

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

JUSTICE BEHIND BARS

1 April 2015

MEDIA RELEASE

Grayling's 'Absconder Policy' declared unlawful

In a judgment with implications for a series of legal challenges brought by affected prisoners, a Divisional Court consisting of one Lord Justice and a High Court judge have held that the Secretary of State for Justice, Chris Grayling's 'absconder policy', is unlawful.

The policy was introduced following high profile press reports in May 2014 of prisoners absconding whilst on Release on Temporary Licence from prison (ROTL). Whilst these 'absconder' cases were in fact isolated and rare incidents, the Secretary of State responded by introducing a policy on 21 May 2014, that 'absconders' would no longer be eligible for transfer to open conditions and ROTL save in exceptional circumstances. The scope of the 'absconder' policy was so wide that it included the Claimant, who failed to return to prison from ROTL on a Sunday evening after missing his train, but handed himself into custody the following morning.

At the time of the press reports in May 2014, Mr Grayling told Sky News, "*We are tearing up the system as it exists at the moment.*"¹

But the absconder policy that was introduced so hastily placed the Secretary of State at odds with his own Directions to the Parole Board, which state:

"for most (but not all) indeterminate sentenced prisoner (ISP) cases, a phased release from closed to open prison is necessary in order to test the prisoner's readiness for release into the community."

In a judgment handed down today², the High Court held the absconder policy to be unlawful, and described the inconsistency between the Secretary of State's Directions and his absconder policy as "irrational".³

The Divisional Court rejected the Secretary of State's argument that, since the Directions to the Parole Board were issued by him, he had the power to ignore or contradict them,⁴ noting:

".. so long as they remain in force ... he cannot lawfully tell the Board to ignore them or his officials to frustrate them."⁵

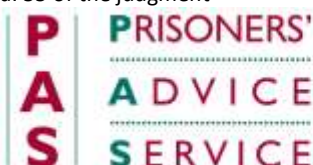
¹ <http://www.theguardian.com/society/2014/may/19/prisoners-absconded-open-prisons-chris-grayling>

² The Queen on the application of Gilbert v Secretary Of State For Justice, [2015]EWHC 927 (Div)

³ Para. 58 of the judgment

⁴ Para. 54 of the judgment

⁵ Para. 55 of the judgment



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The Prison Reform Trust has analysed Ministry of Justice statistics used to back up the policy and demonstrated that the system of temporary release from open conditions in order to facilitate rehabilitation back into the community has a failure rate of only 0.06%.⁶

The Prisoners' Advice Service comments:

"The Secretary of State's contention that he is entitled to ignore and contradict his own policy guidance demonstrates either his ignorance or flagrant disregard for basic legal principles of consistency and transparency in public decision making. The so called 'absconder policy' was introduced as a knee jerk reaction to negative press reports without adequate consideration for either existing policies, or its impact on the prisoners whose progression to open conditions was abruptly prevented."

The Court has granted the Secretary of State permission to appeal against the declaration that the policy is unlawful, but refused permission to appeal their ruling that the handling of the Claimant's case was unfair.⁷

Notes to editors

1. The judgment was handed down at the Royal Courts of Justice at 9.30am, Wednesday, 1 April 2015. Copies available from PAS on request.
2. The Claimant was represented by Naomi Lumsdaine of the Prisoners' Advice Service, instructing Amanda Weston and Leonie Hirst, barristers of Garden Court Chambers.
3. 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.

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⁶ www.prisonreformtrust.org.uk/Portals/0/Documents/InsideOutfinal.pdf

⁷ Paras. 62 and 64 of the judgment