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MEDIA RELEASE

Court of Appeal: Cuts to legal aid for prisoners are unlawful

Cuts to legal aid for prisoners are unlawful because they are inherently unfair, the Court of Appeal ruled today (Monday 10 April) in its judgment on a legal challenge brought by the Howard League for Penal Reform and the Prisoners' Advice Service (PAS).

The ruling is an important step forward in making sure that people in prison move through the system more safely and more efficiently. This will make the public safer and ease pressure on a prison system at breaking point.

Since cuts to legal aid for prisoners came into force in December 2013, violence and self-injury in prisons have risen to record levels. Almost 300 people have lost their lives through suicide.

More prisoners than ever before have called the Howard League and PAS to seek help. Calls to the two charities' advice lines have increased by almost 50 per cent since the cuts were imposed.

The legal challenge by the Howard League and PAS began in 2013. At that time, prisoners were completely shut out from any possibility of getting legal aid for a wide range of problems.

In the time between then and the cases coming before the Court of Appeal in January and February this year, the government conceded on four areas of concern. This left five key problems for the Court of Appeal to consider and, in three of the five, judges found the cuts to be inherently unfair.

Lord Justice Beatson, giving judgment, said: "[A]t a time when... the evidence about prison staffing levels, the current state of prisons, and the workload of the Parole Board suggests that the system is under considerable pressure, the system has at present not got the capacity sufficiently to fill the gap in the run of cases in those three areas."

Frances Crook, Chief Executive of the Howard League for Penal Reform, said:

"This decision will make the public safer. It vindicates our concerns that cuts imposed by the former Lord Chancellor, Chris Grayling, in 2013 presented a grave risk that prisoners would become stuck in a broken system.

"This sends a clear message that important decisions about prisoners cannot be

made efficiently or fairly in the face of these cuts. We look forward to hearing from the Lord Chancellor with her plans to give effect to the judgment.”

Deborah Russo, Joint Managing Solicitor of the Prisoners’ Advice Service, said: “This is an unprecedented and groundbreaking legal victory in which the vulnerability of the prison population is fully recognised as a key factor in its limited ability to access justice.

“Common law came to the rescue of a marginalised and often forgotten sector of our society.”

Simon Creighton, solicitor for the charities and representative for the Association of Prison Lawyers, said: “Access to legal advice for prisoners makes prisons fairer, safer and better at rehabilitating prisoners.

“This was first recognised in the Woolf report a quarter of a century ago and this judgment underlines that it is still true today.”

Rebecca Hilsenrath, Chief Executive of the Equalities and Human Rights Commission, which intervened in the case, said: “It’s a hallmark of a democratic legal system is that it is fair and robust for all users.

“Without access to legal aid, prisoners with learning difficulties and mental illness would not be able to participate effectively in important decisions about their future, placing them at a significant disadvantage.

“We welcome today’s judgment that will ensure our legal system continues to provide legal help during these hearings.”

Notes to editors

1. 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.
2. 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.
3. The charities’ arguments challenging the cuts were heard by three Court of Appeal judges in January and February 2017.
4. Before the hearing at the Court of Appeal, the government agreed that legal aid would be available for cases concerning: mother and baby units; resettlement; licence conditions; and segregation through an exceptional funding scheme. This left five key problems for the court to consider: pre-tariff reviews by the Parole Board where the Board does not have the power to direct release but advises the Secretary of State for Justice whether the prisoner is suitable for a move to open conditions; categorisation reviews of

Category A prisoners; access to offending behaviour programmes and courses (“OBPs”); disciplinary proceedings where no additional days of imprisonment or detention can be awarded; and placement in close supervision centres (“CSCs”).

5. In an 86-page judgment, the Court of Appeal carefully scrutinised the full run of cases that go through the system and whether the existing alternative processes and procedures were capable of filling the gap left by the removal of legal aid in a way that would ensure fairness. The court found that the high threshold required for a finding of inherent or systemic unfairness has been satisfied in the case of pre-tariff reviews by the Parole Board, Category A reviews, and decisions as to placement in a CSC.
6. Pre-tariff reviews are where an indeterminate sentence prisoner has been referred to the Parole Board by the Secretary of State for Justice before the expiry of his/her minimum term for advice on a move to open conditions.
7. Category A is the highest security category. It is defined as prisoners “whose escape would be highly dangerous to the public, or the security of the State, and for whom the aim must be to make escape impossible”. Decisions to move prisoners from conditions of high security are complex and important.
8. CSCs were introduced to deal with the most disruptive or dangerous prisoners, who pose a risk to other prisoners. The decision to place a prisoner in one of these centres, which creates a serious restriction on the prisoner at great expense to the public purse, is complex and important.
9. The court was not persuaded that the lack of legal aid available in two areas – for OBPs and prison disciplinary proceedings where no additional days of imprisonment or detention can be awarded – is unlawful on the ground of systemic unfairness.
10. 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 Alex Gask of Doughty Street Chambers.

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