



## **Joint Committee on Human Rights Inquiry – Proposed legal aid reforms, September 2013**

The Prison Reform Trust, established in 1981, is a registered charity that works to create a just, humane and effective prison system. The Prison Reform Trust aims to improve prison regimes and conditions, defend and promote prisoners' human rights, address the needs of prisoners' families, and promote alternatives to custody. The Prison Reform Trust's activities include applied research, advice and information for people in prison, education, parliamentary lobbying and the provision of the secretariat to the All Party Parliamentary Penal Affairs Group. The Prison Reform Trust is pleased to have a chance to comment on the implications for access to justice in the proposed legal aid reforms. We are not commenting on all of the proposals, just the ones within our areas of interest.

### **Improving treatment and conditions and safeguarding human rights**

The Prison Reform Trust has serious concerns about the proposals to restrict the scope of legal aid available to prisoners as they stand and hope they will be modified. These proposals will have a detrimental impact and result in people in prison not being able to exercise their human rights. The Prison Reform Trust responds to around 5,500 queries from people in prison and their families a year through our Advice and Information Service. We do not receive any funding from legal aid but we understand the concerns that are brought to solicitors and the need for legal aid that covers prison matters. We believe that, despite some improvements over recent years, the current prison complaints system is not adequate.

In recent years legal action has led to systematic improvements in prison regimes and treatment. Legal cases have resulted in improved practices and better treatment for prisoners, particularly for vulnerable groups. We note that, in the context of overcrowding and huge budget cuts, there is pressure to cut corners and it is all too easy for prison conditions to deteriorate. Legal accountability is a deterrent to prisons when considering changes that lower standards. Accountability through the courts has had a considerable impact on prisoner welfare and improving conditions and brought opportunities for prisoners to safeguard their human rights. Access to legal advice and assistance can act as a safeguard against frustrations and abuses of power that can make prison disturbances more likely. The consequences for prisoner welfare and safety both in the context of self-harm and in assaults have to be considered. There is a wider understanding of prisoners' human rights than there used to be and withdrawing the main way of accessing and securing their rights is not only unjust but potentially dangerous.

### **Establishing a fair complains system**

It can be very difficult for a prisoner to take a complaint forward. Many prisoners and their families are extremely concerned about the consequences of complaining about a prison when the staff have almost complete control over prisoners' lives. Often the

person who is being complained about, or a very close colleague, will deal with the complaint and there are many concerns about impartiality. The system is not yet transparent and accountable enough to guarantee that there will not be repercussions for those who complain. In addition, prisoners that complain may be treated differently by staff and may be pressurised to withdraw their complaint. There is general cynicism about the complaints process in prisons. In a recent Prisons Inspectorate report 17% of black and minority ethnic respondents, 13% of white respondents and 19% of prisoners with a disability told the Inspectorate that they had been 'encouraged or made' to withdraw a complaint in their current prison. Many prisoners instruct a solicitor because they feel that they need this additional protection to be able to take concerns forward. Without this protection many prisoners will feel intimidated or concerned about taking a complaint against their prison.

We recognise that the Prison Service has made considerable efforts to ensure that the complaints system is clearer and more credible. The complaints policy has been reduced from 163 pages to 45 pages. However, although easy read complaint forms are supposed to be available, they are not available systematically across the estate. Prisons are not always compliant with human rights legislation concerning access and communication needs. In addition, many people need support to complete a form and may need even more support understanding the answer. The response to applications in prisons is getting better. However we are often contacted by prisoners who have put in an application form and received no reply. This is echoed by our own experience of writing letters to prisons on behalf of prisoners. We still often experience late responses, no response at all or responses that do not answer the queries raised.

### **Responding to people with particular vulnerabilities**

These proposals also impact particularly on the human rights of short sentenced prisoners. Many people are serving short sentences of under a year. The prison complaints system can take a long time to be exhausted. After going through the internal process, the average time for a complaint to be completed by the Ombudsman was 16 weeks. Only 47% of complaints were dealt with by the Ombudsman's office in 12 weeks. This long, drawn out procedure is not suitable for short sentenced prisoners some of whom will rightly feel that a solicitor's letter will be quicker, easier and more effective.

The Prison Reform Trust has specific concerns about areas of work that will be out of scope, particularly adjudications, treatment and sentence cases. People in prison will (in most cases) be unable to access any legal support when facing adjudication. A negative disciplinary record in prison can have a huge impact on sentence progression, opportunities for work and activities and even release. The adjudication process is legalistic, complex, and technical and people usually need legal assistance to navigate this effectively. 21% of newly sentenced people in prison reported needing help with reading and writing. Many people in prison are not able to make written representation against adjudications without assistance from a solicitor. There is no assistance available from prison staff for this area of work (and of course, in many situations this would amount to a conflict of interest).

The prison disciplinary system is already seen as discretionary and discriminatory. The outcomes of adjudications have a direct impact on the punishments people receive in prison. This can include cellular confinement (segregation) and loss of visits. These punishments are too extreme to be given out without accountability and representation. Removing representation in these circumstances could particularly affect people with

learning disabilities or learning difficulties. Our research Prisoners Voices found that people with learning disabilities or difficulties are more likely than other prisoners to have broken prison rules, five times as likely to have been subject to control and restraint and over three times as likely to report having spent time in segregation.

We understand that only a small number have received legal aid for treatment matters since July 2010. We note that a significant proportion of these involved prisoners with learning difficulties and/or mental health difficulties. We believe that the current system, where permission has to be granted before the case can be funded gives sufficient safeguards in terms of cost. This ensures that vulnerable prisoners are able to access the legal advice they need in the more extreme treatment conditions cases where external scrutiny and action is necessary to prevent human rights abuses.

### **Ensuring sentence progression**

Cases regarding sentencing currently cover many aspects related to sentence progression, including categorisation, access to interventions, sentence progression, OASys (risk assessment), resettlement support and release on temporary licence. Solicitors providing advice and assistance on accessing these processes enable the prisoner to make better use of their time in prison and affect on release decisions. Access to legal advice has enabled indeterminate prisoners to access rehabilitative courses so that they can reduce their risk and progress to release. Decisions on recategorisation and transfer often have a direct impact on liberty because they can impede someone's progress to release. The current legal aid provision has enabled many to access rehabilitative opportunities sooner and be released either earlier or better prepared for life outside. This is likely to have saved considerable financial and other costs in the longer term.

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