

To whom it may concern

National Audit Office

NAO Consultation – changes to legal aid

By E-mail: [LegalAid@nao.gsi.gov.uk](mailto:LegalAid@nao.gsi.gov.uk)

Dear Sirs

**Prisoners Advice Service's Submissions: NAO Consultation – Changes to Legal Aid**

We set out below our submissions in respect of the legal aid changes affecting our client group, adult prisoners. We have observed over the last six months that the changes have had a devastating effect on the provision of legal services to an already marginalised sector of the general population.

**Background to PAS**

PAS is a registered charity (charity number: 1054495) and a company limited by guarantee (Reg. No. 3180659). The aims of the charity are to provide legal advice and representation to prisoners and legal advice and education to providers such as solicitors and other non-governmental organisations. We were launched as an independent charity in 1991 and first employed a solicitor in 1993. PAS was awarded the Legal Aid Lawyer of the year award in the category Legal Aid Firm/Not for Profit organisation in 2011. It was also awarded the Longford Prize in 2012.

PAS runs a free advice line on Monday, Wednesday and Friday, and responds to approximately 8,000 letters from prisoners requesting advice and information per year. This is a free service and is not part of any Legal Aid Agency funding. We have two contracts with the Legal Aid Agency in the areas of criminal legal aid (prison law only) and civil legal aid (public law only). We do not receive any Government funding and the vast majority of our funding is from charitable trusts and foundations.

PAS currently has 7 employees: two joint managing solicitors, a community care caseworker, an outreach caseworker, a women prisoners' caseworker, a fundraising and communications manager and an administrator.

## **Effect of Legal Aid Cuts**

### **1) The overall effect on our services**

PAS is now busier than ever before. The number of telephone calls received during our advice line days has substantially increased since the start of the year. We are at capacity most of the time and unable to refer matters elsewhere because of the cuts in legal aid. Wherever possible we take cases on a *pro bono* basis but because of our limited capacity (5 caseworkers, most of whom part time) we are not able to offer this to all the prisoners who contact us.

### **2) The impact of the changes on civil court proceedings**

Judicial review is the principal type of litigation PAS carries out. In the past we have regularly challenged all types of decisions made in the prison context: from decisions concerning parole to ones concerning women's eligibility for release on temporary licence, from sentence calculation to prisoners' pay. Our ability to challenge decisions made by the state in the prison context has been severely curtailed as a result of the serious funding implications now imposed.

It is difficult to know whether a case will obtain permission at the point of issue because of the nature of prison law challenges. These often relate to cases with borderline merits but arguably these are also often the cases which are most likely to progress prison case law.

Prison law is a complex area of law and when judicial review proceedings are issued, they concern matters which require an extensive amount of work. PAS was involved in a very complex Supreme Court case in June 2010. The case of *R (Noone) v the Governor of HMP Drake Hall* concerned the way in which the Secretary of State for Justice misinterpreted legislation relating to the early release of low risk prisoners under the 'Home Detention Curfew' scheme (otherwise known as 'tagging'), which led to remarkable anomalies and injustices whereby, at any one time, hundreds of prisoners were deprived of eligibility for the scheme. This meant that they served up to 135 days longer than other prisoners with similar sentences. The judgment had a tangible and immediate effect on those low risk short term prisoners serving consecutive sentences whose release dates for Home Detention Curfew had been miscalculated.

In February 2012 PAS was involved in another complex judicial review involving female prisoners and their temporary release from prison in order to care for their children. The Court found that the decisions to refuse the women temporary release were unlawful. The decision has had an enormous impact on the rights of prisoners with sole carer responsibilities for their children, and confirmed that the right to family life is not lost simply by reason of being in prison.

Taking these kinds of cases will become progressively more difficult due to the cost implications and subsequent risks involved at the outset of the case.

3) Other public funding options available to prisoners

The legal aid funding that was previously available through the prison law contract with the Legal Aid Agency has been severely cut since 2 December 2013. The only legal aid available in prison law is for parole board hearings (where there is a prospect of release), sentence calculation matters (clear cut cases where prisoners require assistance in rectifying the calculation of their sentences), tariff reviews (akin to appeals against sentence in the criminal context) and disciplinary hearings before the independent adjudicator. All other prison law matters other than the ones set out above are now entirely out of scope.

4) Sustainability of legal aid in the long term

We are of the view that as things stand it will simply not be sustainable for businesses to continue to provide legal advice and assistance to prisoners through legal aid. The fees have in fact been decreased quite substantially (both in terms of civil legal aid rates and prison law contract rates) and with the added difficulties in issuing legal proceedings it will not become viable for law firms to continue to provide a legal service to prisoners. As far as we are aware only PAS and the Howard League for Penal Reform provide free legal advice and assistance to prisoners and neither of these organisations has the capacity to provide assistance to an ever increasing prison population. Moreover, it is only PAS that provides assistance to adult prisoners in England and Wales. No other similar services exist other than more generalised services providing solely information.

5) The effect on the quality of the services still available under civil legal aid

As a result of (5) above we envisage most of the services still available closing down at the next round of legal aid tenders. This will have an effect on organisations such as PAS as the demand on our services will increase exponentially, as it has done over recent months, inevitably affecting the high level of service we once used to pride ourselves in providing.

In conclusion, we unfortunately can only see the negative effects of the recent legal aid reforms and cannot see the situation improving within the current legal aid parameters.

We hope our views will be considered positively by the NAO to put pressure on the Ministry of Justice to ensure prisoners' access to legal services through legal aid is reviewed as a matter of urgency.

Yours faithfully

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Deborah Russo  
Joint Managing Solicitor  
**For the Prisoners Advice Service**

