



THE ASSOCIATION OF PRISON LAWYERS
THE APL IS THE PROFESSIONAL ASSOCIATION OF PRISON LAWYERS IN ENGLAND & WALES

The Association of Prison Lawyers
C/o Scott-Moncrieff & Associates LLP
Office 7, 19 Greenwood Place, Kentish Town
London.
NW5 1LB

Annette Cowell
Ministry of Justice
102 Petty France
London
SW1H 9AJ

1 November 2013

Dear Ms. Cowell,

The Association of Prison Lawyers' response to Transforming Legal Aid: Next Steps

This is the response by the Association of Prison Lawyers ("APL") to the Ministry of Justice consultation paper, "Transforming Legal Aid: Next Steps".

The APL

1. The 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 in judicial proceedings. The membership is made up of around 300 firms of solicitors and around 60 individual members (who include specialist counsel).
2. APL members have extensive experience of representing prisoners in the Administrative Court and have witnessed and played a 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.

Introduction and executive summary

3. The focus of this response relates to the impact of the further proposals on prison law under the criminal legal aid scheme.
4. The APL welcomes the retention of the option of specialist separate contracts for prison law and criminal appeals work.
5. The APL opposes the further fee cuts. In combination with the scope cuts to prison law, it will make it almost impossible for many specialist prison law practitioners to run a viable business. Organisations that also provide general criminal work are likely to find it difficult to provide prison law work in combination with the reduction in fees in their general criminal work.
6. In relation to the wider impact of the proposed changes to general criminal work, the APL notes its grave concern about the risk of inadequate or no legal representation for on those who are at risk of detention and the consequent impact on those clients if and when they enter the prison system. The APL is also concerned about the impact of the cuts and changes on quality standards.

Question 1 – do you agree with the modified model set out in Chapter 3?

7. The APL is not in a position to comment generally on the model set out in Chapter 3 save as to urge the Government to take seriously concerns raised by criminal lawyers as to the sustainability and viability of the model.

Standalone contracts

8. The APL welcomes the confirmation at paragraph 3.44 that standalone prison law/appeals and reviews contracts will remain. In principle it is important that providers are allowed to specialise in this area of law, which has been recognised as a discrete area of law amongst practitioners, academics, publishers, the Legal Services Commission (now the LAA) and commentators. We note that at paragraph 214 of the consultation response the Government states it “is not necessarily convinced that prison law or appeals and reviews services are niche areas of law” on the basis that many providers also provide general criminal work. The APL notes that prison law

work is specialist notwithstanding the fact that many firms provide both general criminal work and prison law services.

Quality in prison law work

9. The APL is also concerned that paragraph 3.77 of the proposals indicate quality standards will be revised but do not refer to prison law specifically. The Supervisor Standard was introduced for prison law as a result of the 2009-2010 consultation, to guard against providers 'dabbling' in prison law. A perverse outcome of narrowing prison law scope would be that Supervisor Standards, as currently drafted, could not be maintained. This is because the standard requires a breath of experience across different areas of prison law. However, the scope cuts mean that virtually all of these areas of expertise will be removed from scope. If the standard was adapted to ensure practitioners have a certain number of hours experience of the remaining matter types in scope, this would allow for extensive knowledge of only two aspects of prison law, to masquerade as expertise in what is a complex and multi-faceted area of law. There would be no incentive to remain updated on the voluminous prison service instructions and other guidance released in relation to sentence progress and prison regulation.
10. The Parole Board expressed its concerns about proposed cuts in their consultation response of June 2013. It recognised the value prison law providers bring to parole hearings, not only as representatives of prisoners, but in their capacity as lawyers with an understanding of the prison system's intricacies.

Removal of pre-tariff reviews from scope

11. A further, deeply troubling, aspect of the consultation response is that it goes further than the original consultation by removing pre-tariff reviews from scope. We have set out our concerns about this in our evidence to the Joint Committee on Human Rights¹.

¹ http://www.associationofprisonlawyers.co.uk/wp-content/uploads/2013/09/JCHR-Written-evidence-submitted-by-the-Association-of-Prison-Lawyers_2013_09_27.docx

Question 4 – 5: remuneration and interim fee reductions

12. Paragraph 3.53 of the consultation sets out a two stage reduction in fees across “all criminal litigation services” of 17.5%. Table G2 annex g and page 247 detail costs reductions in prison law specifically.
13. When coupled with the reduction of scope, these reductions in fees will devastate providers’ abilities to apply for, or sustain, prison law contracts. According to Legal Aid Agency statistics published this year, approximately 80% of work currently in scope will be out of scope under the current proposals.
14. Some of the work that is to fall out of the scope for prison law is critical to the success of work that remains in scope. For example, many sentencing cases address matters such as categorisation or access to offending behaviour work which are inextricably linked to the parole process. The consequence of this is that parole cases will be less successful and increase in number (and cost).
15. Therefore, if implemented, the work currently in scope will be paid for at a drastically reduced fee and the cuts in scope mean that it will not be possible to explore alternative business models as the volume of work is not available . Survival in such circumstances would be extremely difficult, if not impossible.

Questions 7 – 9: Have the MoJ identified impacts and/or are there any forms of mitigation not identified in proposals

16. The proposals as they relate to prison law will cost more than they save, ensure prisoners are released without sufficient rehabilitation and reduce quality in a way that impacts on numerous other public services.
17. The MoJ has failed to properly address the impact of changes on vulnerable prisoners and those with particular problems that are not amenable to resolution by the internal complaints process. A few examples would include; matters concerning selection for mother and baby units as the child may have an independent right to representation from the mother and the decisions will involve social services who are not covered by the prison complaints system; complaints about resettlement and sentence planning

that involve outside probation services as they have their own complaints process that cannot be accessed internally in the prison; issues concerning resettlement for vulnerable prisoners with protected characteristics that will involve outside agencies such as local authorities and the probation service.

18. Dr Nick Armstrong of Matrix Chambers has calculated that the scope cuts announced in this consultation response will in fact cost more than they save². Frances Crook, CEO of the Howard League, has estimated that the proposals will cost £480 million. When the Government aim to reduce spending in prison law by an estimated £4 million, this figure is extremely concerning and we fail to see how the proposals can continue without a full investigation of the overall impact on public funds.

19. In addition to these costs, there is no proper impact assessment of the increased cost that will flow from the inability of prison lawyers to effectively represent prisoners in the areas that do remain in scope due to the combination of fee cuts and scope cuts. There are 12,000 indeterminate sentence prisoners (ISPs) in the system. There is an increased likelihood that parole hearings will become meaningless because the ground work has not been done will simply result an increased number of reviews. Following the Supreme Court decision in *Osborn and Booth*, oral hearings are likely to be required more often than at present in the future. The additional costs on the prison service and the parole board have not been factored into this.

20. Ideas to mitigate or limit costs have not been fully explored. The cost of video link facilities per prison would be negligible when weighed against the savings made to the costs of travel incurred ultimately by the Legal Aid Agency. Indeed the MoJ in their impact assessment to the first part of the legal aid consultation, were receptive to a video link conference system where prisoners and solicitors could exchange faxes at either end. HMP Parkhurst is one of several prisons to offer video link facilities to Probation Officers and Court users but not solicitors. This needs to change.

² See also Lord Carlisle of Berriew (HL Deb, 11 July 2013, c458), Lord Hope of Craighead (HL Deb, 11 July 2013, c468), Lord Bach (HL Deb, 11 July 2013, c472)

Conclusion

21. In conclusion, the APL strongly opposes the proposed changes set out in this consultation.

22. In relation to prison law specifically, the Justice Secretary has confirmed that his motivation for changes to prison law are 'ideological'. In our view it is incumbent upon the Secretary of State to make it clear whether this means that he accepts the proposals will not in fact save public money but are justified on other grounds. This is particularly important if swingeing fee cuts are to be applied to the very narrow areas of prison law that will remain following his decision to proceed with the scope cuts³.

23. The combination of narrowing scope and reducing fees so drastically will be disastrous for prisoners' access to justice as it will decimate the supplier base.

24. We would be happy to discuss any of the points raised in this response in person.

Yours faithfully

The Association of Prison Lawyers

³ It is not accepted that the scope cuts are necessary: The sufficient benefits test already in place ensures public confidence in the system and the appropriate use of legal aid and the removal of treatment matters from scope in 2010 was made after the Legal Services Commission (now the Legal Aid Agency) had identified those areas that could properly be resolved by the internal complaints system and those that could not (ie the sentencing cases now being removed from scope).