ANNEX A – CASE STUDIES

Introduction

The following Case Studies have been provided by APL members. They have been anonymised but they are all based upon actual cases and are verifiable. They represent a comparatively small sample of a very extensive dossier of similar cases. They are grouped into different categories according to the type of case or funding scheme.

Associated Legal Help and Judicial Review – Mr I

1. Mr I was serving a determinate sentence. His 5 year old son was diagnosed with a brain tumour and given a very short life expectancy. The client contacted us seeking advice in relation to his position. Our client and the child's mother wanted to him have as much contact with his son as possible. We were able to advise the client under the CDS1&2 Advice and Assistance Scheme. We made an application to the prison for some form of release / temporary release to facilitate contact. The prison granted an escorted visit, however, indicated no further visits would be granted.Under the current proposals these issues will be out of scope. As the issue arose from a prison law matter we were able to open an associated Legal Help file in order to challenge the decision not to grant any further home leave. We sent a Letter Before Claim and subsequently issued Judicial Review Proceedings in the High Court for further escorted visits.

   Under the current proposals we would not have been able to open an associated Legal Help file as the matter would not have arisen from a prison law matter that was in scope. We would have only been able to deal with this case if we had enough Public Law Matter Starts left, of which we are awarded 15 per year.

The High Court initially refused permission and the case was listed for a renewal hearing to consider permission and also interim relief. Under the proposals the costs associated with this hearing would have been at risk.We were ultimately successful after a number of contested hearings and our client was granted a schedule of further visits with his son prior to his release from prison.

The client was released on licence with similar restrictions on contact with his son. This was despite his deteriorating health and very short life expectancy. The whole family was anxious for our client to spend as much time as possible with his son.

We were able to assist the client to challenge his licence conditions under the CDS Advice and Assistance Scheme, however, this would be out of scope under the proposals. We were thereafter able to consider litigation under the Legal Help Scheme as the matter arose from a prison law matter. Again, this would not be possible under the proposals as the initial matter would be out of scope.

Again we were required to instigate Judicial Review Proceedings. Due to the urgent nature of the case the initial hearing was granted the day after the application was lodged. This was before permission was granted and under the proposals the substantial costs of this hearing would be at risk.

Numerous urgent judicial review hearings were necessary, where the barrister pushed for them to be granted proper contact. At each hearing the authorities tried to restrict contact. Ultimately the father and son were granted the contact they wanted by the High Court: they were granted more visits and then allowed to see each other every day – they were together on the day the son passed away.

Under the proposed funding cuts this family would not have had such access to a prison law solicitor. In addition, cuts to family law funding mean they would not have had access to a family law solicitor either. They would have been powerless in the face of the unlawful interference by the authorities in their lives. The mother told everyone that she wanted her son to be able to see his father as much as possible; that she needed the father to be there to support her and the family. Nobody listened to her, and nobody would have listened to her if the family had not had access to a solicitor. The government’s proposals threaten all of this.

2. Adjudications

Mr A

A was charged with fighting contrary to the Prison Rules. He pleaded not guilty. A accepted that he had been engaged in a struggle with another prisoner but maintained that he was acting in self-defence following an assault by his co-defendant. Witnesses were able to corroborate A's account but they had since been transferred to another prison. A's co-defendant was granted legal representation at the hearing following successful application of the Tarrant rules by his lawyers, by reason of his vulnerable mental state. Submissions to the prison on the matter of the inequality of arms between the parties were submitted on three separate occasions before our client was eventually granted legal representation at the hearing. A's legal representative uncovered procedural irregularities in the manner in which evidence was elicited at the hearing which would have rendered any guilty finding unsafe. He successfully argued that it was no longer in the interests of natural justice to continue with the hearing and the charges against both parties were dismissed.

Mr O

O was found guilty at adjudication for using *threatening, abusive or insulting words or behaviour*, contrary to the Prison Rules. O pleaded not guilty on the grounds that neither his behaviour nor the words he used could have been thus perceived by anyone present. O maintained that he was merely expressing reasonable and proportionate concern for a fellow prisoner who had been attacked and was injured and remained without medical assistance.

The witness statements obtained by us in preparation for the hearing gave full credence to O's account but were nonetheless ignored by the Governor at the hearing. The adjudicator similarly ignored contradictions in the prosecution witness' oral and written evidence. CCTV footage that we had requested be preserved was destroyed by the prison. Our client was found guilty and we appealed the decision on his behalf. The record of the hearing proved to be

cursory and incomplete reflecting the perfunctory nature of the adjudicator's enquiries. A substantial body of correspondence to the prison generated by us in preparing our client's case provided the central tenet of the appeal. Without this body of evidence attesting to the complexities of the case it would not have been possible for the caseworker to properly undertake a review. In this instance the adjudicator had failed in their duty to properly investigate the charge and the guilty finding was found to be unlawful.

Mr S

S was placed on report for an offence of assault. On taking his further instructions it was clear that S had been subject to a racially motivated attack from the prisoner he was accused of assaulting. The prisoner in question had a history of racially motivated attacks on other prisoners and directly following the incident was transferred to another prison. Our submissions to the prison highlighted the unfairness of proceeding with the adjudication in a case where our client's plea was that of self-defence and the assailant was not available as a witness for the purposes of cross examination. On this basis we asked that the prison dismiss the proceedings, which they eventually did.

Mr C

C is serving a sentence of imprisonment for public protection and is over tariff. He had an oral hearing listed at HMP Moorlands in April. He had support for a transfer to open conditions.

He was located at HMP Lindholme when in January he was said to have been on Healthcare and to have been involved in an incident with officers where he was violent and abusive to them. Following the incident he was moved to the segregation unit. He was placed on a governor's adjudication which was adjourned for legal advice. He sent a letter to his solicitor but the letter was never received.

He was then moved to HMP Moorlands where the adjudication was reconvened and despite a plea of "Not Guilty" he was found guilty of disobeying a lawful order although the evidence presented suggested he had been violent to staff. (He was

refused a progressive move at his last Parole Board review because he had assaulted a prison officer weeks before it was to take place.) The Governor did not hear any evidence from the staff at HMP Moorlands and simply accepted the Notice of Report written by the reporting officer.

This finding of guilt was so close to the client's oral Parole Board hearing as to have a significant impact on his progression. The fact that he disputed the charge would not have carried any weight with the panel. The recent show of violence could have meant a progressive move was refused by the Parole Board. We were able to draft written representations to the Prisoner Casework Unit to appeal the finding of guilt and it was quashed such that no weight could be placed on it. Without our intervention the finding of guilt would have remained on the record.

The internal system completely failed because 1.) The letter requesting solicitor's assistance never arrived. 2.) The Governor in the new establishment completely ignored the rules of procedure and despite hearing no live evidence still found client guilty 3.) Without the solicitor's intervention the finding of guilt would have prevented C progressing.

Mr P

P is serving a discretionary life sentence. He has mental health issues which have in the past resulted in very serious self harming behaviour. P was charged with being abusive towards an officer. He always maintained that he had not said the words he was alleged to have said. The Adjudicating Governor found him guilty and placed him in the Segregation Unit as a punishment. P has a history of self harming when his mental health deteriorates and he is particularly susceptible to this when anxious.

We submitted an emergency appeal to the Ministry of Justice raising concerns that this decision to place him in the Segregation Unit had been made without healthcare doing an assessment of him. We also raised our concerns that the Adjudicating Governor had found P guilty simply on the testimony of his officer when it was one word against another and he had given no reasons for preferring the evidence of his officer other than saying 'I will always believe my officer in this

situation'. The Ministry of Justice overturned the finding of guilt and did expressly state that no healthcare assessment had taken place, contrary to the relevant guidance in the Discipline Manual.

Mr Q

PAS represented a determinate sentenced prisoner who was adjudicated on 2 charges of unauthorised items. He was close to his categorisation review that would consider his suitability for open conditions. As a result we were able to deal with the adjudications on the basis of the sufficient benefit test as currently applied. Both charges were dismissed after legal submissions around both procedure, legitimate expectation, and whether the charge had been properly made out. The client was progressed to Category D shortly thereafter, the OMU governor making it clear to him that had these charges been proved this would have meant a knockback in terms of progress.

3. MOTHER AND BABY CASES

Case 1

We represented a young woman, a Moroccan national who, prior to her offence had been working as a nursery assistant for four years. At the time of her offence, (which she continues to deny), she was pregnant. At the time of her sentence hearing, her baby son was 9 months old. She was his sole carer, had never left him and was still breastfeeding when she was sentenced to a 12 month custodial sentence and thereby immediately separated from her son.

She had never been in trouble before and this was her first time in prison. She didn't speak or write English very well, was isolated and with no idea how prison worked, was very vulnerable. She was naturally completely grief stricken and traumatised by being separated from her baby and on her first few nights in custody, was screaming for him. Instead of being given support, she was placed on report for threatening behaviour and placed into segregation for the night. She was subsequently found guilty at her adjudication hearing, despite requesting legal representation.

She was not aware that she could make an application to be transferred to a mother and baby unit, so that she could be reunited with her baby, who was being looked after by an elderly Aunt who was finding it difficult to cope with such a young child.

We advised her that she was entitled to apply for transfer to a mother and baby unit. Further to liaising urgently with the prison, the Council and expert social workers, a positive recommendation was made to the Board but rejected by the Governor on the basis of her reported adverse custodial behaviour, despite the unequivocal medical evidence warning of the detrimental impact that such separation would have on both our client and her baby.

She had not been entitled to representation before the Board and had found it very difficult to understand the proceedings and advocate effectively for herself, given the highly emotive issues that she was dealing with. When her application was rejected, she became very depressed, anxious and unwell.

We assisted her with her appeal, which involved endless liaison with the prison service to obtain highly relevant disclosure of security information and other significant documentation, none of which our client would have been able to obtain without the assistance of a lawyer. Detailed scrutiny of these reports showed that in fact all the adverse reports about her behaviour that had been relied on to reject her application to a mother and baby unit, could be explained as being a direct consequence of the highly stressful and traumatic circumstances of being in prison for the first time and being separated from her baby. There were also positive behavioural reports which the Governor had ignored.

Her appeal was successful and she was transferred to a mother and baby unit, where she was reunited with her baby and where she was reported as being a calming and positive presence.

Under the government's proposals, our client would be expected to have achieved this herself, using the complaints procedures, without any assistance or support. Yet she spoke little English, could write even less, and had no idea of the existence of a mother and baby unit.

It is simply unconscionable that cases such as these will slip through the net because people in prison will no longer be able to access lawyers to advice them of what they are legally entitled to.

Case 2

We were contacted by prisoner after she had been refused a place on the Mother & Baby Unit (MBU). She said that social services were unsupportive of her application for a place on the MBU and that subsequently a decision had been made to refuse her a place on the basis of social services' position. The prisoner's baby was due in less than 10 days' time. We made urgent representations as to her suitability, and obtained permission from Social Services to examine her file. On considering the file there were un-substantiated allegations of behaviour which Social Services had reported as fact. We obtained statements from both family members and professionals involved in her care previously which cast significant doubt on these allegations, and after submitting these statements the prisoner was granted a place on the MBU. The cost of the case was some £700 to the LSC, and a baby was able to remain with her mother.

4. Treatment and/or Judicial Review

Case 1

Prisoner J is serving a life sentence. He was diagnosed with terminal bone cancer. He was due to undergo a stem cell transplant, however, indicated he was unwilling to go through with the operation under the proposed level of restraint, which entailed him being handcuffed to an officer at all times unless a medical need arose for handcuffs to be removed.

The client was concerned his immune system would be low and that being handcuffed may put his health in jeopardy. Furthermore, he felt humiliated by the proposals, which meant he would be handcuffed whilst going to the toilet and washing himself. He had previously been handcuffed at the hospital whilst having a Hickman Line inserted - he was naked on the bed and said he felt like "a piece of meat". Caselaw was clear that restraint in these circumstances was unlawful.

We liaised with the hospital and obtained medical evidence confirming the client would be very sick and weak during and after the transplant. We argued that the arrangements constituted inhuman and degrading treatment and were in breach of Article 3 of the ECHR.

We made representations to the prison regarding the proposals, however, they maintained their stance. A Letter Before Claim was sent and the prison responded confirming the intention to handcuff the client.

We obtained an Emergency Funding Certificate and lodged an application for Judicial Review at the High Court. On the deadline for the Acknowledgment of Service the Defendant agreed not to handcuff the client during his stay as an inpatient and we withdrew our application for Judicial Review on that basis. The client is currently undergoing treatment in hospital.

Under the proposals we could not claim for the work done from the Legal Aid Agency as permission was never granted. A great deal of work was completed in this case and this would have been at risk had the Defendant refused to pay our costs.
When determining whether to issue a funding certificate the Legal Aid Agency must be satisfied there are sufficient prospects of success. We would suggest this is already sufficient to weed out any unmeritorious claims.

Case 2

We were contacted by a prisoner who had severe physical disabilities. We instructed an occupational therapist, who visited the prison and carried out a needs assessment for activities of daily living on the prisoner and the facilities available to him at the prison. The report recommended that: (i) amendments be made to the bath or shower; (ii) a remote controlled call bell system be installed in the cell; (iii) an adjustable perching stool be installed in the cell, to allow him to use the sink; and (iv) that prison staff consider a degree of adaptation to provide independent wheelchair access to the Astroturf area. The prisoner had been unable to take a shower, and instead has to go to healthcare once a week to have a bath. However, there continued to be on-going delays with the provision of these facilities and the prisoner was struggling with inappropriate cell conditions 6 months after the needs assessment was carried out. We were able to refer the prison service to their obligations under the Disability

Discrimination Act 1995, which makes it unlawful to discriminate against disabled people. Paragraph 2.5 of PSO 2855, which specifies that unlawful discrimination occurs when a service provider (such as the Prison Service) fails to make alterations to a service or facility which makes it impossible or unreasonably difficult for a disabled person to use those services or facilities.

5. Segregation

We were contacted by a prisoner held in segregation after he had been placed on the escape list. He had a history of mental health problems and severe self-harming behaviour and had managed to hang himself in segregation before being resuscitated.

He had complained that he had not been subject to regular reviews, denied an escape threat and said such information had been supplied by another prisoner who disliked him. His complaints had been ignored. We obtained the security reports relevant to the prisoner after a freedom of information request threat, they disclosed the evidence against him was unsubstantiated and according to their own reports might be false. We also argued that the case law around segregation and article 3 made it clear that special consideration needed to be given to the continuation of segregation or solitary confinement where there were mental health issues or where the prisoner concerned was vulnerable.

After correspondence and the threat of legal action over the course of a week, the prisoner was removed from the escape list and segregation and returned to normal location. This would clearly not have been something that could have adequately and urgently resolved through the PPO even as an urgent complaint and the threat of the prisoner managing to take his own life was significant.

6. Sentence Progression

Access to Offending Behaviour (Rehabilitation) Programmes

Case 1

In 1987 Mr I was given a discretionary life sentence with a tariff of 10 years. He was significantly post tariff. No risk reduction work that was catered to his individual needs

had been provided. Mr I had engaged with interventions but as a result of his medical problems, in particular cognitive impairment caused by brain surgery in 2003, the offending behaviour group work was not effective at reducing his risk.

It was identified that Mr I should engage in highly specialised individual work with a clinical psychologist. We corresponded with the prison service about this, but we were told that there was no funding in place for this treatment.

Mr I was left to stagnate for a number of years. Mr I tried unsuccessfully to resolve this problem through the complaint process. By 2008 he had spent 20 years in custody and had 8 parole reviews at which the Parole Board reiterated that Mr I's risk had not been sufficiently reduced.

In August 2009, we sent a letter before claim which identified the evidence in support of the need for individualised work due to Mr I's particular circumstances and his disability.

Following the issue of a claim for judicial review, a neuropsychological report was undertaken, and one to one work provided to address primary areas of risk.

The case demonstrates that vulnerable people are deprived of the opportunity to progress through the prison system. Without the assistance of lawyers Mr I would continue to be detained with no hope of progress. The legal costs incurred were less than the costs of keeping Mr I in prison.

Case 2

Mr B is a mandatory life sentence prisoner who was given a 10 year tariff in 1996.

Mr B stagnated as his risks were not properly explored or identified. For many years there was a suggestion that Mr B suffered from autism but no steps were taken to confirm this. During an oral parole review in July 2010 (Mr B's fourth review), the panel noted that the autistic spectrum assessment had taken place but only on the initiative of his legal representative. The panel was also concerned that no other effort had been made to identify resources to help with the obvious learning disabilities and

commented that they were “dismayed that [his] progress through [his] sentence had been seriously delayed by this failure”.

The 2010 panel commented that further work in relation to his self management skills would need to be delivered via “1:1 work with a psychologist, as a suitably resourced establishment is necessary”. The panel also requested that input be provided for the next parole review by a consultant forensic learning disability psychiatrist from the North East would be necessary.

HMPS further delayed Mr B’s transfer, the additional learning disability psychiatric report required and the one to one work. Pre-action correspondence was sent making specific reference to the 2010 Parole Board decision. The one to one work was then provided and Mr B had a meaningful parole review and is now progressing well in open conditions.

Without this sentence matter funded via the CDS advice and assistance scheme, Mr B would not have been provided with appropriate assistance and would still be stagnating in closed conditions until yet another decision was issued by the Parole Board.

Case 3

Prisoner D was an IPP sentenced prisoner. He had learning difficulties. The Parole Board declined a progressive move due to outstanding risk reduction work. He remained at a B category prison for a lengthy period in order to complete work on alcohol misuse, however, this course was subsequently withdrawn due to a lack of resources.

We were able to assist the client under the CDS1&2 Advice and Assistance scheme. We made representations to the Prison Service regarding the need for further risk reduction work. We also liaised with various prisons running suitable interventions to determine availability.

The client was ultimately transferred to complete risk reduction work and later received a positive recommendation for a move to open conditions from the Parole

Board. This would not have been the case had he not addressed outstanding risk factors.

Given that the client had learning difficulties he was not able to deal with the situation himself. The clients' situation combined with his learning difficulties, his impulsivity and inability to solve problems meant he became increasingly frustrated with his situation. His behaviour deteriorated and this was seen as evidence of ongoing risk. Had this client not had access to a solicitor to help him progress then it is likely his behaviour would have continued to deteriorate, he would not have access to work to help him manage his behaviour and he would not have been successful at his parole review. This would have been counter-productive and the client would have ended up in a downwards spiral.

Our intervention saved costs in terms of continued detention in a Category B prison and also delays / other problems with the parole process associated with the lack of progress - the cost of ineffective parole reviews must be borne in mind. We were able to act as an advocate for this client, which helped to improve his behaviour.

This work would be out of scope under the proposals.

Case 4

P is serving a 14 year sentence. He has learning difficulties. He had completed core SOTP. It was suggested in his SARN report that 'given P's learning style, the usual intervention which would provide the opportunity to address his treatment needs are not available to him. It is felt that the best way in which this could be achieved would be through completion of some individual work with a facilitator trained in both Becoming New Me and the Healthy Sexual Functioning Programme.' Despite repeated promptings the prison service failed to provide P with this intervention.

His first and second parole reviews came and went without the Parole Board recommending release because there was outstanding core risk reduction work to be done. We ultimately were compelled to instigate judicial review proceedings which resulted in the prison conceding that this target should not remain on his sentence plan if there was no realistic prospect of him being able to complete this work. P has now secured his re-categorisation to category D status.

Case 5

Mr C, Mr G, Mr H, Mr S and Mr A

The above five were all IPPs with short tariffs, who were all detained in a privately run prison. Following sentencing, they had sentence plans which did not identify appropriate and accessible offending behaviour work.

All remained in this establishment until after tariff expiry as they continued to be held in a private prison that offered no suitable offending behaviour work.

Sentence progression cases were opened up on behalf of the five. The first two cases concerned Mr G and Mr A, these were cases just after their tariff expired in 2008/2009. The establishment did seem to fully appreciate the consequences of their actions and failed to engage in pre-action correspondence or send Mr G and Mr A to appropriate establishments. Therefore, judicial review proceedings were issued. These settled in favour of Mr G and Mr A. Both were transferred to establishments where they could access appropriate interventions; they have now both been released.

In the remaining three cases which as a result of correspondence and threatened judicial review proceedings Mr C, Mr H and Mr S were transferred to suitable establishment where they could address their risk, Mr C is on the brink of a progressive move to open conditions, Mr S is currently in open conditions on the brink of release and Mr H is still addressing his**.**

These cases show unequivocally that the timely intervention of legal representatives saves the tax payer huge amounts of money as otherwise prisoners are left to stagnate.

Case 6 (submitted by a non-lawyer - Dr Van-Leeson Chartered Psychologist Registered Forensic Psychologist)

An IPP post tariff prisoner in the Midlands has significant learning disability issues. He has been floundering in the system for some time and his oral hearing kept being delayed by prison staff due to them not knowing how to progress him. The prisoner was becoming more distressed and his presentation was being put down to mental health issues or him becoming more risky/dangerous because he would shout at people and leave the room when feeling distressed after constant questioning during interviews. They had not at all adjusted for his individual needs in how they treated him, and neither was anything reflected in his sentence plan. It was obvious even in the absence of formalised assessment that he struggled to cope in a mainstream environment and was an extremely vulnerable prisoner.

This prisoner never complained through the complaints system because he didn't know how to. Once a prison law specialist was instructed by him, through encouragement of another inmate who could see he was being bullied and was out of his depth in the system, this lawyer started to press all parties involved in his case for assessment and clarity of his risks and needs. This prisoner, after a significant and constant approach taken by the prison lawyer, was eventually diagnosed as having formal learning disability and was transferred to a low secure unit with the assistance of an expert Psychologist and Psychiatrist.

This lawyer has been instrumental in working above and beyond funded time to support this prisoner and ensure that eventually everyone listened. He wrote tirelessly to several staff groups and the Governor to ensure they took responsibility for this prisoner's needs. He also visited the prisoner regularly and became his advocate at meetings to support the prisoner.

The formal, standard systems are not adequate in either recognising or addressing the needs of prisoners with learning disability issues. There are many of these prisoners who are floundering in the system, and in the event they can't get access to legal support outside of the Parole Board remit I believe many prisoners will fail to progress at a significant cost to the tax payer. In my experience I have seen a number of these cases, including when on remand and post-sentence and the services to assess them are not adequate and neither are mainstream staff sufficiently knowledgeable to

understand how to interpret the presentation and needs of this prisoner group. I have seen prisoners serve many years over tariff and those who even die in custody who needlessly need to be there due to them being low risk. This is a significant cost to the taxpayer. I know that in the event this particular case had not had the input from the prison law specialist, he would still be exactly where he was; no progression route and set to cost the tax payer an endless custody bill.

7. Categorisation

Mr P, Mr B, Mr S - ISPs return to closed conditions

Once an indeterminate sentence prisoner (ISP) has achieved a successful recommendation for a progressive move to open conditions, they can find themselves being transferred back to the closed estate with their category D status being suspended.

If an ISP is transferred back to closed conditions, the PPCS initially reviews the transfer to consider whether they can be returned back to open conditions. However, this review is based on one document (LISP4). Representations can be submitted in support of a return to open conditions and the PPCS will consider on the papers suitability for return to open conditions.

The cases below demonstrate the benefits of legal representation for such prisoners:

- Mr P was returned to closed conditions as his mental health deteriorated. He sought assistance (therefore demonstrating insight into his deterioration). Insufficient mental health and primary health care staff were available. Therefore, he was returned to closed conditions. With the benefit of legal representation Mr P was given medication and was returned to open conditions following a paper review.
- Mr S was returned to closed conditions as he was considered to have been drinking on a town visit. Upon his return to open conditions, he was seen swaying and slurred his speech. Mr S highlighted that his mental health medication had significantly increased over the last 2 weeks. He was returned to closed conditions

on the basis of allegations that he had drunk alcohol. Representations were submitted highlighting the lack of evidence to support the allegations made. Mr S was returned to open conditions following a paper review.

- Mr B was returned for his own safety, he was alleged to be using substances in addition to his methadone prescription. However, Mr B had produced numerous negative drug tests to demonstrate that he was not using any illicit substances. Upon his arrival into the closed estate, another MDT was given showing there were no illicit substances in his system. Also Mr B was accused of this on a Saturday, yet on a Monday evening he was granted an evening ROTL to attend an NA meeting in the community, he travelled unaccompanied and returned to the prison in accordance with his licence conditions. Following representations highlighting these matters Mr B's case was reviewed on the papers and he was granted his return to open conditions.

These sentence cases were all billed at £220.00 CDS advice and assistance fixed fee rate. If no representations clarifying what had actually occurred been made, the PPCS would have had no option but to refer the case to the Parole Board, who would have listed an oral hearing to deal with the issues, specifically the continued suitability for open conditions.

If the PPCS refers the case to the Parole Board, an oral hearing would take place which would result in:

- A three member Parole Panel convening at a closed establishment;
- Probation officer's attendance at the hearing including travel and time out of the office (travelling usually a lengthy distance);
- The closed prison hosting the oral hearing;
- An oral hearing CDS advocacy assistance file being opened up at a minimum of £479 plus disbursements;
- The ISP spending more time in the closed estate, where they could be spending their time in open conditions demonstrating their risk is manageable before their next review;
- Delays in the ISP's release.

Case 2

We represented a foreign national prisoner who had been returned to closed conditions after he had been served a notice of intent to deport by UKBA. He was in paid employment when he was retuned. He exhausted the internal prison service complaints procedure and had not received any determinative decision about his return. We obtained his paperwork and it showed that the prison service had erroneously concluded that because the UKBA had issued an intent to deport this require them to remove the prisoner from open conditions. No individual risk assessment had been conducted and his appeals had not been dealt with de novo. After representations and contacting NOMS directly around the correct procedure to be adopted for foreign national categorisation decisions, the Area Manager eventually authorised his return to open conditions. He had lost his paid job but was at least able to volunteer at Oxfam for the remainder of his sentence

Case 3

Client was serving an indeterminate sentence imposed when he was 17 years old. He was found guilty of an assault in an open prison and returned to a closed prison. The Governor hearing where he was found guilty of assault was unfair and against due process, as the client has not been present for some of the evidence. I appealed the decision successfully. I then challenged the decision to remove him from open conditions. This was also successful and he was moved back to open conditions. This will mean he will spend a shorter period in custody, at a saving to the public. I deferred his parole board hearing to allow this all to take place without the wasted costs of a hearing. The client struggles to read and write and would not have been able to undertake this on his own. He did not understand the process for either the appeals and only realised the decision was challengeable when I advised him.

Categorisation C – B

Case 1

A is serving an IPP sentence and is nearly five years over tariff. On the basis of untested, unproven and unsubstantiated security intelligence which was not disclosed

to A, he was re-categorised from category C status to category B status. A received no opportunity to put representations forward to oppose this decision, however, without receiving any disclosure of what lay behind his re-categorisation it would have been impossible for him to put anything meaningful forward. Finally it emerged that the prison were alleging he had been committing crime yet when we pursued this it emerged that the police liaison officer at the prison had said that there was not a sufficient basis to even interview A. Eventually we had to instigate judicial review proceedings to get this re-categorisation overturned and the day before the court hearing the Secretary of State for Justice did concede that this re-categorisation had been unlawful.

Case 2

Prisoner B was serving an Indeterminate sentence for Public Protection. He was re-categorised from category C to Category B days before his parole review. The Parole Board indicated this decision was material in terms of their risk assessment and deferred consideration of his case in order for further information regarding this decision to be obtained.We were able to assist the client to challenge the re-categorisation decision under the CDS1&2 Advice and Assistance scheme. We appealed the decision and the client was ultimately given back his Category C status. This decision was so closely connected with his parole matters that the Parole Board went on to defer his case on a further occasion pending the outcome of the appeal. It is clear the decision was linked to liberty.

Under the current proposals we would not have been able to assist the client to challenge the re-categorisation decision, despite the clear link to his parole matters and liberty. This would have hindered our ability to deal with his parole matters as the two issues are so intrinsically linked.

Category A

We recently represented someone who had made numerous attempts to seek his removal from High Risk Category A status, arguing that prison service information was either wrong or was not based on evidence. Representations were made around factual errors involved with his index offence, security intelligence, consistency in public policy decision making, and the policy guidance contained in the National

Security Framework, a document which is neither in prison libraries or available on the intranet. The end result was that the prisoner was downgraded to Category B. This had wider implications than simply for the particular prisoner, given that his disabled mother was able to visit more regularly, he was able to engage with external educational courses and was able to start to address the rest of his sentence plan.

Guittard applications

Mr N, Mr S, Mr K, Mr A (No1), Mr A (No2), Mr H, Mr T and Mr W

Following the successful judicial review of *R (oao Guittard) v Secretary of State for Justice* in 2009, new guidance was issued allowing indeterminate sentenced prisoners to be transferred to open conditions without the need for a parole review. Many indeterminate sentence prisoners (ISPs) have been successful in obtaining this recommendation from the SSJ. Consequently, the above mentioned have bypassed the parole oral hearing process. This has resulted in significant costs savings. It is questionable whether many prisoners would be able to benefit from this process without the assistance of legal representation.

Incentive and Earned Privileges (IEP)

Case 1

We represented someone given an IEP warning after complaining that the prison only issued 28 days of medication even though 11 of the 12 months were longer than 28 days. Repeat prescriptions were only provided on a monthly basis and he therefore went without medication and suffered pain and deterioration for between 2 and 3 days every month save for February. He had been warned that his complaint, in which he described staff as lazy was rude. He said he had been told what the policy in operation around medication was, and therefore any further complaint would be considered to be harassment and might be subject to further IEP warnings. We argued that this treatment was an abuse of the IEP Scheme. We contacted the Chief Inspector of Prisons (HMCIP) who had visited the prison and had discussed the issue of medication with this particular prisoner. The Inspector confirmed that they had read the complaint letter and also felt this was an abuse of the IEP system. The IEP system, as set out in PSO 4000 must not be used to punish prisoners and that the *Department for Health 2004 Guidance performance Standard 22* confirms that

prisoners are entitled to parity of medical treatment under the NHS with other members of the public. After forwarding the HMCIP response the Governor, somewhat reluctantly, agreed to remove the IEP warning and to look at the medication policy.

Case 2

A prisonercomplained that he had been unfairly treated when the prison placed him on the basic regime of the IEPS. He said he had been charged with possession of an unauthorised article but was placed on the basic regime the following day before there had been a hearing to consider his guilt. He said he remained on the basic regime for 24 days with no privileges and had been punished without being found guilty.

We obtained a copy of the prison's local IEPS policy. This said that decisions about the appropriate privilege level should be open, fair and consistent. Prisoners should be notified of decisions to change their IEPS level and be given the opportunity to make prior representations. The policy also said that prisoners on the basic level should be afforded structured reviews after the first seven days. We argued that the prison had not followed its own guidelines. Eventually after the threat of legal action the prison agreed to conduct an investigation. They could find no record of the decision to demote him and there were no structured reviews during the time he was on the basic level. The prison's record-keeping was exceedingly poor and no one was able to say who took the decision or why. The Director of Custody agreed that all the indications were that it was used as a *de facto* punishment for the adjudication charge in contravention of local and national policy.

8. Resettlement

ROTL

Case 1

We represented a 17 year old, convicted of violent disorder in the context of a demonstration against Government proposals to introduce student fees. He had been studying for his A levels at College at the time of the offence. He was sentenced to 36

months in custody. At his sentencing hearing, the Judge expressed regret at having to sentence a young man to such a substantial term of custody.

As his prison lawyers we wanted to ensure that his custodial sentence would not completely damage his future prospects in a way which went beyond the intentions of the sentencing Judge. It seemed that the only way to achieve this was to ensure that he only lost one year of education, rather than two. His College had offered him a place starting at the beginning of the next school year, if he was able to attend part time. It was offered to him on the basis that whilst he was at school he was an excellent pupil and in their view, his offence was entirely out of character. We calculated that if he was granted Resettlement On Temporary Licence to College between September and December, then subject to a further risk assessment, he could be considered for Home Detention Curfew in December. He could potentially therefore attend College full time in January whilst on Home Detention Curfew. This would mean that he would then be released on licence into a structured environment proving meaningful and positive social engagement which would ensure his successful resettlement into the community.

The prison that he was detained in had not previously countenanced attendance at an external educational establishment as part of the resettlement remit. Instead working in supermarkets was preferred. We argued that a more nuanced approach should be taken and that the Prison's own guidance in relation to Resettlement on Temporary Licence did make provision for this and that it was entirely within the Governor's remit to facilitate the College's request that he be allowed to attend.

We argued that successful resettlement for our client would be best achieved through a gradual reintegration into education, thereby re-establishing our client's links with his community and allowing him to resume his A-Level studies. This could be achieved if the prison were to grant him Resettlement on Temporary Licence to attend his College on a part time basis.

Ultimately, the Governor did allow him to be released on temporary licence to attend his old College. This was achieved by making detailed written and oral representations to the Governor, liaising endlessly with the school, Probation (who did not initially support the idea) the education department at the prison and our client's family in order to ensure that he was successful. Had our request not been facilitated, our client

would have lost his place and would have been released on Home Detention Curfew with no structure at all. It is highly likely that this would have led to increased despondency and a lack of motivation to reengage in education the next year. This may well have impacted on his employment prospects and ability to play a constructive part in society generally.

That he was able to continue with his education, meant that he was motivated whilst in prison to spend his time constructively and engage with internal prison processes. He was released on Home Detention Curfew, saving thousands in tax payers' money.

Case 2

Mr E was detained in open conditions. He was a post tariff IPP. He was progressing well and at his next parole review was intending to make an application for release. However, whilst he was in open conditions, he was informed that as there were no bed spaces at the approved premises hostel, he could not have his home leave (ROTL). This happened on more than one occasion. However, psychology and probation had made it clear that they required a minimum of 6 home leaves before they would be supportive of release. This simply was not going to be feasible given that his home leaves were repeatedly cancelled as a result of bed space availability.

However, Mr E was advised that he could challenge the position of the relevant Probation Trust in respect of not ensuring sufficient space was available for him to undertake his home leave to ensure a meaningful parole review. Pre-action correspondence was sent and without the need to litigation, Mr E was given access to the hostel. This resulted in a positive parole review hearing. The representative's involvement was limited to drafting pre-action correspondence. Therefore, such a simple task – completing a few letters resulted in Mr E's review taking place on time and saving significant money in respect of the alternative namely further time in open conditions and a deferral to the parole review.

Licence Conditions

Case 1

We represented a 17 year old female with ADHD. She was released from prison with only minimal supervision despite being on MAPPA. When she was released to a

hostel she found she was sharing a room with a much older woman with a history of alcohol issues, the room had no pillow and no lighting. She was unsupervised during the evenings and had no purposeful activities. She was told on release that she would be referred to employment access services but this did not happen.

Despite her clear needs she was subject to a Community Assessment Framework (which is a simple information sharing report) rather that an s17 Children Act 1989 assessment which imposes on local authorities a general duty to safeguard and promote the welfare of children 'in need' in their area. She and her mother had made several complaints about the support she was receiving but Social Services and the Youth Offending Team had failed to respond. It was after legal intervention that a S17 assessment and an attendant assessment for accommodation under s20 could be obtained. She was provided with a care plan, placed in suitable and age appropriate accommodation and has not returned to custody since. If she had remained in the hostel without support, her mother is of the view that she would have been recalled because her daughter would have become frustrated and angry at her situation or tried to get breached in order to get out of the hostel. The cost of this case to the Legal Services Commission (now LAA) was £220, she had a 12 month licence period and so the cost of her recall would have been over £40k to the public purse.

Case 2

We represented a 47 year old man who was coming to the end of a 4 year sentence. He had cognitive dysfunction, severely impaired memory and focal functioning and language impairments; he had learning disabilities, extremely low IQ (mental age of 10 ½ - 11 ½ years); Immature behaviour, obsessional tendencies and disinhibition; Depression, paranoid thoughts and thoughts of self-harm; Post traumatic amnesia; and epilepsy. The Health Care at the prison contacted us. They had been unable to secure any services for him on release from Social Services and were concerned as to how he was going to cope in the community. He was himself unable to properly utilise the complaints procedure because of his health issues. After a significant amount of correspondence and the threat of legal action around the issue of ordinary residence Social Services agreed to assess him under the Community Care legislation and he was released with what Health Care considered as appropriate level of support.

Case 3

R had spent his career in the city as a commodities trader. He had never been in trouble until one night returning home having been out for the evening he hit a cyclist and was charged with death by dangerous driving. He received a 7 year prison sentence. For the last two years of his sentence he was in open conditions. Upon his release he was deemed low risk and was quickly allowed to report to his Probation Officer once a month. R is 68 and disabled; as a result he struggled to find employment. He contacted this firm having been referred by another client. He had a job offer in Serbia as a commodities trader with lucrative terms of employment and wanted permission to travel abroad. His licence which is in force until 2016 restricts travel abroad. We challenged the stance of Probation and requested a full risk assessment. We were able to resolve this without issuing proceedings and permission was granted for R to work abroad. This was an excellent result as the Probation Service is very reluctant to grant permission in cases like this. As a result of the case the Probation Circular was reviewed and a new PSI was introduced. This case had a broad public interest.

Home Detention Curfew

We represented a prisoner who had received consecutive sentences under the 1991 and 2003 Criminal Justice Act legislation. He had been refused HDC. He had sought to use the internal complaints process without success. The Ombudsman was not an effective remedy because by the time they considered his case, his HDC curfew period would have passed. We argued for 'exceptional reasons' based around his disability and age. It was also clear once we had obtained his legal paperwork that they had not followed their policy on disclosing the reasons for refusal and had also mistakenly calculated his eligibility period because they had not taken into account the case of *Noone* when calculating his eligibility period for HDC. After a significant amount of correspondence over several weeks, the prison service eventually conceded that the prisoner's dates had been incorrectly calculated, that he was eligible for consideration under the 'exceptional reason' provisions and released him on HDC. The case cost the Legal Services Commission £220, the savings were that a man who had been refused early release was now considered suitable, with a saving to the public purse of around £14k by his not remaining in prison for a further 135 days.

9. Deep Custody

Close Supervision Centres

The Operating Standards say that lawyers can attend two out of four of the Care and Management Plans which are supposed to take place each year. This is in recognition of the complexity and seriousness of confinement in the CSC. But it does not come under Advocacy Assistance. If it goes out of scope there will be no legal aid for this, even though the guidance permits/encourages it. We have represented at least 3 prisoners who were being assessed for CSC, and through pointing out factual errors in the paperwork, and arguing that certain other indicators could be interpreted in a different way, managed to persuade the assessors that these particular prisoners would not in fact need to go to the CSC but could remain on normal location.

DSPD

Mr R. – is serving an indeterminate sentence for public protection. He had recently transferred from HMP Risley to HMP Wymott (both category C prions) and was due to commence the Sex Offender Treatment Programme (SOTP) at HMP Wymott. A trainee psychologist at HMP Risley had previously completed a PCL-r assessment on him. The conclusion reached was that the client needed to be assessed for the Dangerous and Severe Personality Disorder Unit and he was immediately re-categorised to Category B and transferred to a prison which is part of the high security estate.

We obtained an independent psychological report and PCL-r assessment and our psychologist disagreed with the prison assessment in that the psychologist's view was that the client did not meet the criteria for the DSPD unit. The client subsequently underwent a third PCL-r assessment and this again provided a different account but was on the cusp of the acceptance criteria for the DSPD Unit.

We subsequently obtained further independent reports and whilst this was going on the client's parole process commenced. We therefore put forward submissions that an oral hearing should be convened in order to determine the appropriate treatment pathway for the client in front of the parole board with all the professional witnesses in attendance. The parole board refused our request twice and upon a third appeal

against their decision not to convene an oral hearing, they have now agreed with us in that the client's case is very complex and that an oral hearing should be convened to determine the client's future direction.

This matter has been complex and challenging but without being able to advise and assist the client in relation to the DSPD assessment under a "sentence" case under legal aid, the potentially detrimental effect on the future progression of the client would have gone under the radar. This assessment was rightly challenged and without having access to public funds the potential for our client remaining within the high security estate and on the DSPD unit would result in significant costs being incurred.

However, now that an oral hearing has been granted, this is of great importance to the client as it will allow all the issues to be resolved and an appropriate treatment pathway identified in order to determine the client's future.

Without the funding being available to obtain the independent psychological reports and to challenge the decision of the DSPD, then Mr R. would not have been in a position to challenge the assessments.

10. Mental Health Transfers

We represented a prisoner who had been transferred from hospital to prison after an anonymous tip off that he was due to plan an escape. The prisoner was a prolific self-harmer with a long history of mental health issues. We successfully argued that if the prison service has reasonable grounds to believe that a prisoner requires treatment in a hospital, the Secretary of State comes under a duty to take reasonable steps to obtain the relevant medical advice, and if necessary effect the transfer: *R (D) v SS* [2005] MHLR 17 para 33. A failure to take, or delay in taking, suitable steps to transfer the inmate to hospital may form grounds for judicial review, and may breach Article 3 ECHR (as it did in *Riviere v France* 33834/03, 11th July 2006) or Article 5(1) (as it did in *Pankiewicz v Poland* 12th Feb 2008). We were also able to establish through the

police that the anonymous tip off was made from the patients phone in the hospital and that the ward manager believed that the call was malicious. The prisoner had

been told by both the prison service and forensic services that they were not willing to transfer him back to hospital. However after legal intervention the local forensic services said that they would assess the prisoner again. He was deemed to satisfy the criteria for transfer back to hospital under s47 of the Mental Health Act 1983, to be of low enough risk to be held in a hospital, and was duly transferred so he could receive appropriate treatment in a safe environment.