good karma and bad karma. I got to figure in the next one I’m going to have a chance to do a little bit of good. (p.139)

Indeed, Johnson & McGunigall-Smith’s (2008) study involving death row and life without parole prisoners established that 36% of prisoners preferred the idea of the death penalty over a life without parole sentence, whilst a further 27% of prisoners were ambivalent, interchangeably preferring the idea of the death penalty over a life without parole sentence. This was supported by a participant in Leigey’s (2015) US study who argued that a life without parole sentence was ‘either too much or too little. If a sadistic or extraordinarily cold, callous killer deserves to die, then why not kill him? But if we are going to keep the killer alive when we could otherwise execute him, why strip him of all hope?’ (p.162).

In addition to these human rights concerns and evidence on the lived experience of LWOP prisoners, they also give rise to problems for the prison system itself. Whilst the cost of whole life imprisonment is currently unknown¹, it is known that the costs associated with WLO prisoners far exceed those of mainstream prisoners. Firstly, WLO prisoners are (due to the nature of their crimes) typically incarcerated within high-security prisons, which can cost up to twice as much as an average prison place (Sansom, 2016; Gouk and Winter, 2019). Secondly, WLO prisoners often come with unacknowledged costs such as legal appeals, and secure hospital fees. In 2013, it was reported that Ian Brady’s secure hospital (where he stayed for 28 years) cost £300,000 per year (Tozer, 2013); indeed, Brady is believed to have cost taxpayers around £14 million over the course of his imprisonment (Taylor, 2013). Finally, keeping someone incarcerated for the remainder of their natural life means that they will need lifelong healthcare and palliative care, which are both costly and burdensome for the state (see Abraham, 2011).

WLOs can therefore be understood as both unethical and unconstitutional, and are a stark illustration of the power of the state to inflict harm in ways that exceed other forms of punishment. This subsequently means that we need a full understanding of how WLOs are used, who they are imposed on, and how their use has changed in recent years. However, The Ministry of Justice has produced minimal data on the use of WLOs, with WLO prisoners being subsumed into prison population statistics which fail to provide any detail on this specific subgroup. This article addresses this by examining the proliferation in the use of WLOs (within England and Wales) through analysis of data that was collated via a combination of freedom of information requests and archival research. In particular, we focus on the numbers of people being sentenced to whole life imprisonment, the population of whole life prisoners, and the evidence that we are seeing a process of net-widening when it comes to WLOs. We conclude with some

¹ The cost of whole life imprisonment could not be established with any certainty due to (1) our inability to identify where each prisoner is (or was) imprisoned and for how long, (2) the increasing costs of prison places throughout the years, and (3) the unknown associated costs incurred by each prisoner (e.g., legal appeals and secure hospital fees etc.).

discussion of the reasons for these changes in the use of WLOs, making connections between WLOs, judicial discretion, IPPs, penal populism, and the risk society.

Methodology

The Ministry of Justice does not routinely publish accurate nor detailed data around the numbers of people sentenced to WLOs. This article presents what we consider to be the first and most accurate record of the growth of WLOs since their introduction. In order to do this, we started by amalgamating and cross-referencing data from official sources: Hansard (Parliamentary Debate) Parliamentary Archives, HM Prison and Probation Service's (formerly the National Offender Management Service) Offender Management Statistics Quarterly Bulletins, and freedom of information request responses from the Ministry of Justice (Ministry of Justice, 2020; 2021a; 2021b; 2021c; 2021d).

Hansard was searched to identify references to whole life tariffs and WLOs. This resulted in minimal data beyond occasional statistics, such as 'as at 30 September 2007, the number of prisoners with a whole life tariff was 35' (HC, 2007, v.465). NOMS and then HM Prison and Probation Service's (HMPPS) Offender Management Statistics Quarterly Bulletins were systematically explored to identify relevant data, although this also proved somewhat futile. In 2011, NOMS started to state the number of people serving WLOs within their quarterly bulletins, alongside the number of people who were serving their whole life sentences within a secure hospital (Ministry of Justice, 2011). However, the inclusion of this statistic has been excluded from quarterly bulletins since 2021; rather, the WLO prisoner population is now documented within the prison population data more generally.

The data which was gathered from Hansard (Parliamentary Debate) Parliamentary Archives and NOMS/HMPPS Offender Management Statistics Quarterly Bulletins did not provide a comprehensive picture of the way in which WLOs were being used within England and Wales, nor how the WLO prisoner population had changed over time. Thus, data was requested directly from the Ministry of Justice under provisions available via the Freedom of Information Act 2000. These requests focused on generating a dataset that included demographic information about former and current WLO prisoners within England and Wales. The responses to these requests are one of the primary sources of data that underpins the remainder of this article.

The data provided within the Ministry of Justice's responses to our requests was limited, with responses suggesting we limit the scope of our requests due to the historic nature of some requests, or the costs associated with retrieving the data. With freedom of information requests, it is also the case that governments may refuse a request if the data could result in the identification of an individual and it may be the case that, given the low numbers of prisoners serving WLOs, this will have affected the responses to our requests (Clifton-Sprigg, James and Vujić, 2020). This further underlines the lack of systematic recording data on WLO prisoners, particularly for those of a more historic nature. The responses to our requests also allowed us to identify discrepancies between different sources. For example, the data which was available via Hansard (Parliamentary Debate) Parliamentary Archives suggested that more people had received whole life sentences than had been acknowledged in responses to freedom of information requests.

Further freedom of information requests revealed that this is due to the existence of a group of whole life sentence prisoners for whom the Ministry of Justice either cannot legally disclose any information, or for whom they no longer hold any data (Ministry of Justice, 2021c). For example, the Ministry of Justice were unable to name whole life sentence prisoners whose sentences were set and subsequently reviewed by the relevant Secretary of State which resulted in their sentence

being quashed or substituted with one of a specified length with an expiry date. Nevertheless, an extensive analysis of case overviews suggests that a minimum of ten people originally received a whole life tariff but subsequently had their sentence reviewed by the relevant Secretary of State, which resulted in their sentence being quashed or substituted with one of a specified length with an expiry date.

The Ministry of Justice was also unable to name any former whole life sentence prisoners who were sentenced to whole life imprisonment and subsequently released under The Good Friday Agreement 1998 for which the Ministry of Justice ‘holds no data’ (Ministry of Justice, 2021d, n.p), although we know that eight whole life tariff prisoners were repatriated to The Republic of Ireland under The Good Friday Agreement (Kandelina, 2011).

This means that there is a group of ‘unconfirmed’ former whole life sentence prisoners; people for whom there is reliable evidence to suggest that they were (at some stage) considered a whole life sentence prisoner, but precise data on whether they remain a WLO prisoner is unknown. There seems to be sufficient evidence to suggest that there may be as many as 26 current and former WLO prisoners who remain unconfirmed by the Ministry of Justice. These 26 people have not been included within the quantitative data in the remainder of this article to maximise the validity of the data. Those whose sentences were set and subsequently reviewed by the relevant Secretary of State, which resulted in their sentence being substituted to one of a specified length with an expiry date have not been included within the following discussion, as the possible imposition of their whole life sentence remains unconfirmed by the Ministry of Justice. Similarly, the eight whole life tariff prisoners who were repatriated to The Republic of Ireland have not been included due to uncertainty around their status, as well as the unique context of their offending and sentencing.

The data discussed throughout this paper was generated primarily from freedom of information request responses (see Ministry of Justice, 2020b; 2021b; 2021c; 2021d; 2021e) and extensive supplementary media and archival research. Through this process, we identified every former (e.g. those who were deceased or had successfully quashed their sentence) and current WLO prisoner within England and Wales, as held on the Ministry of Justice’s records. In order to generate more comprehensive demographic data on the WLO prisoner population, further research on each WLO prisoner was carried out. This exploratory and archival research draws on approximately 750 authoritative sources including case overviews and sentencing remarks, governmental reports and statistics, books, documentaries, journal articles, and newspaper articles to shed light on who is given WLOs and what they are given them for.

Having collected data on the numbers of people given WLOs, data were analysed using univariate descriptive analysis to describe the data that had been gathered (Fitzgerald and Fitzgerald, 2013). Frequency counts were undertaken to calculate the following variables:

- the number of people to have received WLOs per year,
- the number of WLOs imposed per year,
- the number WLOs to have been received for each category of offence,
- the number of people with previous convictions, and the frequency of certain previous convictions (e.g., murder), and
- the number of deaths and causes of death.

These data were analysed to understand – in more depth – the use of WLOs, such as the percentage of WLO prisoners who had previous convictions (including of certain offences) (Fitzgerald and Fitzgerald, 2013). An important part of our analysis has been to identify wider trends or changes to the WLO prisoner population over a prolonged period, with a focus on changes that occurred before and after the Criminal Justice Act 2003, to consider whether there were any differences in the ways in which the sentence had been utilised by the Home Secretary and the judiciary. Thus, for each quarter, analysis of the WLO prisoner population as a whole alongside those who had been sentenced before the implementation of the Criminal Justice Act 2003 and those who had been sentenced after the Criminal Justice Act 2003 allowed us to identify the number of WLOs that had been received, the categories of offences for which WLOs were being received, the age of those being sentenced, the average age of death, and the average amount of time served at their time of death for those who had been sentenced before and after the enactment of the Criminal Justice Act 2003.

As noted, the Ministry of Justice was unable to provide detailed or accurate information in relation to all WLO prisoners. Due to the ambiguity surrounding sentencing decisions which occurred before the enactment of the Criminal Justice Act 2003, it was not always possible to ascertain the exact point at which those who were sentenced before the enactment of the Criminal Justice Act 2003 went onto receive whole life sentences. Thus, for the purposes of this article, we have used a person's sentencing date in 27 cases as the proxy date for the imposition of a WLO. The remaining 76 received their WLOs following the implementation of the Criminal Justice Act 2003 when WLOs became a judicial sanction.

A separate limitation with our dataset is that it was not possible to definitively identify the name of every former (e.g., deceased or successfully quashed their whole life sentence) and current WLO prisoner within England and Wales. There were likewise discernible discrepancies between the data which was available via Hansard (Parliamentary Debate) Parliamentary Archives, HM Prison and Probation Service's (formerly NOMS) Offender Management Statistics Quarterly Bulletins, and our freedom of information request responses from the Ministry of Justice. In some respects, this represents a finding in its own right as it demonstrates just how little consideration this particular subgroup of prisoners receives including from governing bodies, but should also be borne in mind when considering the comprehensiveness of the data presented below.

Whilst the data discussed throughout this paper is not comprehensive, it is our contention that it represents the most accurate picture of the use of WLOs over a period of 60 years and can therefore be used to cast important light on how the use of WLOs, and the WLO prisoner population within England and Wales has changed since their introduction.

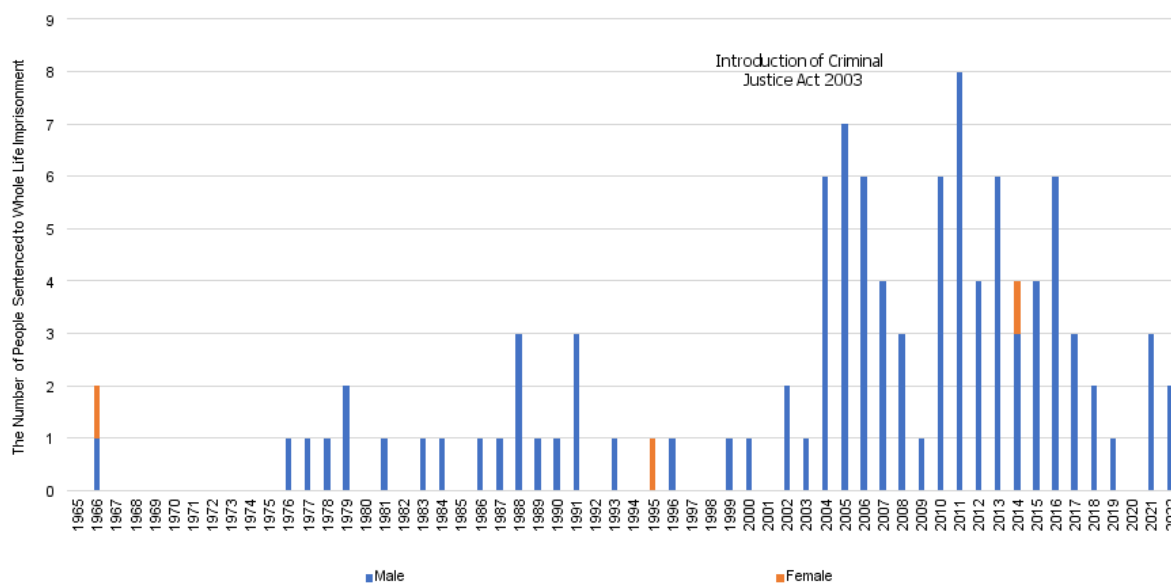
Analysis

The Growth of Whole Life Orders

The imposition of whole life tariffs was initially a rare occurrence. In 1966, Ian Brady and Myra Hindley became the first people to receive sentences which would go on to be substituted with whole life tariffs at a later date (*R v Secretary of State for the Home Department, ex parte Hindley* [2000]). They remained the only two people who had done so until in 1976 Donald Neilson received four concurrent life sentences, as well as a 61 year term for the murder of three postmasters and the abduction and murder of seventeen-year-old Lesley Whittle (*Re Neilson (application under para 3 of Sch 22 to the Criminal Justice Act 2003)* [2008]; The Abduction of Lesley Whittle, 2021).

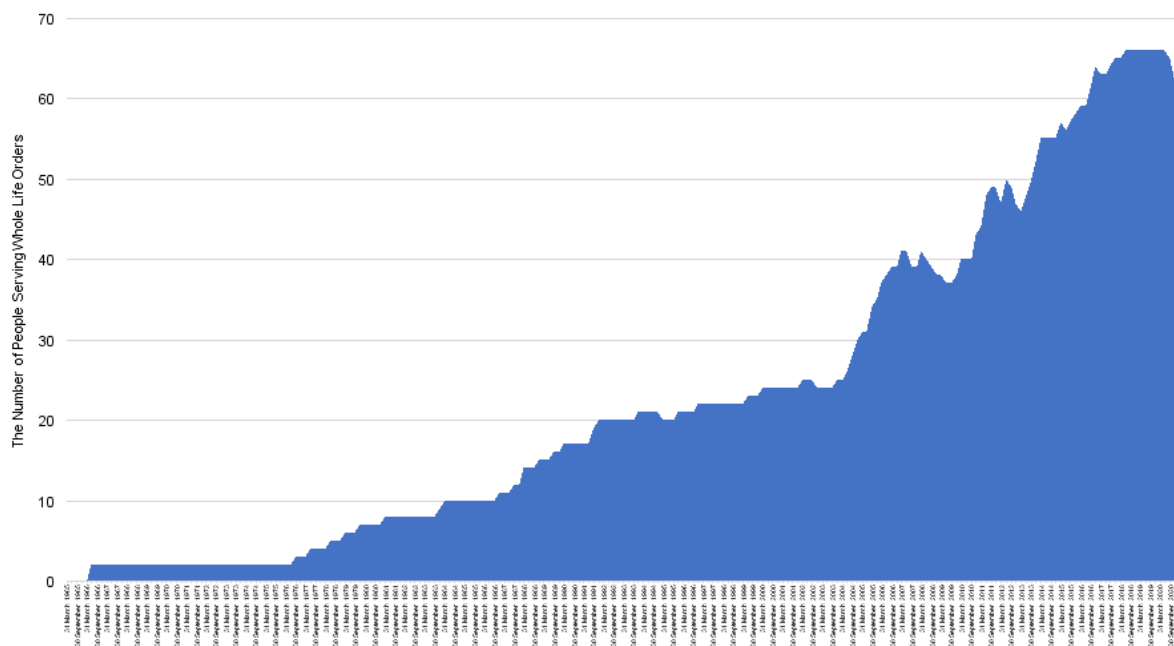
It was at this time – and coinciding with the politicisation of law and order (Garland, 1996; 2002; 2018; Pratt, 2006) – that the use of whole life tariffs began to increase, albeit slowly. Between 1st January 1977 and 31st December 1979, four people received sentences which were substituted with whole life tariffs at a later, unconfirmed date (see Figure 1). This trend continued throughout the 1980s; a decade during which at least one whole life tariff was imposed almost every year (see Figure 1). This pattern remained much the same throughout the 1990s with another eight people receiving whole life tariffs over the course of the decade, and the whole life sentence prisoner population steadily increasing (see Figure 1).

The most noteworthy increase in the use of whole life sentences has, however, occurred more recently. Between 1st September 2003 and 31st March 2022, 76 people received a WLO within England and Wales: 75% of all (107) WLOs have been imposed within this 18.5 year period (see Figure 1), bringing the total number of people to have received a WLO to 103.



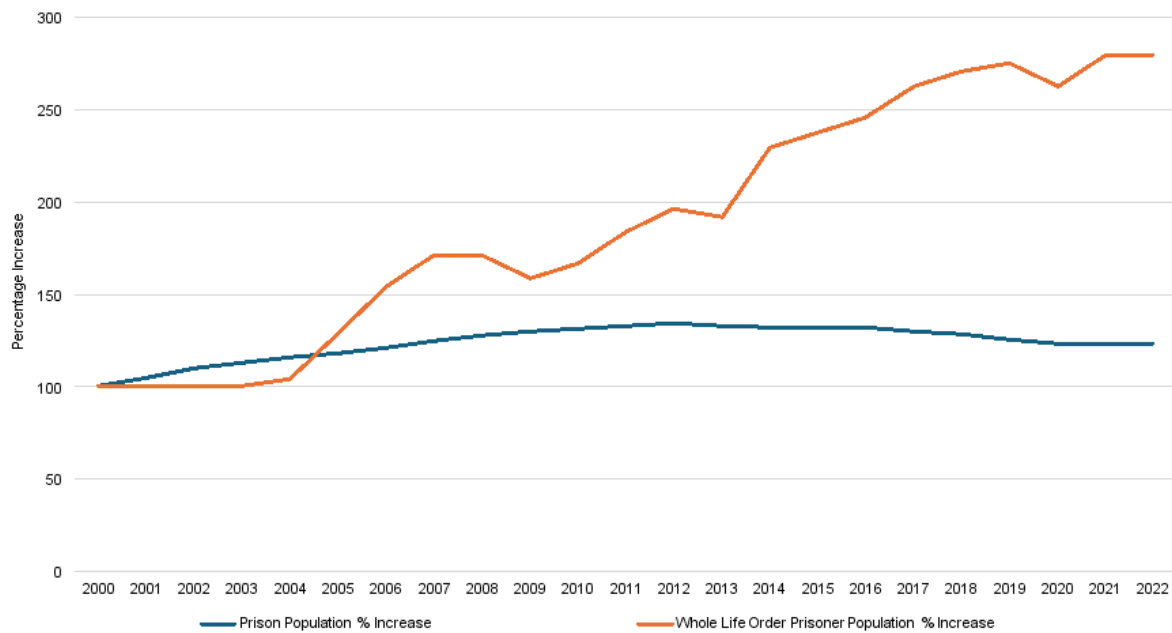
The Whole Life Order Prisoner Population

The WLO prisoner population within England and Wales has increased considerably in conjunction with the number of imposed WLOs (see Figure 2). On 31st March 2022, 67 people were serving WLOs in England and Wales (Ministry of Justice, 2022b)). This may, of course, simply be the product of people not being released but we would contend that it is the effect of a cumulation of increasing numbers of people being given WLOs from 2004 onwards. Furthermore, this demonstrates that in the vast majority of cases, WLOs are exactly that; only a small number of people within England and Wales have successfully appealed against the imposition of their whole life sentence and the increasing population is reflective of that fact.



When the increase of the WLO prisoner population is compared directly against the increase in the wider prison population, the increasing number of WLO prisoners within England and Wales becomes more apparent. The prison population within England and Wales increased from approximately 31,000 people in 1966 (Sturge, 2023) to 64,602 people in 2000 (Prison Studies, n.d) resulting in an increase of 33,602 people, or 108% within a 34-year period. In contrast, the WLO prisoner population within England and Wales increased from 2 people in 1966 (Ministry of Justice, 2020; 2021a; 2021b; 2021c; 2021d) to 24 people as at 31st March 2000, resulting in an increase of 22 people or 1,100% within the same 34 year period.

Of course, this may be the product of starting from a very small number (i.e. 0). Thus, if we look to the number of people serving WLOs in recent years, and specifically after the implementation of the Criminal Justice Act 2003, we can see that when using the year 2000 as a base year the relative change in WLO prisoners significantly outgrows that of the wider prison population (Figure 3). Between 2000 and 2022 the prison population rose from 64,602 in 2000 to 79,744 in 2022; an increase of 23% in 22 years (Ministry of Justice, 2022c; Prison Studies, n.d). The WLO prisoner population, meanwhile, rose by 179% from 24 in 2000 to 67 in 2022 (Ministry of Justice, 2020; 2021a; 2021b; 2021c; 2021d).



Widening the Net of Whole Life Orders

The variety of offences for which WLOs have been imposed has progressively widened in what we describe as the widening of the net of WLOs. WLOs were originally imposed solely against people who had been convicted of murdering multiple children (Ian Brady and Myra Hindley) (*R v Secretary of State for the Home Department, ex parte Hindley* [2000]). However, our analysis shows that the range of offences for which WLOs have been received has progressively broadened to include:

multiple murders (1976),

multiple sexually aggravated murders (1988),

sexually aggravated murder of a child (1988),

murder, for those with a prior conviction of murder, manslaughter and/or attempted murder (1991),

murder of a child (2004),

sexual offences² (2004),

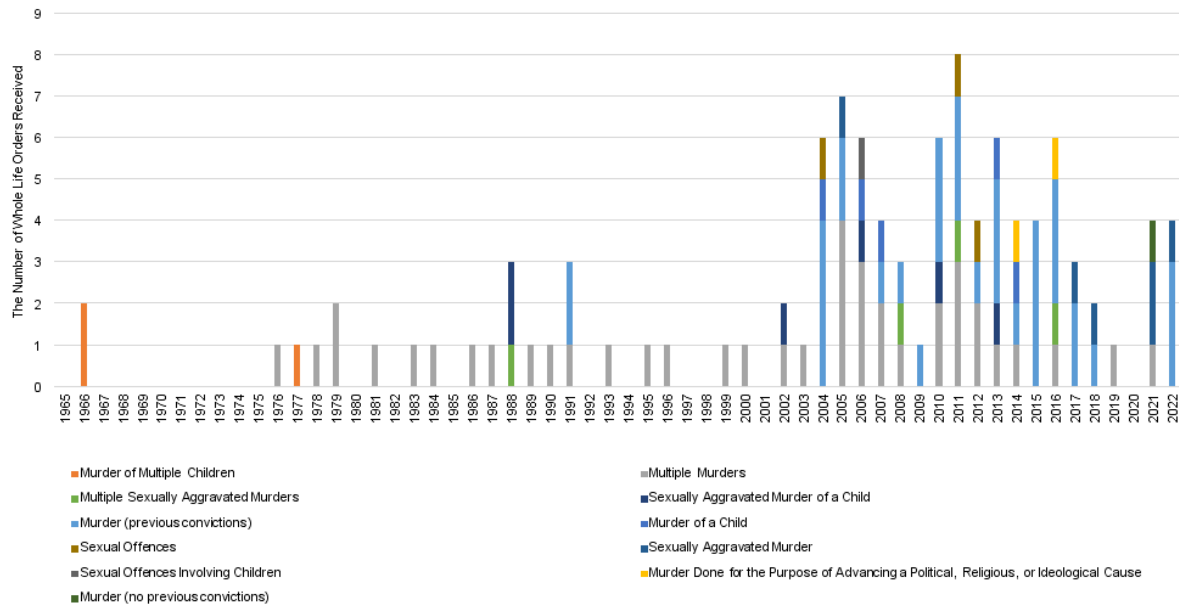
sexually aggravated murder (2005),

sexual offences involving children (2006),

² In their own right (i.e., not in the context of murder(s)).

murder done for the purpose of advancing a political, religious, or ideological (terrorist) cause (2014), and

murder, for those with no previous convictions (2021).



When the variety of crimes for which a whole life sentence could be received within England and Wales was broadened to include murder, it was initially only ever imposed against people who had a previous conviction for murder, manslaughter, and/or attempted murder. Those who received a whole life sentence for murder without having a previous conviction for murder, manslaughter, and/or attempted murder (or indeed any prior convictions at all) were all able to successfully appeal against the imposition of their whole life sentence and instead received sentences with set minimum terms.

Likewise, the three people who received whole life sentences and WLOs for sexual offences (including those involving children) had all successfully appealed against the imposition of their sentences as at 31st March 2022 (*R v Andrews (Donald Joseph)* [2015]; *Regina v Oakes*; *Regina v Restivo*; *Regina v Roberts*; *Regina v Simmons*; *Regina v Stapleton* [2012]). This changed later that year when Damien Bendall received an unprecedented five WLOs, one of which was for the rape of an 11 year old girl (Sky News, 2022). The sentencing remarks for this case are restricted and so cannot be directly quoted, but it is worth noting that the maximum penalty for rape is life imprisonment, and the judge stated that the circumstances of the offence were – in this instance – exceptional (presumably, because the sexual offence occurred within the context of several brutal murders) and therefore determined that a WLO was necessary to constitute ‘just punishment’ (Sky News, 2022, n.p).

Bendall’s case was the first of three to occur within a nine-month period which further broadened the variety of offences for which a WLO had been received within England and Wales. Seven months after Bendall’s sentencing, Louis De Zoysa became the first person to receive a WLO for the murder of a police officer in the course of his duty (*R v De Zoysa* [2023]) as outlined within Schedule 21, Paragraph 3(2)(a) of the Sentencing Act 2020, and – just three weeks later – Lucy

Letby became the first person to receive WLOs for both the premeditated murder of a child (under Section 125 of the Police, Crime, Sentencing and Courts Act 2022) and the premeditated attempted murder of a child, with the trial judge determining that her actions had bordered on 'sadism' (*R v Letby* [2023] para.20) and warranted a WLO on 'each and every' count (*R v Letby* [2023], para.21).

Multiple WLOs

A final theme we can identify in our analysis is a move towards imposing multiple WLOs on one person. In 2011, Levi Bellfield became the first person to receive two WLOs (*R v Bellfield (Levi)* (2012)). Bellfield received one WLO in 2008 (when he was convicted of the murders of Marsha McDonnell and Amélie Delagrangé, as well as the attempted murder of Kate Sheedy), and another in 2011 for the murder of Milly Dowler (*R v Bellfield (Levi)* (2012)). In 2012, Stephen Farrow received two WLOs for double murder (Jenkins and PA Media, 2023). In 2021, David Fuller received two WLOs at the same sentencing, although they were imposed for offences which had been committed in 1987 (*R v Fuller* [2022]). In 2022, Hakeem Kigundu received two WLOs (*R v Kigundu* [2022]), and, just two months later, Bendall received five WLOs (Sky News, 2022). This was quickly surpassed when in 2023, Letby received an unprecedented fourteen WLOs having been convicted of murdering seven babies and attempting to murder six more (*R v Letby* [2023]). In 2024, Letby received a fifteenth WLO for the attempted murder of another baby (*R v Letby* [2024]). This pattern of numerous WLOs continued into 2025, when Kyle Clifford received three WLOs for triple murder. It may be that this move towards imposing multiple WLOs on individual people is simply a reflection of more people committing multiple murders and serious violent and sexual offences. On the other hand, we might understand these changes as attempts to appeal to concerns amongst the public about dangerous people and the risks they pose. It may also be that multiple WLOs are being used to ensure that WLO prisoners can never be released; even if a person was able to successfully appeal against the imposition of one (or even two) of their WLOs, they would be highly unlikely to successfully appeal against so many.

Indeed, our analysis suggests that successful appeals of WLOs are very rare indeed. Of the 103 people who have received a whole life sentence or WLO (Ministry of Justice, 2020; 2021a; 2021b; 2021c; 2021d; 2021e; 2021f; 2022a; 2022b), only 15 people have successfully appealed (Ministry of Justice, 2021c). There are sets of two circumstances within which whole life sentences and WLOs have been revoked; three people (whose whole life sentences were set by the Secretary of State) had their whole life sentences reset by The High Court as fixed minimum terms, pursuant to Schedule 22 of the Criminal Justice Act 2003, whilst a further 12 people (whose whole life sentences were set by the judiciary) had their whole life sentences quashed by The Court of Appeal (Criminal Division) and substituted with set minimum terms (Ministry of Justice, 2021c).

Discussion

It is likely that the number of WLO prisoners within England and Wales will continue to rise, and perhaps more quickly than ever before. This will partly be the natural product of the accumulation of people who have been sentenced to a WLO living in prison until they die. However, the Police, Crime, Sentencing and Courts Act 2022 broadened the variety of offences for which a WLO must be imposed to include the premeditated murder of a child (for which a WLO is now the starting point (under s.125)), as well as the age groups that can receive a WLO (under s.126) and this is likely to increase the number of people being given WLOs through legislation. Our analysis also points to a more recent trend of imposing WLOs for offences that are not contained within the sentencing criteria (Sky News, 2022; *R v Lucy Letby* [2023]; *R v Kyle Clifford* [2025]) which will contribute further to increasing numbers of people serving WLOs. One explanation for this increase could be that it reflects more violence in society, but this line of argument falls down

when we consider the fact that the homicide rate in England and Wales has remained relatively stable over the same period (Office for National Statistics, n.d.) and the number of homicide incidents (which counts numbers of homicide events rather than victims and so is not affected by mass fatality homicides such as terrorist attacks) has steadily decreased since the introduction of the Criminal Justice Act 2003 (Office for National Statistics, n.d., fig.2).

On the contrary, whilst homicides have decreased, the political rhetoric around violence in society and WLOs has ramped up in recent years, with former Prime Minister Rishi Sunak pledging to make WLOs mandatory for the ‘worst murderers’ such as those who commit murder of a sexual or sadistic nature (Rt Hon Rishi Sunak MP, 2023). This response was (whilst popular) purely political; it strove to appease genuine concerns amongst the public by appearing to propose a policy that should reduce the number of violent offenders in the community (Hammond, Thatcher and Fido, 2024). Our use of the word ‘appearing’ here is entirely intentional: the response itself was entirely unnecessary as Schedule 21, Paragraph 4 of the Criminal Justice Act 2003 specified that a WLO was the appropriate starting point for murder (if an offender was over the age of twenty-one (sch.21, para.4(1)(b))) if said murder involved sexual or sadistic conduct (sch.21, para.4(2)(a)(iii)). That said, the introduction of mandatory WLOs for such offences will shift the balance of power that exists between the Secretary of State and the judiciary by removing the element of judicial discretion.

England and Wales has witnessed a significant growth in the number of people being given WLOs. This gives rise to questions as to why this is. It seems to us that the growth of WLOs is the product of the dual forces of an increasingly punitive and risk-focused society. As noted above, WLOs serve the dual sentencing purposes of being both highly retributive and highly incapacitative. Indeed, it is possible that the increasing use of WLOs is a consequence of a judiciary which increasingly sentences based on risk and public protection. These changes that we observe here, then, may simply reflect changes to judicial culture and decision-making, although analysis of such changes are notoriously difficult to ascertain in the English and Welsh context (Cahill-O’Callaghan, 2023). Recent years have witnessed the emergence of a risk-based logic, within which risk and risk reduction are prioritised (Beck, 1992; Shearing and Johnston, 2005). This has ‘re-shaped the use of punishment as a regulatory mechanism’ (McAlinden, 2010, p.26), creating an emerging genre of preventative justice, which operates pre-emptively in the name of securing public safety (Zedner, 2007). Thus, society’s response to threats (such as crime) has become increasingly anticipatory, reactionary, and risk averse (Shearing and Johnston, 2005; McAlinden, 2006; 2010) and criminal sanctions and sentencing policies (such as WLOs) are becoming increasingly focused on preventing any possible manifestations of future risk (McAlinden, 2006; 2010; Zedner, 2007; Gilman, 2018). The Criminal Justice Act 2003 demonstrates a discernible shift towards sentencing on the basis of perceived risk especially with the introduction of various new dangerousness measures including WLOs and IPPs, both of which were designed to protect the public from so-called dangerous offenders (Bettinson and Dingwall, 2013).

The pattern of growth amongst the WLO prisoner population (and of course the prison population more broadly) is reflective of changes in the political climate and subsequent approaches to crime and criminal justice (and particularly sentencing policies). As has been documented elsewhere, the last four decades of penal policy in England and Wales can be characterised by a punitive turn (Savelsberg, 2018). Governments of the 1980s and 1990s collectively focused on creating an increasingly punitive sentencing framework (especially for crimes such as murder) which resulted in a progressively more precautionary approach to criminal justice, and ultimately resulted in the creation of whole life tariffs (and eventually WLOs). In this political context, it is unsurprising that not only has the WLO prisoner population grown, but that the harshest sanction available in contemporary society has grown considerably faster than the general prison

population, pointing to further evidence of society's increasingly punitive and risk averse approach to crime.

It is impossible to know what would have happened to the use of WLOs had the power to impose them remained with the Home Secretary, but our analysis clearly shows that their use has increased following the implementation of the Criminal Justice Act 2003, which transferred the power to impose such a sanction to the judiciary (under sch.21, para.4)). We might therefore question whether (or to what extent) the Criminal Justice Act 2003 may have caused or influenced the contemporary surge in the use of WLOs within England and Wales. There is an interesting parallel here with the indeterminate sentence of Imprisonment for Public Protection (IPP), which was also introduced in the Criminal Justice Act 2003 and which similarly emphasises the sentencing aims of public protection and retribution in its formulation. It is widely recognised that the IPP sentence in England and Wales has become the greatest stain on the criminal justice system, and thousands of prisoners are still struggling to be released having been sentenced under a regime that was abolished in 2012 (Legal Aid, Sentencing and Punishment of Offenders Act 2012). The IPP sentencing framework resulted in so many people being sentenced to indeterminate sentences because the judiciary were unable to oppose the pre-emptive turn in penal policymaking and they had their discretion severely curtailed by the legislation (Annison, 2014; 2018). Indeed, one of the ways in which the government sought to resolve some of the problems created by the IPP was – in 2008 – to give the judiciary more discretion prior to the sentence's eventual abolition in 2012. If the Policing and Sentencing Act mentioned above comes into force further limiting judicial discretion, should we be expecting yet more WLOs in the years to come?

Whilst it is impossible to ascertain whether (or the degree to which) the judiciary are influenced by external pressures, one thing is clear; the shift in penal ideals and philosophy away from penal-welfarism and towards penal populism and populist punitiveness led to the creation of WLOs and a concomitant surge in their use. The findings presented here, then, add weight to debates around the punitive turn and analysis of penal policymaking which points to the prominence of penal populism in the development of penal policy. The professional groups who once dominated policymaking processes have become disenfranchised, and contemporary legislature is continually being constructed in ways which give preference to the furtherance of political agendas (Bottoms, 1995; Garland, 2002; Pratt, 2006). The politicisation of crime and criminal justice has led to radicalised sentencing policies and procedures. Throughout the past thirty-or-so years, sentencing policies and procedures have altered incessantly and significantly in accordance with the political and penal climate (Hough, Jacobson and Millie, 2003), which culminated in the enactment of the Criminal Justice Act 2003. The Criminal Justice Act 2003 endeavoured to 'provide a sentencing framework which [was] clearer' (Explanatory Notes, Summary and Background, para.6) than the pre-existing sentencing framework, with the purpose of establishing consistent sentencing particularly for serious and/or persistent offenders. Thus, increased sentences were made available (and in some cases mandatory (Criminal Justice Act 2003, pt.12)) which ultimately resulted in the creation of a more punitive sentencing framework, by which the judiciary is *obligated* to be more risk averse and 'tougher' in their decisions (Hough, Jacobson and Millie, 2003). Thus, sentencing has become tougher in all respects; the judiciary has become increasingly likely to pass custodial (particularly indeterminate and extended) sentences and, when they do, sentences are lengthier. Thus, 'more and more offenders are getting mired deeper and deeper within the criminal justice system for doing less and less' (Morgan, 2003, p.14). It is this nexus which we suggest provides the most compelling explanation for the proliferation of WLOs documented in this article.

Conclusion

This article has presented analysis of the use of WLOs, the harshest penalty available to the courts in England and Wales. Through analysis of what we believe to be the most accurate dataset of the use of WLOs and the prisoners serving them, we identify an initial gradual increase in the use of the sentence followed by – after the implementation of the Criminal Justice Act 2003 – a sharp rise in the numbers of people being sentenced to a WLO and the number of people in prison serving WLOs. Furthermore, we have been able to identify a widening of the net in terms of the offences which have attracted WLOs and the numbers of orders being given to individuals. We would suggest that there is a need for a conversation as to whether WLOs should form part of the penal apparatus in England and Wales. WLOs are hugely burdensome on the prison service, and society more broadly; imprisoning people for their whole lives is incredibly costly and puts significant strain on an already overwhelmed and under-funded system. Furthermore, research consistently demonstrates that whole life sentences do nothing to address future offending; whilst whole life sentences ensure that a person remains incarcerated for the remainder of their natural life (and by consequence, is no longer a threat to the general public), there is no evidence to suggest that whole life sentences deter serious, or prolific offending (Leigey, 2015). Thus, society remains unchanged as the sanction fails to address the wider issue of crime, and a society which allows such serious crimes to occur (Leigey, 2015). Furthermore, WLOs do little in the way of rehabilitation and so rarely address an individual's behaviour. This article has likewise demonstrated a noticeable shift in the way in which WLOs are being used; WLOs are being imposed more frequently and – in some cases – for offences that are not identified within legislation or sentencing guidelines (*R v Couzens* [2021]; *R v Letby* [2023]). Moreover, since our initial data collection and analysis, at least two more people have had multiple WLOs imposed on them suggesting the use of WLOs is still on the rise.

This growth in the use of WLOs not only means that more people are condemned to experience the harms caused by them, but it also puts further strain on the prison system. Thus, it is necessary to consider whether WLOs should continue to be seen as a solution to the problem of crime. If it is decided that WLOs should continue to be used as a solution to the 'problem of crime', then the findings presented suggest that work is needed around understanding and – potentially – constraining further growth, perhaps by ensuring that they are only imposed when legislation allows, as outlined by the Sentencing Act 2020, or by introducing the possibility of review and release by means of a penological review (as was suggested in *Vinter*), thus reverting WLOs back to their original state (see *R v Secretary of State for the Home Department, ex parte Hindley* [1997]). This study found that the Ministry of Justice holds minimal data on the WLO prisoner population, and a central implication from this article is for the need for more accurate record keeping to enable a fuller understanding of how the sentence is being used. We would also point out that whilst *Hutchinson v The United Kingdom* [2017] ruled that WLO prisoners should be eligible for review, the fact that Ministry of Justice does not keep accurate records of the numbers of people serving such sentences, and that the Secretary of State's discretion to release whole life order prisoners on compassionate grounds remains unused suggests that the procedures as described in *Hutchinson* are not being followed. Ultimately, this article demonstrates a real need for more research on the impact of the sentence on prisoners, greater scrutiny of the consequences of mandatory WLOs, and careful consideration of the role of judicial discretion all underpinned by the recognition that WLOs give the state the power to impose harm on its citizens in all but the most fatal way.

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