



Background briefing on prison law and legal aid

Legal Aid Practitioners Group (LAPG) is a membership body representing legal aid practitioners across England and Wales. Our Members are private practice and not-for-profit (NfP) organisations, Law Centres, barristers and costs lawyers. Constituted in 1984, we are one of four bodies officially appointed to formally consult with the Government on all legal aid contracting and operational issues.

The Association of Prison Lawyers (APL) 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. We represent and provide training for our members, comprising specialist barristers, solicitors and legal representatives across England & Wales, and endeavour to represent our members' views in policy development.

Why do people in prison need legal advice and representation over and above representation in the criminal courts?

It is well established that people in prison are more likely to suffer from both physical and mental health difficulties and to come from marginalised and disadvantaged communities.¹

People in prison have a wide range of unmet civil legal needs, such as the need for support with housing issues, community care and family law issues. Civil legal aid is in theory as available to people in prison as in the community. However, the combination of the vulnerabilities of people in prison combined with lack of access to the outside world means they often struggle to know when they have a legal issue that they could be assisted with and find it hard to access legal advice and support.

Critical areas of work that were in the scope of prison law for a modest fixed fee before 2013 remain unavailable. These include sentence planning cases (including work on access to offending behaviour courses) that previously ensured prisoners could undertake crucial risk reduction work before automatic release or parole.

Prison lawyers can be crucial advocates for the rights and wellbeing of individuals in custody, providing legal advice and representation on various matters within the prison system to ensure they are not treated unfairly or denied access to crucial rehabilitative work.

¹ <https://prisonreformtrust.org.uk/wp-content/uploads/2025/02/Winter-2025-factfile.pdf>

What is prison law legal aid?

Prison law sits under the criminal legal aid contract but is recognised as a distinct area of work that must be applied for separately and has its own “supervisor standards” requirements and distinct fee structure. It is less than 1% of the criminal legal aid spend and has many features that overlap with civil law.

Prior to the changes brought about by the Criminal Legal Aid (General) Regulations 2013 SI No 9, legal aid in prison law included help with sentence planning issues, categorisation for all prisoners and all disciplinary issues. The only restriction to scope was that there had to be sufficient benefit in doing the work and prisoners had to demonstrate financial eligibility for legal aid. The 2013 Regulations cut the scope of legal aid in prison law drastically. A limited number of aspects of this work were brought back into scope following a successful challenge in the Court of Appeal by two penal reform charities.

Currently, there is very limited prison law legal aid available beyond Parole Board and Independent Adjudication cases. The areas that were brought back into scope were those areas where the Court of Appeal found a direct impact on liberty, such as decisions about Category A status and sentence cases where the release date is at issue.

Changes to prison law and prison law legal aid over time

In December 2013, the Criminal Legal Aid (General) Regulations 2013 were amended to restrict the ability of firms holding a legal aid contract to provide assistance with a number of areas in prison law. These included issues surrounding categorisation, sentence planning, licence conditions, mother and baby units and most prison disciplinary hearings. The main work that remained was parole and disciplinary hearings in prison before a Magistrate.

In 2018, following litigation by the Howard League and the Prisoners’ Advice Service,² some areas were brought back into the scope of legal aid on the basis that the Court of Appeal found that fairness required legal advice and representation because of the impact of the subject matter on a person’s liberty. This included work for those in closed supervision units and Category A cases. In some other areas of work, such as mother and baby unit cases, could be applied for under the exceptional funding scheme. The use of this scheme by prison lawyers is so negligible that data is not even available as to the number of prison law cases that are funded under the exceptional funding scheme (ECF).

At the same time, prison law has become more complex following new layers of work that have arisen from the Worboys case.³ This created a new system of reviews of parole decisions, the production of summaries of cases, and the need to establish findings of fact where there are unadjudicated allegations by means of pre-hearing case conferences or ‘mini hearings’. Hearings can now be held in public and observed by victims. Further

² *R (Howard League for Penal Reform and Prisoners’ Advice Service) v Lord Chancellor* [2017] EWCA Civ 244. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2017/244.html> (accessed 27 September 2021).

³ *Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11. Available at: <https://www.bailii.org/uk/cases/UKSC/2018/11.html> (accessed 27 September 2021).

changes have been legislated for in the Victims and Prisoners Act 2024, such as High Court reviews of parole decisions, which are yet to be implemented.

Legal aid fees for prison law

Decades of underfunding and cuts to criminal legal aid have led to a decrease in the number of prison law practitioners.

The latest data from the Legal Aid Agency (LAA) shows that as of March 2023, there were 101 provider offices throughout England and Wales completing prison law legal aid work.⁴ This compares to 353 in 2013 and over 900 firms doing this work in 2008/2009, a decrease of 85%.

Concerns have been raised about the need for prison law to be included in increases in funding to criminal law generally: see Independent Criminal Legal Aid Review 2021⁵ and, more recently, the report of the Criminal Legal Aid Advisory Board delivered by HHJ Taylor⁶.

While all other fees for criminal legal aid work have increased, prison law legal aid fees have been cut.

The following table shows the rates in for the two most common prison law fixed fee cases, written parole reviews and oral parole reviews in December 2011, 2014, 2015 & 2016 (which is the last time the rates changed), as well as the decrease in real terms since 2011 to today's rates using the Bank of England inflation calculator.

Written parole cases

	2011	2014	2015	2016	Reduction in real terms since 2011
Fixed fee	£220.00 (320.51)	£200.75	£181.50	£200.75	38%
Escape fee threshold	£660.00	£602.75	£544.50	£602.75	You can only get paid more than the higher std fee if you exceed this amount

⁴ See [Legal aid statistics England and Wales tables Oct to Dec 2024](https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-october-to-december-2024), Ministry of Justice, March 2025, Table 9.1, <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-october-to-december-2024>

⁵ <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

⁶ <https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024>

Oral parole cases

	2011	2014	2015	2016	Reduction in real terms since 2011
Lower std fee	£479.13 (697.83)	£437.21	£395.28	£437.21	37%
Higher Std fee	£1,593.91 (2,320.75)	£1,454.44	£1,314.98	£1,454.44	37%
Escape free threshold	£4,780.87	£4,362.54	£3,944.22	£4,362.54	You can only get paid more than the higher std fee if you exceed this amount

Escape fees, reached only where the profit costs are over three times the fixed fee, are very rare in advocacy cases. The fee is calculated using the relevant “hourly” rate, which is very low: preparation in written cases is £42.80 and in oral cases is £51.24. Where the escape threshold is met, the claim is sent to the Legal Aid Agency for detailed assessment. The LAA can reduce it if it does not consider the work has been correctly claimed. The process of preparing a bill for an escape fee assessment can take many hours of unpaid work. A recent change in practice in the way the LAA processes these claims has resulted in many claims being rejected.

Impact of fee cuts

A 2023 survey conducted by the Association of Prison Lawyers, which surveyed 98 practitioners in total, found a looming sustainability crisis in the profession due to poor remuneration. Three-quarters of respondents considered they would not be doing prison law in 3 years’ time with 88% of those cited poor remuneration as the reason.

Prison law was excluded from the fee increases that were the product of the Criminal Legal Aid Review (CLAR). This was contrary to Lord Christopher Bellamy’s recommendations in the original independent report which suggested an increase of at least 15% for prison law and parole work.

In real terms, the rate of pay for prison law has decreased since 2011 by 36%. Practitioners tell us that fees remain low: for example, a practitioner could spend up to 14 hours on a complex written parole case and only get paid £200.75. In exceptional circumstances, where work on the case amounts to more than three times the fixed or higher standard fee in an advocacy case, a claim may be made for all the actual costs of the case. This is based on an hourly rate for preparatory work of either £42.80 or £51.24. Small businesses cannot survive on these rates.⁷

⁷ See APL’s Sustainability Report, 2023, available at https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_AUGUST_2023.pdf