

Note to the Sentencing Review on the impact of recommendations on access to justice and legal aid

1. This note follows a meeting with the Right Honourable David Gauke and officials on 10 February 2025 and Lord Bach, co-chair of the APPG on Access to Justice.¹ It has been prepared by Legal Aid Practitioners Group and the Association of Prison Lawyers to highlight access to justice issues that may be relevant to the Sentencing Review and its recommendations.
2. If prisoners are to “earn” release, institutional responses to behaviour and opportunities to demonstrate progress will become directly related to liberty. Sufficient resources will need to be in place to enable progress to be possible for all.² Decisions affecting liberty will need to be administered fairly and prisoners will need to be able to challenge decisions where necessary. The current scope of legal aid for prison law would need to be expanded to facilitate this. **Therefore, any recommendation along these lines should go hand in hand with a recommendation for adequate legal aid to ensure it is administered fairly.**
3. Prison law lawyers play a vital role in ensuring that people in prison are treated fairly. As Lord Simon Brown stated when debating swingeing cuts for legal aid for prisoners over a decade ago:
*“...prisoners, as members of a closed community uniquely subject to the exercise of highly coercive powers, far from having fewer rights of recourse to independent courts than most of us, should, rather, have at the very least equal access to justice.”*³
4. People in prison are more likely to suffer from both physical and mental health difficulties and to come from marginalised and disadvantaged communities.⁴ They often struggle to know when they have a legal issue and find it hard to access legal advice and support.
5. Prison law falls under the criminal legal aid contract. Recommendations for investment in prison law funding were made by Lord Bellamy in 2021⁵ and the Criminal Legal Aid Advisory Board in 2024⁶ to no avail. Between 2008 and 2022, prison law legal aid providers fell by 85%. The combined effect of cuts and inflation mean the rate of pay for prison law has decreased since 2011 by 36% in real terms. Legal aid firms cannot survive on these rates.⁷
6. Until 2013, prison law legal aid included help a wide range of issues, provided there was sufficient benefit in doing the work and the person was financially eligible for legal aid.⁸ However, those changes reduced the scope of prison law legal aid work, albeit that a successful challenge in the Court of Appeal by two penal reform charities resulted in some aspects of this work being brought back into scope.⁹ Currently, there is very limited prison law legal aid available beyond Parole Board and Independent Adjudication cases. Legal aid is confined to areas that directly impact on liberty.
7. Given the needs of prisoners, chronic overcrowding and staff shortages across the prison estate, it will be essential that any changes that involve prisoners “earning” release are accompanied by the availability of sufficient legal aid for prisoners to challenge unfair decisions or lack of opportunities to make progress: previously legal aid was available for sentence planning to ensure prisoners could access courses, treatment and other opportunities to work towards rehabilitation.

¹ The meeting was also attended by Rohini Jana and Dr Laura Janes KC (Hon), both from the Legal Aid Practitioners' Group, which provides the secretariat to the APPG.

² The latest Annual report by HMIP suggests much is to be done to achieve this

<https://hmiprisoninspectorates.gov.uk/hmipris-reports/annual-report/>

³ Hansard, 29 January 2014, Vol 751, Col 1279 [https://hansard.parliament.uk/Lords/2014-01-29/debates/14012973000449/CriminalLegalAid\(General\)\(Amendment\)Regulations2013](https://hansard.parliament.uk/Lords/2014-01-29/debates/14012973000449/CriminalLegalAid(General)(Amendment)Regulations2013)

⁴ <https://prisonreformtrust.org.uk/wp-content/uploads/2025/02/Winter-2025-factfile.pdf>

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>

⁷ See APL's Sustainability Report, 2023, available at <https://www.associationofprisonlawyers.co.uk/category/prison-law/>; for more information about prison law legal aid, see attached background paper

⁸ For a good summary of the changes and their impact on people in prison see PAS and Howard League v SSJ <https://www.judiciary.uk/wp-content/uploads/2017/04/howard-league-v-lord-chancellor-20170410.pdf>; eligibility for prison law legal aid is very low - income must be under £99 per week (including the income of any partner they plan to live with on release) and savings under £1000.

⁹ Ibid