



The silent demise of legal aid prison law: practitioners speak out

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Executive summary

A toxic combination of emotionally exhausting, complex and poorly paid work means that prison law legal aid work is no longer sustainable. This is the only conclusion that can be drawn from the results of this survey by the Association of Prison Lawyers in June 2023.

Legal aid prison law is already in drastic decline: between 2008 and 2022, there was an 85% decrease in prison law legal aid providers. Three-quarters of respondents to the APL survey considered they would not be doing prison law in 3 years' time, with 88% of those anticipating leaving this sector citing poor remuneration as the reason. Prison law was excluded from the Government's 15% increase to criminal law legal aid rates in 2022, contrary to the advice of Lord Bellamy, who conducted an independent report for ministers that recognised the economic case for funding it sustainably. The only reason given for this has been that the Government wanted to prioritise the backlog in criminal matters. However, there is also a significant backlog in parole cases caused in part by significant changes designed to toughen and open up the system. These changes have been at the heart of the Government's reform agenda and have made parole work more difficult and complex.

Almost all respondents (98%) felt that the complexity of parole board work has increased significantly in the last five years. This has involved navigating two new mechanisms which can enable the re-opening of parole decisions: the reconsideration mechanism (introduced 2019) and the set-aside process (introduced 2022). In the words of one respondent "It has become so much more complex - in terms of the volume of information to consider in the dossier...complex guidance...and complicated procedures." Despite these changes, prison law, which falls under criminal legal aid, was expressly excluded from the general uplift in criminal law fees that was implemented in September 2022 and there appear to be no plans to remedy this.

Further complex changes are proposed in the Victims and Prisoners Bill but there is no talk of an increase in fees to deal with them. This contrasts with the Government's approach to the additional work anticipated from the Illegal Migration Bill, where it has agreed a modest increase of 15% in legal aid fees to deal with the additional burden on providers.

It is now clear that the immense changes to the parole process, which require extensive additional work from prison law legal aid lawyers, will be undermined by lack of adequate funding.

Prison law legal aid lawyers already go above and beyond for their clients, following sweeping cuts to the work legal aid covers in 2020: 100% reported routinely doing additional work that is not funded by legal aid for clients. As one respondent commented "I am forever chasing the prison or healthcare or mental health...without which [my client] would not be properly able to apply for parole."

The work is not only legally complex, but emotionally exhausting: 86% of respondents considered that at least half of their clients are vulnerable and in need of additional support. This explains why so many prison lawyers feel that they cannot simply refuse to do unpaid work. In the words of one respondent, "our clients often have no one else. If they suddenly have medication stopped and they are calling in desperate need, it is impossible not to care for them." Prison law clients are often distressed: "I have had clients so desperate about being in prison and delays with parole that they have self-harmed or threatened suicide. You can't deal with distress quickly."

The combination of emotionally exhausting, complex and poorly paid work is not sustainable. When fixed fees were introduced for prison law under a previous administration, it was on the business case of “swings and roundabouts”; the idea that in some cases practitioners would do more work than they were paid for and in other cases they would be paid more than the work done. Yet in this survey, over 90% of respondents estimated that they lose out financially in over half of their cases, and 62% estimated they lose out in three-quarters of them.

There is virtually no hope of recruiting new blood into this sector: over a third described it as “extremely difficult” to recruit and retain new staff. In the words of one respondent, “it is really hard to retain new lawyers in this field - many young lawyers express an interest in this area but do not stay in it due to the lack of funding”.

Taking into account inflation, prison law legal aid rates have decreased by 35% since 2011. The 15% increase recommended by Lord Bellamy would not even bring current fees in line with inflation. Prison law currently amounts to 2% of the criminal legal aid budget. An increase of 15% would therefore not amount to a significant increase in the overall spend on criminal legal aid.

The prison system is in crisis: it is chronically overcrowded and understaffed, and the prison population is set to rise exponentially in the next three years. Investment now is essential to ensure the prison and parole system will function fairly so that people can be released from prison safely at the earliest opportunity from costly incarceration.

It is time to act: “Fees need to be increased now or the Prison Lawyer will disappear & it will be too late to rescue the crumbling system that we help remain functioning.”

About the survey

In June 2023, the APL issued a survey of its members in response to concerns that prison law work was becoming unsustainable and a lack of any response to the Association’s requests to meet with the Secretary of State for Justice to discuss whether and when the recommendations of the Independent Criminal Legal Aid Review would be implemented.

The APL wanted to capture the current views and experiences of its members and to ascertain whether the decline in prison law was set to continue and why that might be.

A survey was devised to capture both quantitative and qualitative data – see Appendix 1 for the questions asked.

In total 98 responses were received, which is a reasonable number given the very small number of firms that do this work.

Latest data from the Legal Aid Agency (LAA) shows that as of March 2023, there were 116 provider offices completing prison law legal aid work. This compares to 353 in 2013 and over 900 firms doing this work in 2008/2009.¹

¹ For March 2023 and 2013 data, see <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2023>, at table 9.1. For 2008 data, see the Legal Services’ Commission’s report on ‘Prison Law Funding: A Consultation Response’, dated 15th July 2009, at §5.4 on p.64.

It should also be noted that due to extensive cuts to the scope of what prison law legal aid covers in recent years, almost all prison law legal aid work involves reviews by the Parole Board.

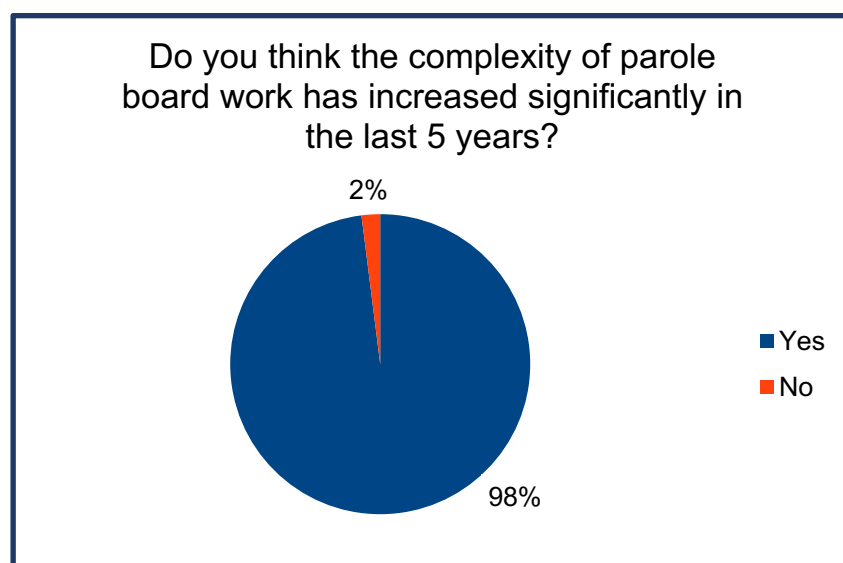
This report outlines the key findings.

Survey findings

Increase in complexity of work over the past five years

In recent years Parole Board work has increased in volume and complexity.

In 2021/22 the Parole Board considered 22,530 cases on the papers,² an increase of 34% from 2016/17, when it considered 16,866.³ To deal with this increase the Parole Board has expanded its members: during this period the number of parole board members has increased from 212 in 2016/17 to 346 in 2021/22, an increase of 66%. In the same period the number of legal aid providers doing prison law work decreased by 40%. The Parole Board's annual report for 2022/23 shows its workload has increased by 45% since 2018/19⁴



In response to the question “Do you think the complexity of parole board work has increased significantly in the last 5 years?” 98% of respondents said “Yes”. One respondent commented “the complexity has increased massively without any changes to the funding scheme” and another commented, “I have been working in prison law for 15 years and I’ve never known hearings to be as complex as they are now.” The following response provides an overview of the increased complexity:

“It has become so much more complex – in terms of the volume of information to consider in the dossier (lots more police information, for instance), complex guidance to consider around outstanding allegations (and need to consider case law when interpreting this) and complicated procedures including those after the hearing for which

² See Parole Board Annual Report 2021/22, <https://www.gov.uk/government/publications/the-parole-board-for-england-wales-annual-report-and-accounts-202122>

³ See Parole Board Annual Report 2016/17, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631425/Parole_Board_Annual_Review_Web_Accessible_Version.pdf

⁴ See Parole Board Annual Report 2022/23, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1171892/Parole_Board_ARA_2022-23_-_Final.pdf

rarely get paid as often reached the upper fixed fee limit and way off exceptional (reconsideration, set aside, decision summaries).”

More evidence, including complex and expert evidence

Respondents identified that cases now involve a lot more expert evidence, with cases having “much more psychology input” and “reports and additional work.” One respondent commented that:

“the Parole Board now seem to rarely accept a single psychological assessment from an independent psychologist, and often direct a prison assessment which adds to the length a case goes on for with additional report[s] to read and witness[es] to question, all for the same fixed fee.”

A number of respondents noted “more witnesses at oral hearings” and the shift from in-person to remote hearings results in longer hearings.

Changes in policy and practice

A number of respondents commented on recent changes to policy and practice that made cases more complex. This included a period of almost a year when the former Secretary of State for Justice, Dominic Raab, prevented Prison and Probation (HMPPS) staff from providing the Parole Board with recommendations as to whether a person in prison should be progressed or released. This policy was reversed following a successful challenge in the High Court (*R v Bailey*⁵) but the change took its toll on practitioners. As one respondent commented, “thankfully HMPPS witness can now give recommendations again but the period when this was prohibited created much more work for prison lawyers.”

In June 2022, the former Secretary of State for Justice, changed the test for open conditions, making it tougher and introducing a new public confidence element. Following that change, the number of recommendations by the Parole Board that have been accepted by the Secretary of State has plummeted from around nine in ten being accepted before the change, to two in ten being accepted after the change (Prison Reform Trust, 2023)⁶. As one respondent noted:

“The change in the test for open means that open is simply not an option for many people, and we have to deal with delays with recommendations being considered and the fallout when they are rejected, and then further challenges.”

All of this comes on top of the introduction of the reconsideration process following the Worboys case. This means that many Parole Board decisions are now provisional for 21 days and can be subject to reconsideration which means the decision could be quashed and the matter sent back for a fresh hearing:

⁵ <https://www.judiciary.uk/judgments/bailey-and-morris-v-secretary-of-state-for-justice/>

⁶ <https://prisonreformtrust.org.uk/blog-house-of-lords-declares-open-season-on-raabs-open-conditions-criteria/>

“The reconsideration mechanism routinely adds an extra stage after a parole hearing.”

In 2022, another layer was added to the process with a new mechanism to “set aside” decisions, usually based on new information. Therefore, compared to five years ago, a single parole board review may have up to four stages: the initial hearing, a reconsideration application, a setting aside application and a re-hearing.

“When you take on a case, you are now effectively agreeing to take on a potential stream of satellite cases that will come under the single fixed fee, which can include complex disclosure issues, dealing with summaries, explaining to your client about "reconsideration" and "setting aside", making representations on decisions to reconsider or set aside, the changes in open conditions, and the list goes on.

Generally, following the Worboys case, there is a greater emphasis on making sure all relevant information is aired before the Parole Board and in recent months, the Parole Board has held its first ever public hearings, which have formed part of its transparency agenda:

“Post-Worboys unproven allegations are very frequently encountered. We now have to deal with more disclosure applications, public hearing applications, very frequently delayed and deferred hearings. All very time-consuming and challenging.”

Mental health

A number of respondents commented on the increased prevalence of mental health issues in prison law work:

“The level of complex mental health cases has escalated significantly, as well as the challenges facing many prisoners in accessing the necessary intervention.”

“Due to the amount of recalls based on complex mental health issues and not further offending the risk assessment process has become more difficult.”

Adjournments and delays

Many respondents commented on the high prevalence of delays:

“Cases are regularly adjourned.”

“Around 25% of...cases get deferred/adjourned”

“Hearings are not proceeding when they should, delays and adjournments are adding to the volume of work being undertaken, and lengthening the time a case takes from start to conclusion.”

“Whereas previously I would expect to be having recall hearings within 6 months of a direction to oral hearing, I am now frequently waiting a

full year from MCA [initial paper sift] direction to oral hearing. Of course, this then means that I have to more carefully consider the impact of outstanding work, expert reports, longer periods of security information/adjudication history. We are also waiting longer than ever for MCA decisions and Oral Hearing decisions, with frequent adjournments, additional information and additional legal representations required.”

“Oral hearing cases can now regularly take years with no interim payment. Frequent changes to parole rules have led to a large increase in adjournments and deferrals. Massive delays at the Parole Board have made payment extremely volatile with my income vacillating wildly month to month.”

Conclusion

The survey responses demonstrate a new parole system riddled with legal complexity and delay due to changes in law, policy and practice in recent years. Further complex changes are expected in the Victims and Prisoners Bill which proposes two further layers to the parole process, including a ministerial veto in respect of certain decisions and a further appeal to the Upper Tribunal.⁷

Yet, in contrast to the approach in immigration law, where the Government has suggested a modest increase of 15% in fees to deal with the additional burden on providers⁸, no increase is suggested for prison law legal aid affected by the proposals. Prison law, which falls under criminal legal aid, has been excluded from the general uplift in criminal law fees.

The immense changes to the parole process in recent years and those proposed in the Victims and Prisoners Bill require extensive additional work from prison law legal aid lawyers and will be undermined by lack of adequate funding.

Prevalence of additional unfunded work

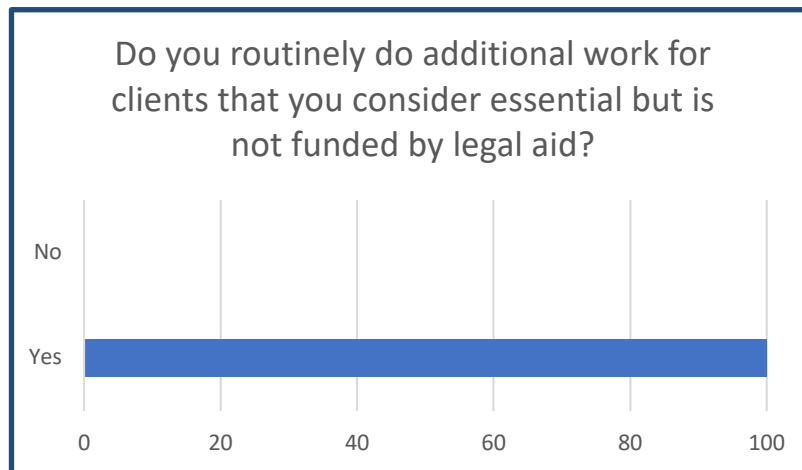
Cuts to the scope of prison law legal aid were introduced in 2010 and further reductions were made in 2013. Some of these were reversed following a judicial review brought by the Howard League for Penal Reform and the Prisoners' Advice Service⁹ but the overall range of work that prison lawyers can do under the legal aid scheme remains very limited. As a consequence, the vast majority of work in prison law is Parole Board work. In the past, it was possible to work with clients in the years leading up to their parole reviews, ensuring they were able to access appropriate courses and be recategorised when appropriate to ensure their rehabilitative progression.

In response to the question “Do you routinely do additional work for clients that you consider essential but is not funded by legal aid?”, 100% of respondents said “Yes”.

⁷ <https://www.lawgazette.co.uk/practice-points/victims-and-prisoners-bill/5116345.article>

⁸ <https://www.gov.uk/government/consultations/legal-aid-fees-in-the-illegal-migration-bill/legal-aid-fees-in-the-illegal-migration-bill>

⁹ R (*Howard League and the Prisoners' Advice Service*) v The Lord Chancellor [2017] EWCA Civ 244, Available at <https://www.judiciary.uk/wp-content/uploads/2017/04/howard-league-v-lord-chancellor-20170410.pdf>



All respondents to the survey completed additional work for clients that cannot be charged, and much of it is essential to the effective progress of the funded work or the welfare of their clients:

“Every single case includes additional essential work. Most cases for my clients require intensive work on one or more of the following unfunded issues: - dealing with parallel disciplinary matters - dealing with accommodation and support on release - dealing with health (physical and mental) issues arising in prison - dealing with the provision of offence focused/risk reduction work - dealing with issues of access to your client or your client's access to you so you can effectively represent them - this includes problems with getting visits, bringing laptops or papers into visits, post issues, telephone PIN issues, opening of confidential mail, confidential mail not being received etc”

Several respondents described having to chase up risk management plans - a person cannot be released safely from prison if they have nowhere to go to:

“Risk management plans are often incomplete and it is not uncommon for me to have to liaise with service providers to secure funding for care homes or alternative accommodation.”

The free work is common, serious in nature and essential for the client

This work is not trivial, rare or incidental:

“It is standard for every advice file to do almost double the amount of work - so you are paid for only half the work.”

“Every day work is undertaken pro-bono, if such work was not undertaken by myself (and the profession) then clients have little other support acting on their behalf and for their interests.”

“Our clients often have no one else. If they suddenly have medication stopped and they are calling in desperate need, it is impossible not to

care for them and at least write a couple of letters to try to help. Once clients are in the community they will often call for advice. This can stop recalls - the most important outcome is that the client retains their freedom... preventing recalls saves a huge amount of resources. Also advising between reviews on sentence progression - really important work which helps people get out earlier but which is unpaid.”

“There is no question that we do so much unfunded work for clients.”

“It is impossible to deal with parole cases without dealing with sentence planning issues on a daily basis.”

The toll of doing frustrating and distressing work for free

This is deeply distressing and frustrating work, as a number of respondents noted:

“I am forever chasing the prison or healthcare or mental health about something or the other that my client needs, without which she would not be properly able to apply for parole. it drives me crazy.”

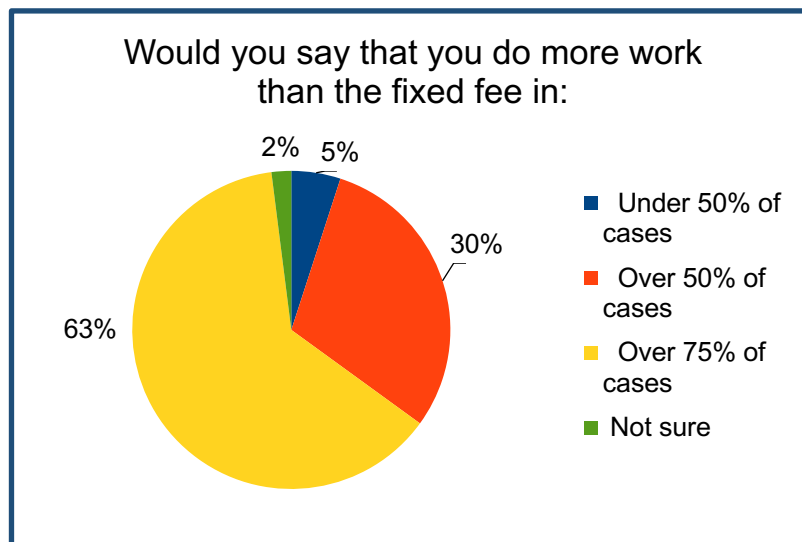
“The trauma of being key workers in lockdown (distinguishable from others in that payment for the highly intensive work we did is inherently precarious) is only exacerbated by the degrading compulsion imposed on us to do free work.”

Conclusion

The survey shows that prison law practitioners’ poor rates of pay are only half the story as they have so much hidden work that is unpaid, but essential and distressing in nature.

Routinely doing more work than the fixed fee

Respondents were asked to consider the proportion of their cases in which they do more work than the fixed fee. Over 90% of respondents estimated that they lose out financially in over half of their cases: 29% of respondents considered that they do more work than the fixed fee in over half their cases and 62% estimated they do more work in over three-quarters of them.



The original intention behind the fixed fee

When fixed fees were introduced for prison law under a previous administration, it was on the business case of “swings and roundabouts”. The consultation response document by the predecessor to the Legal Aid Agency, the Legal Services Commission, in 2009 stated:¹⁰

“Fixed fees work best where the actual case costs of the majority of cases are broadly similar and providers are undertaking a broad mix of cases. While no two Prison Law cases will be exactly the same, the relatively narrow spread of average case costs for Prison Law advice and assistance cases is an indicator that it is well suited to a single fixed fee. The fixed fee will work on a swings and roundabouts principle. Some cases will take less time to complete and some more. Over a period of time the work done and the fees paid should balance out.”

The reality of the fixed fee model

The evidence from this survey shows that this assumption has not panned out as anticipated and the fees paid have not balanced out:

“The majority of my cases exceed the fixed fee rate.”

“The breakout [escape] fee for advocacy cases which is above £4k should be reduced. I often have cases which have £3k posted on them however I can still only claim the £1500 fee. I have never had a case which has gone above £4k therefore this figure is unreasonable.”

“Very rarely do I come out on top i.e. get paid more than the work I have done. I have numerous examples where I have done £550 of work on a written reps case (plus travel!) and get the fixed fee [£200.75]. Almost all oral hearing cases exceed the fixed fee, often by £1000-2000. And of course all the travel time is for free!”

¹⁰ Paragraph 5.74, Legal Services Commission, Prison Law Funding: A Consultation Response, July 2009

“On most written reps files I do over the work of a fixed fee but not enough to reach exceptional. Same on oral hearings.”

“I looked at our advocacy cases billed to the LAA over the last 24 months and can confirm this to be the case, whether at the lower or higher standard fee. The gap between the higher and escape fee is particularly insulting.”

“I looked at the last 15 cases I billed. 2 were escape fees. On 9 of them the profit costs were between £2,500-£3,900 but of course was only paid £1454. None of them were billed under the lower fee. This feels like a kick in the teeth.”

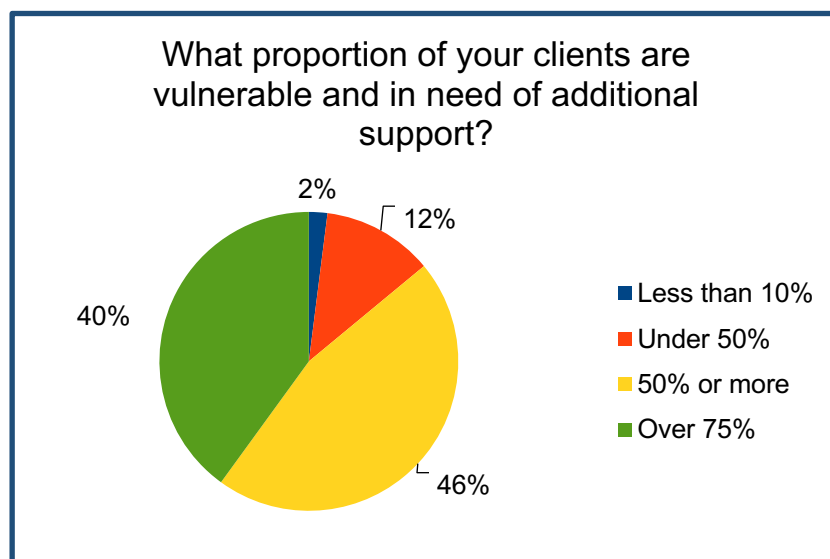
Conclusion

The fixed fee system is not working as envisaged. As cases have become more complex, providers who do the work have increased their losses in each case to the point where it is no longer sustainable without a fee increase.

A high proportion of vulnerable clients in need of additional support

Respondents were asked about the proportion of their clients that they considered vulnerable and in need of additional support.

Only 2% of respondents considered that only one tenth of their clients fell into this category. Just 12% considered under half of their clients fell into this category, leaving 86% of respondents who considered that over half of their clients are vulnerable and in need of additional support. In fact 40% felt over three-quarters fell into this category.



The prevalence of unmet mental health need in prison

These responses are not surprising in view of what is well known about the vulnerability of people in prison. The Justice Committee noted the high levels of unmet need in its 2021 report, *Mental health in prison*:¹¹

“The high unmet need for treatment for mental illness in prisons is surprising and disappointing. Around 10% of prisoners were recorded as receiving treatment for mental illness with one suggestion that as many as 70% may have some form of mental health need at any one time. NHS work is long overdue to quantify the gap between mental health treatment needs and the services provided.”

Respondents recounted numerous examples of clients facing dire mental health and other problems:

“One particular client has significant mental health problems... He was a suicide risk and on one occasion I had to telephone safer custody. This client telephoned every day for the two years that his case was running. Owing to his vulnerabilities I did not feel able to ignore the calls when they came in to my direct dial. Very few of those telephone calls were recorded however without that support he would not have succeeded in securing release.”

“In a caseload of around 50 clients, around 10% make calls to [tell] me that they feel like harming themselves or just have done so. I then spend the next 30 minutes with follow up calls to the Safer Custody dept. at the prison. I have 75% clients who are closed in their cell for 23 hours a day because there is no employment for them and there is not enough staff to let them out for association. I am regularly asked to write to the prison regarding an absence of medication, healthcare, exercise and showers.”

“I have had clients so desperate about being in prison and delays with parole that they have self-harmed or threatened suicide. You can't deal with distress quickly- this is rarely covered by the fee.”

“I act for several clients who have learning difficulties, are on the autistic spectrum and who have mental health difficulties. They are simply lost without additional support. I have a choice of ignoring their need, advocating (unpaid) on their behalf for them to try to access it from prisons/NHS (already overstretched and usually unwilling to or incapable of providing it) or doing much more work than is remunerated by the fixed fee to meet this need...”

“Most of my IPP clients who are either regularly recalled or who have not been released are psychologically harmed by the sentence and are extremely vulnerable. Many self harm or attempt suicide. They need care, which I hope I will always give, but this is not reflected in the pay we receive.”

¹¹ Page 27, <https://committees.parliament.uk/publications/7455/documents/78054/default/>

“Increasing numbers of my prisoner clients are vulnerable due to reduction in prison service and probation provision. This is leading to desperation, hopelessness and a declining belief in the justice system in the UK as it once was. Degraded public service and less legal aid provision is having negative consequences in all my current cases.”

“From poor literacy to chronic paranoid schizophrenia , the prison lawyer is left as the non government employee expected to adapt and continue to properly represent the demanding vulnerable client . Hearing a client has self harmed and [been] hospitalised or died is soul destroying.”

“Constant support with their Mental Health, when they cannot access any support in the Prison, results in multiple phone call that are non chargeable. Probation or the prison service fail to provide the correct service and care or support.”

“The majority of cases I handle have learning difficulties, cannot read and write, do not understand complex matters, struggle with ADHD and autism, and/or have mental health issues. They need significant guidance or help to understand matters, which they do not receive in the prison.”

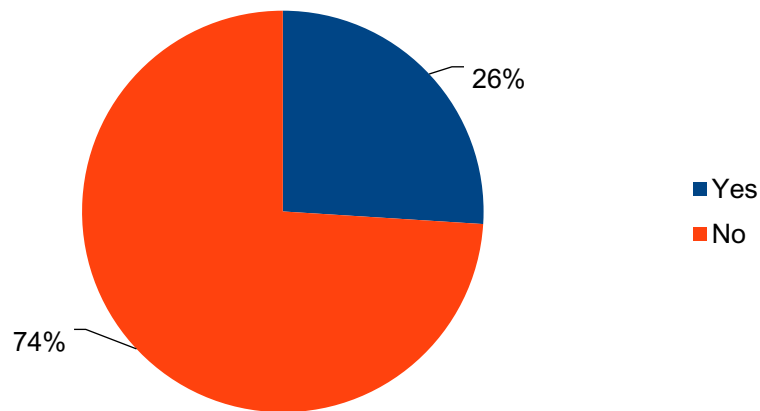
Conclusion

The comments from respondents speak for themselves: prison law legal aid lawyers are dealing with life and death situations on a daily basis, all of which is unpaid and distressing work.

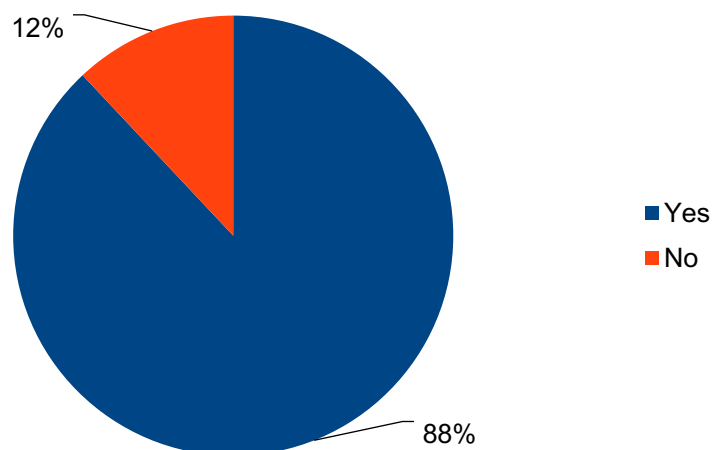
Attrition of prison law legal aid lawyers due to poor pay

Three-quarters of respondents to the APL survey considered they would not be doing prison law in 3 years' time and 88% of those cited poor remuneration as the reason.

In the absence of an increase in fees, do you think you will be doing prison law work in 3 years' time?



6. If NO, is that due to poor remuneration?



The reduction in prison law fees in real terms

By way of context, prison law legal aid rates have decreased in the last 20 years. In 2011, the hourly rate that is used to calculate the fixed fee was higher than it is today. It was decreased by 17.5% in 2014 and subsequently increased by 10% in 2016 to the present level, resulting in an overall decrease on 8.75% in the rate of pay since 2011.

The decrease in rates of pay also needs to be considered in light of inflation. In order to account for inflation, the 2011 rates would need to have increased by 40% and the current rate since 2016 would need to have increased by 30%. Therefore, in real terms, the rate of pay for prison law has decreased since 2011 by 35%.

The 15% increase recommended by Lord Bellamy would not even bring current fees in line with inflation. Yet even this increase, has been rejected.

Impact of poor pay on practitioners

Respondents provided crushing comments about the impact of poor pay:

“I have always said I would continue to practice as long as it was financially viable, this point is coming close with each increase in the cost of living.”

“I feel like I am doing more work than ever for the same amount of money and it is not tenable. I feel undervalued and overworked. I am in poverty.”

“I don't want to stop doing this work but at some point something will have to give. I can't keep starting work at 3am, dealing with the immense stress and vicarious trauma that we do, and also have financial worries. It's too much.”

“For us to be able to make money for the firm we work for, we have to work so hard, have an exceptionally high case load and it just isn't sustainable. It is making us ill.”

Reduction in provision

Some respondents provided examples of firms winding down and closing prison law departments in light of the poor pay:

“A majority of firms have already disbanded their Prison Law departments due to a lack of profitability. I therefore struggle to see how this level of work is sustainable without an increase in fees.”

“Our department is a loss making department. There has been a recent restructuring and the department has had to lose a paralegal and a solicitor to reduce the costs of the department. The other departments can no longer subsidise the prison law department because of cuts to criminal and civil legal aid. We will not be viable unless there is an increase in fees.”

Poor survival prospects

There was a strong sense that the sector cannot survive in the current climate without a pay increase:

“The profession has been put on its knees and the cost of living crisis, minimum wage increases and pensions is the final straw.”

“Unless there is an increase in fees it will not be economically viable to continue.”

“Overheads are rising exponentially; fees have stalled for decades. It's untenable.”

remuneration is just a small part of the overall package; the other element is the cost associated with cases being deferred/adjourned. We need to have some additional remuneration to cover this cost- It is no longer possible to provide a good enough quality service to this client group without making unacceptable personal compromises.”

“With the cost of living it is just not sustainable on the current fees - the only way it can work is if you have lots of cases but then the quality of the work is compromised and there is a risk that issues will be overlooked. It is so short sighted to underpay and undervalue prison lawyers because the issues will escalate and cost more in the longer term.”

Impact on practitioners with care commitments

Respondents noted how the poor pay is particularly difficult for people with care commitments:

“I am at the early stages of my career and I have a young family. Unfortunately, I do not see a future in prison law as if my family continue to grow it wouldn't be able sustainable for me.”

“I cannot simply work for free as I am a single mother and have a family to provide for.”

Conclusion

One respondent captured the passion many lawyers in the sector have for this work combined with the impossibility of making a living from it:

“I love this area of work and would love for it to be a career. Unfortunately there is a ceiling to income based on the legal aid fees, and without an increase the cost of living is simply going to make prison law a minimum wage job, despite it requiring expertise in key skills to represent someone regarding their liberty. It's a slap in the face, honestly.”

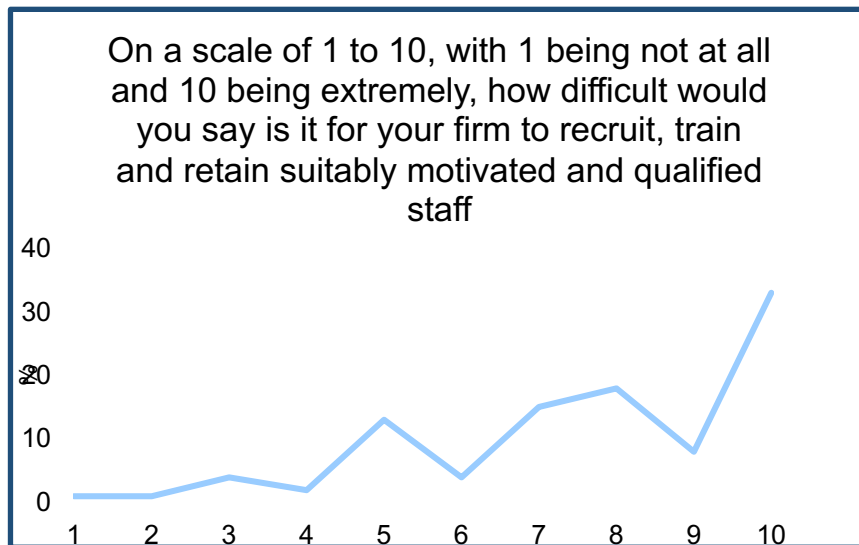
It was clear that the extremely low rates of pay, which have decreased in real terms in recent years will mean that the very high rate of attrition will be set to continue. Between 2008 and 2022, there was an 85% decrease in prison law legal aid providers.¹² Given that three-quarters of respondents considered they would not be doing this work in three years' time, largely due to poor remuneration, it is unlikely that there will be anything left of the professional at all by 2026, when the prison population is predicted to reach almost 100,000.¹³

¹² For 2022 data, see

<https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2022>, at table 9.1, which shows 130 providers doing prison law as of June 2022. For 2008 data, see the Legal Services' Commission's report on 'Prison Law Funding: A Consultation Response', dated 15th July 2009, at §5.4 on p.64, which shows that in 2008/2009 there were over 900 firms doing this work.

¹³ UK Prison Population Statistics, Georgina Strange, House of Commons Library, October 2022, <https://researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf>

Poor recruitment and retention rates



A third of respondents described it as extremely difficult to recruit and retain staff.

Many respondents commented on how difficult it is to recruit and retain staff:

“As a supervisor (who once ran a prison law department) I can categorically say that it is near enough impossible to recruit an experienced prison lawyer. It is difficult enough for any high street firm to recruit good candidates at present - given how low the salary is compared to other industries - so why would you want to enter the world of prison law if there was a choice. It is not desirable, does not pay well & there is little security (given that many firms are disbanding their [prison law] departments).”

“...it is really hard to retain new lawyers in this field - many young lawyers express an interest in this area but do not stay in it due to the lack of funding”.

“It’s extremely difficult to train and retain people on a [consultancy] basis, as they need a high volume of clients in order to sustain a survivable regular income- the rates need to be reviewed in line with other professionals in order to retain good people.”

“We do not believe in providing a substandard service to a vulnerable client group. We are committed to being a decent employer who exercises a duty of care to staff. Consequently, we place a lot of importance upon recruiting, training and retaining good staff. This requires time, care and effort. This is not straightforward work...There is simply insufficient remuneration to enable this to work. When we manage to uncover a 'gem' who is willing and able to take on a low-paid position, it is not possible to retain them because, once they realise how demanding the work is, they either ask for wage increases which they deserve but which we cannot afford or they decide to leave for other better remunerated areas of work or professions. Ongoing

training and support are important but there is a cost associated to this. It has to be paid from somewhere.”

“[I] find it hard to persuade trainees to stay in this field of law when I cannot, hand on heart, say that the work will provide them with a decent standard of living in the long term while they are carrying out important and stressful work.”

“It is really hard to retain new lawyers in this field - many young lawyers express an interest in this area but do not stay in it due to the lack of funding.”

“Most simply do 1 or 2 years then move on.”

Respondents highlighted poor morale, as they worked hard to train colleagues up, only for them to leave this area of work:

“The pay in prison law is so pitiful, my fellow colleagues and I feel undervalued most of the time. I am a prison law supervisor as well as a consultant. I supervised a trainee who recently qualified as a solicitor who had become experienced in prison law, [but] has [now] left the firm.”

Prospects of creating a future generation of legal aid prison lawyers were low:

“Currently, few see it as a viable career due to the low fees and subsequent low wages. If fees do not increase so that base remuneration can increase, I would not be surprised to see even greater reduction in the number of practising prison lawyers, which will have a significant impact on the access to justice for prisoners.”

“Young people do not want to work for the salaries available in this field.”

Conclusion

There is virtually no hope of recruiting new blood into this sector with the current combination of emotionally distressing work and poor pay.

Final thoughts from the profession – act before it’s too late

Respondents were given an opportunity to provide final reflections on the sustainability of prison law. Comments were universal in their concern about the poor rates of pay, the intensity and complexity of the work and the urgent need for action before it is too late:

“Fees need to be increased now or the Prison Lawyer will disappear & it will be too late to rescue the crumbling system that we help remain functioning.”

“The huge amount of adjournments in parole oral hearings means we are doing more and more work per open file. In some cases, it is so difficult to hit the exceptional fee limit that we are effectively conducting hearings for ‘free’, especially on the second or third adjournment when evidence has been taken on each occasion.”

“This is an absolute watershed moment for this area of work. The cost of living crisis, combined with the increased demands of the work and the inexplicable refusal to provide any increase in the rates of payment will mean that we will no longer be able to justify continuing....”

Recommendations

The findings of this survey show that legal aid prison lawyers are in decline.

While prisons and parole reviews regularly feature in the news, the silent demise of prison law legal aid has not featured. This survey shows that without investment now, the existing decline in legal aid prison lawyers is set to continue to the point where the sector has been decimated. The reforms to parole that have been rolled out in recent years will be undermined by this loss.

The APL therefore has two simple recommendations to prevent this further decline:

- Government should implement the uplift recommended by Lord Bellamy immediately
- Government should review the viability of prison law legal aid with a view to considering what further investment in prison law and infrastructure is required in the longer term

A commitment to these two recommendations is an essential first step to dealing with the serious concerns raised in this report.

Appendix 1: The Survey Questions

1. Do you think the complexity of parole board work has increased significantly in the last 5 years?
 - Yes
 - No
2. Do you routinely do additional work for clients that you consider essential but is not funded by legal aid?
 - Yes
 - No
3. Would you say that you do more work than the fixed fee in:
 - Under 50% of cases
 - Over 50% of cases
 - Over 75% of cases
 - Not sure
4. What proportion of your clients are vulnerable and in need of additional support?
 - Less than 10%
 - Under 50%
 - 50% or more
 - Over 75%
5. In the absence of an increase in fees, do you think you will be doing prison law work in 3 years' time?
 - Yes
 - No
6. If NO, is that due to poor remuneration?
 - Yes
 - No
7. On a scale of 1 to 10, with 1 being not at all and 10 being extremely, how difficult would you say is it for your firm to recruit, train and retain suitably motivated and qualified staff?
 - 1 Not at all
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10 Extremely Difficult

8. I am a manager/owner/recruiter

- Yes
- No

9. I am a fee-earner

- Yes
- No

10. Please provide any other comments, examples or case studies to illustrate any of your concerns about the sustainability of legal aid prison law in the absence of an increase in fees.

About the Association of Prison Lawyers

The Association of Prison Lawyers was formed in 2008 by a group of specialist lawyers, to provide a voice during the Legal Aid Agency's funding consultation process that led to the 2010 prison law contract. The Association represents its members' interests and provides training for members.

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