

Tuesday 28 July 2015

MEDIA RELEASE

Court of Appeal allows charities to challenge legal aid cuts for prisoners

Two charities have today (Tuesday 28 July) won the right to challenge legal aid cuts for prisoners after the Court of Appeal ruled there was a risk that the system could be unfair and unlawful.

The Howard League for Penal Reform and the Prisoners' Advice Service (PAS) have been inundated with requests for help from children and prisoners since the cuts were introduced in December 2013.

The cuts have coincided with an unprecedented deterioration of safety standards in English and Welsh prisons and a rise in suicides, compounded by staff shortages.

A challenge by the Howard League and PAS was blocked by the High Court in March 2014 – but that decision was today overturned by Court of Appeal judges Lord Justice Leveson, Lord Justice Tomlinson and Lady Justice Sharp.

The Court of Appeal's decision means that the case can now proceed to a full trial.

The charities argued in court that there were seven key areas of work cut from the ambit of legal aid that carry an unacceptable risk of unfairness. These included:

- cases where prisoners appear before the Parole Board about their suitability for a move to open prison (but not release);
- cases about pregnant prisoners being allocated to mother and baby units;
- segregation;
- access to offending behaviour work;
- having a suitable home to go to on release from prison.

Unlike other cuts to legal aid, where a safety net was introduced to allow people to apply for legal aid in exceptional circumstances, the cuts for prisoners were absolute: there is no lifeline for even the most vulnerable or incapacitated prisoner to apply for legal aid for prison law matters.

In its detailed decision, the Court of Appeal recognises the risk of systemic unfairness as a result of the legal aid cuts to prison law. Lord Justice Leveson concludes: "The question of inherent unfairness concerns not simply the structure of the system which may be capable of operating fairly, but whether there are mechanisms in place to accommodate the arguably higher risk of unfair decisions for those with mental health, learning or other difficulties which effectively deprive them

of the ability effectively to participate in, at least, some of the decisions to which [the applicants' counsel] Ms Kaufmann refers.”

Lord Justice Leveson adds in the judgment that the Howard League and PAS are “pre-eminent in this field” and have “the very highest reputations”.

In the year following the cuts, calls to the Howard League’s advice line increased by 45 per cent. The legal team, which provides the only dedicated legal service for children and young people in prison in the country, is overwhelmed with requests from young people with nowhere else to turn.

Prisoners’ Advice Service (PAS) represents adults (over-21s) and receives thousands of letters and calls each year. The charity simply does not have the physical or financial resources to deal with the large amount of requests that it now receives for pro bono assistance and representation.

The first key point of the case argues that the removal of legal aid for a small number of important Parole Board cases is unlawful. These cases affect prisoners on life sentences and imprisonment for public protection (IPP) sentences who can only progress to open conditions if the Parole Board advises that it would be safe for them to do so. This is important because, once in open conditions, prisoners can apply to work and receive education in the community. This step is key for prisoners’ rehabilitation and public safety. Making prisoners go through this stage without legal advice and representation is counter-productive and increases the risk to the public.

The second argument concerns the removal of legal aid for prisoners facing particular difficulties such as mothers threatened with separation from their babies, children and disabled prisoners who need a support package so they can be released safely, and mentally ill prisoners held in isolation. Managing people through long prison sentences is a skilful business which needs to be handled with extreme care so that they can resettle safely into the community.

Frances Crook, Chief Executive of the Howard League for Penal Reform, said: “We welcome today’s decision, which offers hope to children and young people in prison.

“The Howard League’s legal team has represented many hundreds of children in prison and we want them to thrive inside and on release. Legal aid gets them the best help to achieve that.”

Deborah Russo, Joint Managing Solicitor at the Prisoners’ Advice Service, said: “We are delighted with the outcome of today’s hearing. The legal aid cuts to prison law have resulted in prisoners’ access to justice being severely curtailed with the consequence of further isolating an already very marginalised sector of our society.

“We therefore welcome today’s judgment, which now allows for a full hearing of the case and are thrilled to be now given the opportunity to put forward our case for legal aid for the most deprived and disadvantaged of prisoners.”

Notes to editors

1. The Court of Appeal heard oral argument on 7 July 2015. The case was before Lord Justice Leveson, Lord Justice Tomlinson and Lady Justice Sharp.
2. The seven key areas of cuts to legal aid under challenge are:
 - (1) Cases before the Parole Board about a move towards open conditions, otherwise known as pre-tariff reviews and return to open condition cases;
 - (2) Prisoner eligibility for one of the few available places in mother and baby units;
 - (3) Prisoner segregation and placement in Close Supervision Centres;
 - (4) Category A reviews;
 - (5) Access to offending behaviour courses
 - (6) Resettlement and licence conditions
 - (7) Disciplinary proceedings (where no additional days may be awarded)
3. The Justice Committee's year-long inquiry into the impact of the Government's programme of reforms and efficiency savings across the prison estate raised concerns about the deterioration in safety. The report was published in March 2015 and is available here:
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/report-prisons-planning-and-policies/>
4. The Howard League for Penal Reform is the oldest penal reform charity in the world. It is a national charity working for less crime, safer communities and fewer people in prison.
5. The Prisoners' Advice Service is an independent registered charity which provides legal advice and information to prisoners in England and Wales regarding their rights, the application of the Prison Rules and conditions of imprisonment.
6. The Howard League for Penal Reform and the Prisoners' Advice Service are jointly represented in these cases by Simon Creighton of Bhatt Murphy Solicitors, Phillippa Kaufmann of Matrix Chambers, and Martha Spurrier and Alex Gask of Doughty Street Chambers.

Further information

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