



## **Justice Barred**

### **The difficulties lawyers face in seeing clients in prison**

**January 2024**

#### **Contents**

About APL.....	2
Context and executive summary .....	2
Overview of evidence.....	4
Key evidence .....	5
<i>Prisons providing no video links for solicitors at all</i> .....	5
<i>Limited availability for video links</i> .....	6
<i>Limited availability for in person visits</i> .....	8
<i>Ineffective visits and general concerns</i> .....	9
Conclusions and recommendations.....	11

## About APL

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 APL continues to represent and provide training for its members, comprising specialist barristers, solicitors and legal representatives across England & Wales, and endeavours to represent members' views in policy development.

## Context and executive summary

The criminal justice system is facing unprecedented challenges. The prison population is at an all-time high (Sturge and Carthew, 2023).<sup>1</sup> Delays in the criminal process are at record levels (Richards and Davies, 2023).<sup>2</sup> Funding for legal aid has become unsustainable to the point where three-quarters of prison lawyers do not think they will be doing prison law legal aid work in three years' time (APL, 2023).<sup>3</sup> Due to reductions in the scope of what legal aid work covers in the last decade, almost all cases for people in prison have a bearing on their liberty.

The problems faced by practitioners in representing their clients effectively are compounded by the difficulties in getting to see clients. This is an issue that was raised directly with the Minister for Criminal Legal Aid, Mike Freer MP, in February 2023. The Criminal Bar Association have also raised serious concerns about the difficulty in lawyers being able to access clients (CBA, 2023).<sup>4</sup>

The right of a lawyer to see their client is a fundamental right that has long been protected in law. At common law, it falls under the right to access to the courts, which is a constitutional right.<sup>5</sup>

As far back as 1982, Lord Wilberforce noted that regulations that prevented a prisoner from writing to his lawyer denied the right of access to a court and were a contempt of court.<sup>6</sup> Lord Justice Steyn explained that a prisoner's right of access to a solicitor is "an inseparable part of the right of access to the courts themselves".<sup>7</sup> The European Court of Human Rights has also recognised that interference with access to a solicitor is a breach of Article 6(1), noting that "the rule of law was scarcely conceivable without the possibility of access to the courts".<sup>8</sup> The State has a positive obligation to facilitate this access.

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<sup>1</sup> <https://commonslibrary.parliament.uk/research-briefings/sn04334/>

<sup>2</sup> <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts>

<sup>3</sup> <https://www.associationofprisonlawyers.co.uk/the-silent-demise-of-prison-law-legal-aid/>

<sup>4</sup> <https://www.criminalbar.com/wp-content/uploads/2023/11/London-Prisons-Group-CBA-and-SEC-Submission.pdf>

<sup>5</sup> See *R v Lord Chancellor ex p Witham* [1998] 2 WLR 849

<sup>6</sup> See *Raymond v Honey* [1983] 1 AC 1

<sup>7</sup> See *Leech (No 2)* [1994] QB 198; see also *R v SSHD ex p Simms* [2000] 2 AC 115

<sup>8</sup> *Golder v United Kingdom* (1979-1980) 1 EHRR 524

In the context of parole reviews and in many criminal cases where a person is on remand, a person's liberty is at stake. This means there must be adequate provision of facilities for legal visits where client instructions can be taken to enable proper representation before the Parole Board and at the criminal courts.

In a world where technology is developing all the time, the failure to facilitate timely access between lawyers and their clients is unacceptable. In 2013, Nick Hardwick – former Chief Inspector of Prisons, said in his forward to a report on education in prisons by the Prison Reform Trust and the Prisoners' Education Trust:<sup>9</sup>

“We can't go on with prisons in a pre-internet dark age: inefficient, wasteful and leaving prisoners woefully unprepared for the real world they will face on release. I have not met one prison professional who does not think drastic change is needed.”

A decade on, there has been an exponential leap in the development of technologies in prison, exacerbated by Covid. In 2021, a clear strategy for modernisation across His Majesty's Prison and Probation service was set out (HMPPS, 2021).<sup>10</sup> Yet as this report shows, despite facilities in existence, they are not equally and easily accessible to lawyers who need to see their clients to ensure justice is done.

This report shows that lawyers are still struggling to get access to their clients, both via video links and in person, with some prisons point-blank refusing to allow lawyers to use their video link facilities. The APL has identified 16 prisons that have told practitioners that they do not offer video links to solicitors.

Others have said they can only be used between Friday and Monday, or they offer appointments weeks or even months away. In a number of prisons, in-person visits are extremely limited, with a slot just once a week, sometimes only in a busy visiting hall with no privacy for confidential discussions.

In some instances, even when a visit occurs in person, there are huge difficulties on the day, including being denied authorised laptops or the person being brought to the visit late, or not at all, due to staff shortages or other issues in the prison.

Practitioners have experienced difficulties in getting through to prisons to book visits – there is no central system – every prison is different.

Urgent steps must be taken to ensure efficient access to justice for everyone in prison:

- Lawyers ought to be able to find out how to book a visit easily,
- Confidential video links and in person visits should be available within a reasonable period of time in every prison, and
- Prisons ought to prioritise legal visits to ensure they work smoothly once booked

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<sup>9</sup> <https://prisonreformtrust.org.uk/wp-content/uploads/2013/11/through-the-gateway.pdf>

<sup>10</sup> <https://www.gov.uk/government/publications/hmpps-digital-data-and-technology-strategy-what-to-expect-in-202122/hmpps-digital-data-technology-strategy-what-to-expect-in-202122>

## Overview of evidence

Practitioners have provided 78 examples of their experiences in seeking visits by video link or in person across 46 jails in England and Wales.

The examples included experiences between August 2022 and January 2024, with the vast majority occurring in 2023.

Key concerns included:

- Prisons providing no video links for solicitors at all: 34 examples were provided where practitioners were advised there were no links for solicitors across 16 prisons
- Limited availability for video links: 25 examples were provided across 18 prisons where practitioners were told that they could book a video link but would have to wait for excessive periods of time
- Limited availability for in person visits: 13 examples were provided across 12 prisons where in person visits were extremely limited
- Ineffective visits: 6 examples across 6 different prisons were provided where visits had been completely ineffective because the client was not produced, or a laptop not allowed in

It does not have to be this way. Practitioners provided two examples where prison visits can be easily booked across two prisons.

## Key evidence

### *Prisons providing no video links for solicitors at all*

34 examples were provided where practitioners were advised there were no links for solicitors across 16 prisons.

These prisons were:

- Aylesbury
- Downview
- Erlestoke
- Guys Marsh
- Highpoint
- Hindley
- Humber
- Lancaster Farms
- Northumberland
- Onley
- Portland
- Ranby
- Rislely
- Swaleside
- The Mount
- Wymott

In February 2023, following a request for a video link with HMP Highpoint a solicitor received the following reply:

"Unfortunately, we cannot facilitate video links for solicitor. You will need to email our legal visit department, to arrange a face-to-face hearing or a telephone call from Mr XXX's cell. We are unable to provide any alternatives."

In August 2023, following a request for a video link with HMP Ranby a solicitor received the following reply:

"Good Morning  
As we only have one video link this is only for Courts and Oral Hearings. We simply do not have the capacity to accommodate solicitors for video links."

In November 2023, following a request for a video link with HMP Northumberland a solicitor received the following reply:

"Good Afternoon

Sorry we only use video link for a court hearing only, we do visits Wednesday to Sundays at 2pm. I will need the name of the prisoner to check what's available."

In January 2024, following a request for a video link with HMP Hindley a solicitor was informed there are no video links at all for solicitors, that they can only attend in person and next in person availability was not for two weeks.

### ***Limited availability for video links***

25 examples were provided across 18 prisons where practitioners were told that they could book a video link, but would have to wait for excessive periods of time or that the system would not allow a booking to be made for a significant period.

These prisons were:

- Dartmoor
- Downview
- Erlestoke
- Ford
- Full Sutton
- Garth
- Gartree
- Haverigg
- Humber
- Isle of Wight
- Long Lartin
- Oakwood
- Rochester
- Stanford Hill
- Stocken
- The Verne
- Warren Hill
- Wetherby
- Whitemoor

In August 2022 a practitioner who requested a video link at HMP Haverigg was told that no video links would be available until after the client's hearing in September:

"Good afternoon,  
Thank you for your email.  
I can confirm that I have cancelled you face-to-face Legal visit on Friday 1st September 2023.  
Unfortunately, we are fully booked up for Legal Video links and the earliest availability is Friday 22nd September 2023 and I appreciate that this will be after the hearing.

Should you require further information, please phone our Social/Legal Visit line on 01229 713016 – Mon – Fri – 13:00 until 16:00.

Regards,  
Legal Visits/Social Visits"

A solicitor seeking a video link in May 2023 at the Isle of Wight was told none were available and that links were only held between Friday and Sunday:

"Please note that we can only facilitate videolinks on Friday, Saturday and/or Sunday afternoons

Please note that this prisoner is in Albany, and the Friday wait list to see Albany prisoners is oversubscribed.

The next available Friday 07/07/23"

In July 2023, a lawyer seeking a video link at HMP Gartree was told that the first availability was in September 2023. The lawyer spoke to the prison and was told that there are only two video link slots a week at Gartree.

A lawyer who requested a video link in August 2023 at a children's prison, HMYOI Wetherby, to prepare for a parole hearing, was told that the prison's earliest availability was not until October, and two days after the parole hearing.

In September 2023, a lawyer asked for a video link at HMP Dartmoor within a period of a few weeks. The prison gave the following response:

"We have no availability for a video link call on either of the dates you have requested.  
We only have one video link room."

In October 2023, a lawyer sought a video link at HMP Long Lartin. The client had been self-harming and had serious mental health concerns and his parole hearing had been subject to significant delays. The lawyer asked for any date in October or November, up to 21 November. The prison stated that no visits were available until 30 November 2023.

A lawyer seeking a visit at HMP Stanford Hill in November 2023 for an elderly man with mobility issues was told that there was no availability until January 2024.

HMP Rochester told a lawyer in November 2023 that nothing was available for a month, which meant that a deadline for submitting representations on parole would be missed. The same prison would not book visits for the following month, stating:

"Our next available date will be December but we are not booking yet as we don't have the diary hopefully next week we can".

In November 2023, a lawyer was told by HMP Garth that the prison had no availability for video links until January:

“The next slot for a video link will be in January.”

Following a request to HMP The Verne in December 2023, a lawyer was told:

“...currently the next available Legal video call is on Tuesday 20th February 2024 at 09:00-09:45 and 10:00-10:45.”

In response to a request in January 2024, HMP Stocken confirmed that video appointments are fully booked for January and February.

In January 2024 a lawyer seeking a video link to prepare for a parole hearing was told that they were fully booked until 29 January, after the hearing. The client had additional needs.

### ***Limited availability for in person visits***

13 examples were provided across 12 prisons where availability of in person visits was extremely limited. Prisons where practitioners experienced problems included:

- Aylesbury
- Belmarsh
- Erlestoke
- Ford
- Fosse Way
- Full Sutton
- Garth
- Haverigg
- Lewes
- Wandsworth
- Werrington
- Whitemoor

In August 2022 a practitioner who sought an in person visit at HMP Haverigg was told that visits were limited to every other Friday.

"Good afternoon,

Thank you for your email.

Unfortunately, we will not be able to book a face-to-face visit on either of those dates, as we hold Legal visits on every other Friday. We do have availability for Friday 18th August 2023.

Please would you be able to confirm whether this would be convenient?

Should you require further information, please phone our Social/Legal Visit line on 01229 713016 – Mon – Fri – 13:00 until 16:00.

Regards,

Legal Visits/Social Visits HMP Haverigg"



A lawyer who tried to book a visit to see a client in person at HMYOI Aylesbury in January 2023 was advised that visits only take place on Wednesdays. Other lawyers have confirmed that it is very difficult to book these visits and when they do take place they are in a busy visits hall with no privacy, raising serious concerns about client confidentiality.

In April 2023, a lawyer seeking an in person visit at HMP Erlestoke was advised of extremely limited availability and restrictions on bringing legal papers into the visit:

“Unfortunately we do not currently have the resources to provide legal visits via video link. We have recommenced in-person legal visits, on Friday mornings only from 09:00 to 11:00. However, unless a face to face visit is absolutely necessary, telephone calls between the visitor and the client can be arranged via a headed R39 letter to the client, who will then make contact with their Keyworker, Unit Manager or Unit staff to make arrangements in facilitating the phone call.

Please let us know if you do require an in-person visit, including the date & timeslot.

Also please note, as of the 28th of February 2023 no Paper Legal Correspondence or Documents will be allowed into the Prison. Anything that you may wish to discuss with a client must be stored on a laptop computer, authorisation for which must be arranged no less than 48 hours prior to the visit.”

In December 2023, a lawyer was advised by HMP Full Sutton that in person visits are only available between Friday and Sunday:

"Our Legal Face-to Face visits are Fri, Sat and Sun PM only."

A lawyer seeking an in person, or video link, visit at HMP Lewes in January 2024 was advised that there is not availability either in person or by video link until 29 January and in-person visits can only be booked for a maximum of 1 hour on a weekday. The prison only facilitates 2 hour visits on weekends.

A lawyer seeking an in person, or video link, visit at HMP Whitemoor in January 2024 was advised that the next available video call is Tuesday 26th March at 09:00 for one hour; and the next available face to face is Wednesday 1st May at 09:00 for one or two hours.

### ***Ineffective visits and general concerns***

Six examples across 6 different prisons were provided where visits had been completely ineffective because the client was not produced, or a laptop not allowed in. Respondents also described difficulties in getting responses to requests for visits both by telephone and email, with some prisons simply not communicating. Problems on visits were not the focus of this survey and there are, no doubt, many more issues that arise on visits both by video link and in person that have not been captured in this survey.

The prisons where concerns were raised were:

- Cookham Wood
- Exeter
- Gartree
- Frenon
- Lowdham Grange
- Stafford
- Wandsworth
- Manchester

In March 2023 a lawyer had a video link at the children's prison, HMYOI Cookham Wood. The lawyer was told that the young person she was meant to see had not been brought down for the video link. She had booked a one hour video link to speak to him and had arranged for an interpreter to attend as well. The interpreter and the lawyer waited over an hour, but in the end had to log off, so did not end up speaking to the client. The lawyer spoke to the prison multiple times while waiting and was told that due to lack of staff/issues with movements there would be delays with bringing him down. Before leaving the videolink she told the prison that they would be leaving, and that the young person should not be brought down. Following the visit the lawyer received an email from the young person's personal adviser to say that "he was called down for a visit 2 days ago but when he got to the visiting area, no-one was there".

In November 2023, a lawyer reported that HMP Grendon had cancelled two recent bookings lately with no reason.

In the same month a lawyer reported that despite having booked a video link at HMP Lowdham Grange weeks in advance - and originally struggling to get an answer from the prison (by both email and phone) - an officer appeared on the link to explain that their visit had been cancelled due to staff shortages. After complaining, the lawyer was put through to OMU, who were only able to offer a replacement link four weeks later (and just several days before the clients parole hearing).

A lawyer who attended an in person visit in HMP Exeter in December 2023 was not allowed to bring their laptop in, even though the lawyer had previously provided the prison with all the requisite details and they had been sent an email confirming they could bring their laptop on the visit.

Another lawyer reported in January 2024 that an in person visit at HMP Gartree was ineffective. The prison does not allow any paperwork or writing implements to be brought in, including parole dossiers. A fully charged laptop cleared in advance is permitted but no paperwork. This is the same at HMP Manchester.

## Conclusions and recommendations

Access to justice is essential for a functioning criminal justice system. This report provides a small snapshot of widespread serious delays and lack of appropriate facilities, necessary for lawyers and their clients to see each other.

This is unacceptable. Legal aid lawyers who are already in serious decline due to lack of sustainable funding, are wasting time on trying to get prison visits and having visits that are ineffective. For clients, many of whom are waiting for their liberty to be determined while they wait in an overcrowded prison system, the position is even worse.

Urgent steps must be taken to ensure efficient access to justice for everyone in prison:

- Lawyers ought to be able to find out how to book a visit easily,
- Confidential video links and in person visits should be available within a reasonable period of time in every prison; and
- Prisons ought to prioritise legal visits to ensure they work smoothly once booked.

**Analysis by Dr Laura Janes on behalf of APL  
22 January 2024**