



## **BRIEFING**

### **“Transforming legal aid: delivering a more credible and efficient system”**

This briefing by the Association of Prison Lawyers (“APL”) focuses upon the impact upon the provision of legal services to prisoners of the proposals in the Ministry of Justice consultation paper, “*Transforming legal aid: delivering a more credible and efficient system*”.

The Association of Prison Lawyers (APL) was formed by a group of specialist prison lawyers in 2008 to represent the interests and views of practitioners in prison law. It currently represents the interests of around 360 members who specialize in representing prisoners. APL members have extensive experience of representing prisoners in Courts, Parole Board and disciplinary proceedings, making representations to prisons and other agencies working with prisoners while they are in custody and during their transition into the community. APL members have played a central part in the development of public law in the prison context over the past three decades. Some of our members have been representing prisoners for well over twenty years.

APL exists to enable some of the most vulnerable members of our society to be represented by lawyers with appropriate levels of relevant expertise. Representing prisoners fairly and fearlessly not only ensures that vulnerable prisoners are not treated unfairly and unlawfully, but it also leads to the development of better protection for all members of society.

APL has worked closely with the Legal Services Commission (now the Legal Aid Agency), the Parole Board and other stake-holders in the area of prison law and penal policy to reduce the costs of legal aid in prison law and develop good working practices.

### ***The relevant proposals***

There are four proposals that in combination are almost certain to destroy the provision of good quality legal aid prison law work. They are:

- (i) Prison law will be removed for everything other than parole reviews and disciplinary hearings before a magistrate**
- (ii) Prison law will only be delivered by those who ‘win’ a crime contract**
- (iii) There will be a 17.5% reduction in the rates payable for prison law work.**
- (iv) Prisoners will find it extremely difficult to find a lawyer bring judicial reviews on their behalf in meritorious cases**

APL believes the proposal to effectively remove legal aid for all prison law issues other than parole hearings and disciplinary hearings dealt with by magistrates is not justified and will have adverse consequences which are wholly disproportionate to the stated aims within the consultation paper. The rationale behind the proposal is that the internal prison complaints system is capable of dealing with all matters without the need for any legal involvement. **There is no evidence to support the use of the complaints system as a viable alternative to legal advice and representation and there is significant evidence to suggest that it is not.**

Legal aid is already restricted to matters that meet a stringent ‘sufficient benefit’ test and applications to the Legal Aid Agency for permission to take on cases about prisoners’ treatment are so carefully scrutinised that only **11** such cases have been granted since July 2010. However, the changes will mean that funding will no longer be available in any circumstances for such important matters as the separation of mothers and babies, prisoners being held in solitary confinement and access to rehabilitative programmes. No exception is to be made for children or vulnerable groups.

APL believes that the changes to ‘scope’ (the kinds of cases for which legal aid will be granted) will result in unsafe prisons and unsafe communities where prisoners are released without having done the courses they need to do or with a suitable home to go to. In order to illustrate the breadth and significance of the types of assistance which will be excluded if the proposals in the paper are implemented, we appended a wide range of

Case Studies to our detailed Response to the consultation. A selection of these are included in an E-book which is attached to this briefing.

It is also proposed that all prison law cases will have to be dealt with by firms awarded a new criminal contract under the new PCT 'mega-firm' proposals. APL believes **this will end years of specialism and expertise amongst providers**, and will prevent charitable organisations such as the Prisoners' Advice Service and the Howard League from being able to take on cases.

APL is concerned that proposed changes to judicial review arrangements will mean that it will become **virtually impossible for prisoners to access the Courts when they are the victims of serious abuse by the State and all other attempts to deal with the problem have failed**.

The Government's figures on the costs of prison legal aid are wholly misleading. In the last 2 years, the cost of legal aid in this area has actually fallen<sup>1</sup>, and the overall increase in the budget in the last 10 years is entirely attributable to the massive increase in the prison population and the explosion of people serving sentences of imprisonment for public protection (IPPs).<sup>2</sup> The proposed savings are minimal, if not negligible when compared to the cost of further detention as prisoners are warehoused because the state is failing to progress them.

APL is concerned that the **proposals will actually increase the overall cost to the public purse and will lead to a decrease in public safety**. Many more complaints will be directed to the Prisons Ombudsman, where each investigation costs 5 times the fixed legal aid fee<sup>3</sup> and many prisoners will remain in custody for longer than is necessary at enormous expense. **Important rehabilitative steps that protect the public and reduce reoffending will no longer be taken**.

APL is also concerned that the **lack of effective redress for prisoners may well lead to increased problems of order and discipline in prisons**.

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<sup>1</sup> The prison legal aid spend fell by £3m (11.5%) in 2011/2012

<sup>2</sup> Over the period 2001-2011, the prison population increased by 25% and the number of people serving indeterminate or life sentences increased by 300%.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/163144/story-prison-population.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/163144/story-prison-population.pdf.pdf)

<sup>3</sup> The legal aid fixed fee is £220, the average cost of an investigation by the Ombudsman is approximately £1,000.

## Costs and Savings

APL is recognised as the representative body for prison lawyers and meets regularly with the Parole Board, Legal Aid Agency and officials from NOMS/Ministry of Justice. APL has, since its inception, actively pursued a policy of engagement with stakeholders within the penal system and with the Legal Aid Agency. Three examples of the APL's work underline this approach:

- a. APL has worked closely with the Parole Board, NOMS and Probation Service to improve good practice within parole proceedings and to reduce the number of avoidable deferrals of hearings which are extremely costly and disruptive and impact adversely on everyone involved in the process.
- b. APL has collaborated with the Parole Board, NOMS, Probation Service and expert witnesses in a number of training events.
- c. APL has met regularly with the Legal Services Commission and latterly the Legal Aid Agency to discuss funding issues and to seek to develop good practice.

APL's response to the Ministry of Justice's 2009 Consultation, 'Legal Aid: Refocusing on Priority Cases' advocated the introduction of a quality supervisor standard and the development of a good practice guide (which should be available to prisoners) to set out what the funding authority expected practitioners to do and not to do when carrying out prison law work. This response noted:

*"The Commission must take care not to presume that the practitioners who currently carry out this difficult area of work will be able to continue to do so whatever the funding system that is in operation."*

Cuts to the scope and pay rates for prison law work were imposed in 2010. Prior to that they had remained static (hence dropped progressively in real terms) over a period of 15 years.

Between 2010 and 2013, APL has encouraged the LSC to develop practice guidance for practitioners to supplement the 2010 contract. Such guidance was finally published by the Legal Aid Agency in April of this year. The purpose of this guidance is obvious. It will

ensure that prison law is provided by expert solicitors and counsel, who work together to ensure the efficiency of the prison law system. The primary focus for legal representatives is to work effectively with prisoners and the agencies of the state towards rehabilitation so that prisoners can be released into their communities without risking the protection of the public. This, in turn, reduces public expenditure on the costs of detention.

Within a matter of days of the publication of this funding guidance, the Ministry of Justice issued the consultation document. This effectively proposes that prison law should return to being an adjunct of the crime contract, that specialism should be discarded and that over four years' work of engagement should be tossed away. Regrettably, the consultation document has been produced without any analysis of the likely savings to the public purse brought about by (a) the introduction of this funding guidance, (b) the reforms following the coming into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, (c) the policy of engagement between the APL and other stakeholders.

APL believes very strongly that the proposed paycut is not viable and will result in a terminal decline in the expert supplier base. This will not provide the savings which the government wants to achieve. Further cuts will make it impossible to provide a good enough service that will enable prisoners to rehabilitate and resettle effectively into the community. There are extensive hidden costs in prison law work which make it inherently expensive due to the bureaucracy of the prison system and the fact that it is time consuming to get instructions from detained clients. A significant proportion of prison cases are complex and require careful investigation. The retention of expertise protects both quality and efficiency.

APL is committed to working collaboratively if the Ministry of Justice is willing to do likewise. APL would welcome the opportunity to continue to work with other stakeholders but this can only work with a mutual commitment to quality, transparency and justice.

**The Association of Prison Lawyers**

**26 June 2013**