



## **Association of Prison Lawyers (APL) Response to the Ministry of Justice Criminal Legal Aid Consultation: Prison Law Proposals (Paragraphs 37-45)**

### **Introduction to APL and prison law**

1. The Association of Prison Lawyers (APL) was formed in 2008 by a group of specialist lawyers. We represent and provide training for our members, comprising barristers, solicitors and legal representatives across England & Wales, and endeavour to represent our members' views in policy development.
2. Prison lawyers play an important role in representing people before the Parole Board, ensuring that cases are progressed in a timely manner and enabling release where that is safe, providing legal advice and representation in disciplinary matters and picking up on abuse and errors in the system.<sup>1</sup> Legal representation also benefits victims involved in the process.
3. Prisoners are recognised as including disproportionate numbers of people with protected characteristics compared with the ordinary population: around two-thirds of people in prison have mental health problems, including learning difficulties.<sup>2</sup>
4. Prison law sits under the criminal contract due to the nature of the work and its impact on liberty and fairness but has many features that overlap with civil law.<sup>3</sup> The Ministry of Justice's Consultation Paper ("the Consultation Paper") identifies that prison law work makes up around 2% of the overall criminal legal aid expenditure (§39).

### **Question 6: Do you agree with the proposal to increase prison law fees by 24%? Please state yes/no/maybe/do not know and provide reasons**

5. **Yes.** The APL welcomes the proposal to increase prison law rates by 24%, which will finally honour the findings of the 2021 Bellamy review<sup>4</sup> and the CLAAB in 2024.<sup>5</sup> Our consistent ask for several years has been to seek an increase to keep pace with inflation, to address the serious reduction in providers and to provide a sustainable

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<sup>1</sup> The right of people in prison to access the courts (and by extension lawyers to assist them to do that) is a fundamental right that has long been protected by the common law. The courts have characterised this as a constitutional right which cannot be abrogated (*R v Lord Chancellor ex p Witham* [1998] 2 WLR 849).

<sup>2</sup> <https://committees.parliament.uk/publications/7455/documents/78054/default/>

<sup>3</sup> Prisoners will often need to resort to public law remedies: there are significant concerns about rates and fee structures that also affect the viability of prison law specialists who undertake civil legal aid work.

<sup>4</sup> <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

<sup>5</sup> <https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024>

future for this important area of work. If implemented, the current proposals in respect of solicitors' fees in criminal legal aid work will constitute significant progress towards achieving this: it will bring fees up to around two-thirds of the rates in 2011. The proposed increase is a good first step and we hope that it marks the beginning of concerted efforts to stabilise the provider base and to ensure long-term sustainability.

6. The Consultation Paper acknowledges that prison law was left out of the increases in criminal legal aid fees by the previous government, despite recommendations that it should be included. It also notes that the rates for prison law legal aid work have not changed (apart from a reduction in 2014) for many years (§40-41). In fact, according to the Bank of England inflation calculator, prison law legal aid rates have decreased in real terms by 37% since 2011.
7. The lack of investment in prison law legal aid has led to a huge decrease in the number of providers by 85% since 2007.<sup>4</sup> The Consultation Paper notes that between 2012-13 and 2023-24, the number of providers completing prison work in each year has decreased by 63% (§42). That is more than any other area of work, with the exception of categories purposefully reduced by LASPO, such as welfare benefits and debt.
8. Small businesses cannot survive on the current rates.
9. In August 2023, APL's sustainability report found that three-quarters of prison lawyers surveyed did not think they would be doing prison law legal aid work in three years' time. The principal reason identified for this was the stagnation of fee rates, combined with the increasing complexity of the work. The report highlighted issues with poor recruitment and retention rates, and the emotionally distressing nature of the work.<sup>6</sup>
10. The Consultation Paper correctly identifies that:

*"Making the parole process as quick and effective as possible – and ensuring the Parole Board can reach decisions on release without delay – is a crucial enabler for an effective and efficient criminal justice system. Prison law is a relatively specific area of criminal legal aid and we need to maintain the workforce to ensure the workload is being met."* (§43).
11. The Consultation Paper also correctly identifies that:

*"Further investment into prison law fees may help to mitigate the falling provider levels in the sector."* (§44).

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<sup>6</sup> [https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL\\_SUSTAINABILITY\\_REPORT\\_7\\_AUGUST\\_2023.pdf](https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_7_AUGUST_2023.pdf)

12. Prison lawyers play a vital role in upholding the rule of law, protecting the rights of some of the most vulnerable individuals in society, and ensuring fairness and accountability within the prison system. Further, practitioners deal with complex, traumatic and often urgent matters that have profound implications for liberty, rehabilitation, and public safety. These include parole reviews, adjudications, recall challenges, and decisions about segregation and categorisation.
13. Legal representation also benefits victims involved in the process. Skilled and experienced legal representation can provide:
  - a. An essential buffer between perpetrator and victim;
  - b. Informed and sensitive advice to prisoners about the conduct of parole proceedings; and
  - c. A means of mitigating and challenging delays to parole proceedings that are harmful to victims, prisoners and to the public purse.
14. The current levels of remuneration do not reflect the skill, experience, and time required to undertake this work effectively. The proposed 24% uplift in fees will go some way to rectifying the issues with remuneration. It is an essential first step towards making prison law legal aid work sustainable. Further steps will need to be taken and we make some suggestions for further consideration here.
15. The Consultation Paper also recognises that Parole Board cases are “*becoming increasingly complex*” (§42), a point that prison lawyers have been making for many years.
16. This is highly relevant to the way that cases are remunerated. When the current fixed fee system was designed on a “swings and roundabouts” basis, it was on the basis that although providers would be underpaid on some cases, this would be off-set by being overpaid on others. However, the change in the nature of the work means this rationale no longer applies. The last government made huge changes to the parole system, some of which are still to be implemented. Cases often last years. Most of these long cases will still only attract a fixed fee at the end of the case. This results in a significant loss for providers who often spend much more time than is paid for under the fixed fee.
17. Examples of additional work subsumed under the fixed fee include:
  - (i) **Fact-finding hearings:** After the Worboys (DSD) case, parole reviews now frequently involve investigations into alleged, but unproven, allegations. This widens the scope and complexity of cases and requires skilled preparation and advocacy to minimise delays and ensure fairness.
  - (ii) **Reconsideration and setting aside reviews:** The reconsideration system was introduced 6 years ago. This is a whole new stage to parole reviews, effectively an appeal system but on judicial review grounds, which follows after the

hearing itself has concluded. They are particularly complex and time-consuming: they involve the application of public law principles, are reserved for specialist, accredited Parole Board members and are publicly reported. Additionally, there is a new “setting aside” process which means release decisions can be set aside if there are new developments: lengthy representations are often required. Work on both reconsideration and setting aside applications is effectively whole separate case but forms part of the single fixed fee.

- (iii) **Transparency: public and victim observed hearings:** The government and the Parole Board are committed to an increase in transparency and to expanding victims’ rights to participate in the parole process. Victims can now attend parole hearings. Hearings can be held in public. Summaries are now produced in most cases and a plan to move towards redacted decisions will require further work by legal representatives. Legal representation of prisoners is critical to making this sensitive process work. The number of requests by victims to observe hearings increased five-fold since 2022/23. Where victims attend the hearing, it will invariably take longer and rightly require additional case conferences, directions hearings and care and attention by the legal representative.
- (iv) **Top tier referrals (forthcoming):** The Victims and Prisoners’ Act introduces referrals by the Secretary of State to the High Court to review release decisions.<sup>7</sup> These cases are likely to be akin to judicial reviews and will need to be remunerated accordingly. APL requests that we are formally consulted on the arrangements for payment in these cases.

- 18. The Parole Board has confirmed around 50% of oral hearings now require specialist Parole Board members and a recent increase in hearing length: in the last six months to March 2025, the number of hearings lasting over a day trebled compared with the previous six months. These changes are indicative of the increasing complexity of the work. If implemented, the proposals from the Independent Sentencing Review by the Rt Hon David Gauke mean that more standard recall cases are likely to fall away from parole, meaning that all Parole Board work will be complex.<sup>8</sup>
- 19. The Parole Board values skilled legal representation - a point underlined in its response to the Ministry of Justice’s consultation in May 2022:

*“There has been a significant reduction in the number of legal firms prepared to carry out prison law work over the last decade and we fear that unless there is some increase to fees there is a danger that there will be insufficient lawyers to represent prisoners involved in the parole process, which would have a significant detrimental effect on timeliness, victims*

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<sup>7</sup> APL’s concerns about this measure are set out in our evidence to the V&P Act Scrutiny Committee: <https://bills.parliament.uk/publications/52104/documents/3794>

<sup>8</sup> For full analysis of the Gauke proposals, see [https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2025/06/IMPACT\\_CHANES\\_GAUKE\\_2025\\_06\\_14.pdf](https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2025/06/IMPACT_CHANES_GAUKE_2025_06_14.pdf)

*and the public purse.”<sup>9</sup>*

20. At present, prison law legal aid lawyers are only paid for the work that they actually do if their work exceeds three times the amount of the fixed or standard fee. This means many lawyers do huge amounts of unpaid work on most cases: in many cases the fixed fee is used up by the basic preparation meaning any complications and additional hearings result in completely unpaid work.
21. Cases that meet the escape threshold have recently been subject to increased scrutiny, often not conducted in fair or transparent ways. LAA assessments often result in the case being rejected and only paid at the fixed fee, with firms losing thousands of pounds of work as well as the unpaid time spent preparing files for manual billing (files have to be sent in hard copy).
22. The aforementioned APL sustainability report (August 2023) sets out in some detail the way practitioners consider that prison law work has grown in complexity and the prevalence of additional underfunded work.<sup>10</sup>
23. There are no interim payments for disbursements or profit costs. When files run for years, this can cause huge cashflow problems.
24. We therefore ask that, without prejudice to the much-welcomed, proposed short-term increase of 24%, the Ministry of Justice engages with APL on developing a new model of funding that adequately and fairly reflects the nature and complexity of Parole Board work and enables the profession to be financially sustainable, including electronic billing, interim payments for profit costs and disbursements, and fair and transparent billing processes.
25. In addition, APL would welcome the opportunity to be consulted upon the development of the government’s proposed reforms following the Gauke Sentencing Review. These reforms provide the potential for further addressing the prison population crisis which has created a myriad of serious problems within the prison estate for both staff and prisoners. If people are not released when they should be (or recalled when they should not be) due to the absence of procedural safeguards, the rising prison population will not be tackled.
26. In conclusion, we strongly support the 24% uplift and encourage the government to implement this increase without delay, while continuing to engage with the profession on further changes to ensure the long-term sustainability of prison law legal aid and to support the government’s proposed reforms arising out of the recent Sentencing Review.

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<sup>9</sup> <https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2022/12/Martin-Jones-to-Rikki-Garg-and-PB-response-to-Legal-Aid-review.pdf>

<sup>10</sup> [https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL\\_SUSTAINABILITY\\_REPORT\\_7\\_AUGUST\\_2023.pdf](https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_7_AUGUST_2023.pdf)

**Question 13 - From your experience, are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.**

**Question 14 - What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please provide evidence and reasons.**

27. As stated at paragraph 3, prisoners are recognised as including disproportionate numbers of people with protected characteristics compared with the ordinary population: around two-thirds of people in prison have mental health problems, including learning difficulties.
28. Many, if not most prison law clients, who benefit from the areas of work, such as Parole and Independent Adjudication cases, that are currently in scope have one or more protected characteristics under the Equality Act 2010. These characteristics often require prison lawyers to do additional work, such as making representations to healthcare, safeguarding referrals and attending video hearings in person with their clients to enable effective participation. This work is not separately remunerated but covered by the fixed fee. Therefore, and without prejudice to APL's firm view that the scope of prison law legal aid is too narrow, prison law clients are likely to be affected in a positive way by the proposed 24% uplift in prison law fees. This is because an increase in fees is essential to ensure that lawyers who provide high-quality legal representation are able to continue to do this work. It will mitigate the challenges faced by practitioners representing clients in complex cases and seeking to ensure a fair review in each case. This, in turn, will improve outcomes for prisoners with protected characteristics.
29. Prisoners, and especially those with protected characteristics face some of the most serious interferences on their rights and liberty yet often have the least capacity to advocate for themselves. An uplift in fees will help sustain a network of qualified lawyers able to represent this often-overlooked population, thereby reinforcing access to justice and public confidence in the integrity of the justice system.
30. Examples include, but are not limited to:
  - a. Prisoners with Disabilities (including mental health conditions): A significant proportion of the prison population lives with physical or mental disabilities, including learning disabilities, neurodiversity (such as autism or ADHD), and serious mental illness. These individuals often struggle to navigate prison systems or articulate their legal rights without assistance. By supporting the sustainability of legal representation, the uplift will help ensure that disabled

prisoners continue to receive the specialist advice and advocacy they need – especially in parole, allocation , or categorisation decisions.

- b. Older Prisoners: The ageing prison population presents significant challenges for HMPPS and there is a growing need for skilled and attentive legal representation to assist older prisoners with particular vulnerabilities.<sup>11</sup> There has been a marked increase in capacity issues arising in parole and other cases which necessitate the involvement of litigation friends or referrals to the Official Solicitor. Specialist advice and advocacy is essential for this category of work. An uplift in the funding rates supports lawyers in taking the time needed to adequately support older prisoners, improving access to justice and enabling proper consideration release or categorisation.
- c. Prisoners from Ethnic Minority Backgrounds: Ethnic minority prisoners are disproportionately represented in the prison population and may face systemic bias, racial discrimination, or language barriers that affect their treatment and opportunities for progression. Better-resourced legal representatives can challenge discriminatory decisions and help ensure fair treatment within the prison system.
- d. Young Adults and Children: Young people in custody are highly vulnerable and may not understand their rights. Retaining experienced and specialised prison law practitioners will help ensure young people receive clear advice and strong advocacy in complex situations, such as disciplinary proceedings or parole reviews.
- e. Women prisoners: Women in prison are a minority group and often face different issues, including trauma histories, caregiving responsibilities, and needs related to mental health. Sustaining prison law services means women will continue to have access to specialist legal support. This is especially important in cases involving sentence progression, in terms of access to appropriate treatment, or release planning in respect of parole.
- f. LGBTQ+ Prisoners – Gender Reassignment and Sexual Orientation: Prisoners who are transgender, non-binary, or identify as lesbian, gay or bisexual often experience high levels of discrimination, bullying, isolation, and poor access to appropriate healthcare or accommodation. Properly resourced legal practitioners can advocate effectively on behalf of LGBTQ+ prisoners—for example, in relation to placement in gender-appropriate facilities in relation to release planning, protection from harassment and recognition of their identities.

31. The aforementioned APL sustainability report (August 2023) provides examples from

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<sup>11</sup> See <https://prisonreformtrust.org.uk/national-strategy-urgently-needed-to-support-rising-numbers-of-older-prisoners/>

practitioners in respect of the high proportion of vulnerable clients in need of additional support.<sup>12</sup>

32. These needs are compounded in the case of people in prison with protected characteristics, meaning that appropriate legal support is essential to mitigate the disadvantages they face.
33. The attached Annex provides a snapshot of current examples from our members which illustrate the needs of people with protected characteristics set out above. These are cases where additional work has been required to ensure a fair review for clients with protected characteristics. This is work that will almost always fall outside of the standard fixed fee and will therefore be unpaid.
34. The proposed 24% uplift in prison law fees is likely to have a positive and protective effect on several groups with protected characteristics. By helping to maintain a viable network of experienced legal professionals, the uplift will enhance the capacity of the legal aid system to serve those with the greatest needs and to address inequality within the prison system.

**APL**

**1 July 2025**

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<sup>12</sup> [https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL\\_SUSTAINABILITY\\_REPORT\\_7\\_AUGUST\\_2023.pdf](https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_7_AUGUST_2023.pdf)

## Annex A

### Examples in support of Questions 13 and 14

Under the current fee regime, the standard fee for an oral hearing is often reached in a straightforward case without any additional work (para 16 above).

The recent examples provided by our members demonstrate the some of the additional work practitioners undertake in cases where clients have protected characteristics that is largely unremunerated.

This additional work is essential to meet the needs of clients with protected characteristics but is not sustainable under the current fee system and without appropriate remuneration.

1. **Pregnancy and maternity:** *In addition to the usual parole preparation for a release application- I had to also liaise with the mother and baby unit, and social services to ensure there was an effective release plan, to strengthen the release application and to try and keep mother and child together.*
2. **Gender reassignment:** *I represent a transwoman re parole- in addition to the normal required work for parole I have had to liaise and submit additional representations to the Complex Case board, prison and COM regarding allocation decisions and accommodation for release. The decisions are crucial for an effective release plan and essential for the parole.*
3. **Disability:**
  - a. *I represent a client re her parole with low cognitive understanding. To ensure she fully understood the process and could give effective instructions additional attendances were required and I needed to attend the remote hearing in person to ensure representation took account of her characteristics. The visiting hours at most prisons necessitate multiple visits for such lengthy attendances.*
  - b. *My client is illiterate and therefore cannot read and write. I have to read every document to her in her parole dossier. Most dossiers are at least several hundred pages long. I also cannot send letters or emails because she is unable to read them and I have to book extra calls and video links. This means the time taken always goes well beyond the fixed fee.*
  - c. *Client unable to properly read and write, ASD issues, severe adhd and PD. several steps needed to ensure effective representation. Organisation of experts to ensure a fair review. explaining documentation, multiple attempts at contact for instructions. Liaison with 3rd party experts. Absolutely no way in which client would have a fair review without representation.*
  - d. *Client's communication needs required face to face attendance for visits and hearings. He is unable to read beyond a very basic level and the dossier over 800 pages. The prison in this case refused to allow my laptop into the prison under any circumstances. This required a lot of additional work well outside the standard fee challenging this refusal*

to allow appropriate and fair representation for client. This was in addition to the longer attendance times required with client and in person attendance at an otherwise remote hearing.

- e. *My client is a tariff-expired IPP sentenced prisoner with Bipolar disorder, he has spent the vast majority of his sentence in Mental Health hospitals. Now that he is no longer considered treatable under the Mental Health Act he has been returned to prison. However, he struggles on a daily basis with crippling anxiety. He has my mobile number and will call daily (often multiple times) and I am also in contact with his family. He will ask the same questions repeatedly and seeks constant reassurance. All of this additional contact is likely to fall outside of the current fixed fee.*
- f. *In this Parole Board oral hearing case, my client had a diagnosis of Autism Spectrum Disorder (ASD), a protected characteristic under the Equality Act 2010. As a result, I took several additional and proactive steps to ensure he was supported appropriately throughout the parole process. I liaised repeatedly with the caseworker from a community-based Forensic Outreach Liaison Service (FOLS) to advocate for and facilitate reasonable adjustments. This included arranging specific communication formats, adapting the hearing environment, and coordinating scheduling considerations in line with the client's sensory and processing needs. Given the client's difficulties with remote communication and high anxiety in unfamiliar or complex legal settings, I ensured that the appointed representative attended the hearing remotely with my full technical and procedural assistance. In contrast, I attended the parole hearing in person – despite the FOLS representative appearing remotely – to provide in-person support to the client throughout what was an all-day hearing. This allowed me to guide him in real-time, explain proceedings in an ASD-appropriate manner, and help regulate the hearing pace and environment in line with his needs. Throughout the process, I acted as a go-between with the Parole Board, translating communications into an accessible format for the client and ensuring that the Board was aware of and responsive to his communication challenges. In total, I worked over 38 hours on this matter. However, due to the Legal Aid fixed fee structure, my firm received only £1,454.44 – an equivalent of approximately £38 per hour paid, for a qualified solicitor. This case highlights the dedication required in prison law, particularly for vulnerable clients, and starkly illustrates the entirely inadequate remuneration available for such vital work."*

#### **4. Race:**

- a. *I represent a client re parole- English is her second language and an interpreter is required to ensure full understanding and effective communication. The attendances had to be longer than normal to take account of the interpreting. I also had to read all reports to her which required additional time. Prisons do not routinely provide translated documents to clients.*
- b. *In my experience prisons regularly fail to arrange an appropriate interpreter for parole hearings even where this is directed by the Parole Board. In recent months this has required significant additional work from me liaising with the prison and interpreters/ seeking directions to ensure that hearings are viable. I have had two hearings defer in the last 6 months due to the non-attendance of an interpreter. Hearings that require*

*interpretation also tend to be much longer than a standard hearing as additional time is needed to allow for the interpretation. This on its own is unlikely to push a case into escape territory. This is in addition to the time required to arrange interpretation for my own meetings with the client.*

5. **Age: Child (under 18):** *As part of a Parole Hearing at HMYOI Feltham, it was agreed that two fee-earners attended the hearing to support our client due to his complex vulnerabilities: his ADHD, severe mental health issues, and his enhanced needs. As someone who struggled to retain concentration during legal visits (and who had previously struggled to engage for longer than 10-15 minutes during previous visits), we had identified a need for two fee earners to support our client - with one person being focussed on fully engaging with our client, taking instructions and addressing his needs, with the other fee earner drafting the attendance note. This was initially trialled in advance of the hearing, during legal visits at Feltham, and in our view led to markedly better engagement from our client. We then applied this two fee earner approach at his parole hearing, to ensure the principal fee earner could invest their full attention and support with our client to ensure his participation and engagement in the hearing, whilst the other fee earner kept a detailed note of proceedings.*
6. **Age: Older Prisoners:** *I represented an elderly female prisoner with advanced dementia. She was deemed to lack mental capacity to participate in proceedings. In circumstances such as these, it is necessary to locate a 'litigation friend' to assist the prisoner. This requires extensive enquiries to identify a suitable litigation friend. In cases where there is no suitable litigation friend, cases will be referred to the Official Solicitor. The Official Solicitor has limited resources to deal with the growing number of similar cases. Having to instruct the OS can delay proceedings and, in this case, I spent a considerable amount of time liaising with family members and identifying whether any could act without a risk of a conflict of interest arising. This was ultimately successful. The case itself involved very extensive liaison with the local authority to ensure that a lawful social care assessment was completed. This identified social care needs (related to physical as well as mental disabilities) which informed both care plans as well as release and risk management plans. The case involved several expert witnesses and also involved sensitive non-disclosure applications. It was a highly complex case which required a great deal of attention, sensitivity and skill to ensure that the prisoner could have a fair hearing and to minimise the risks of significant delays to her parole hearing.*