

Extend and defend

The Prisoners Advice Service is turning 20 at a time when penal reform is back on the front pages. **Matthew Evans** reminds the government of why the long struggle to forge prison rights must not get lost in the shake up

There is no doubt prisons are poised for change. But the current climate of debate is strange one. On the one hand you have the justice secretary Ken Clarke calling for the beginnings of reform. On the other, you have the prime minister boasting that votes for prisoners makes him 'sick'. Irrespective of one's views about the need for voting rights, or indeed the desire of prisoners themselves to have them, this climate should spark a debate about what the nature and purpose of imprisonment is.

Clarke has at least made some public noise towards debating what the purpose of prison should be. But the overt failure of senior ministers to stand up in support of Clarke's pronouncements on reducing the prison population speaks volumes about whether this government can differentiate itself from Labour by showing real political leadership and the guts to tackle this issue in the face of public and media vitriol.

So as the Prisoners Advice Service (PAS) prepares to mark its 20th year, it is perhaps worth reminding Clarke where things stood last time he was in a position of power.

Clarke's brief spell as home secretary coincided with the early years of PAS, which was conceived against a backdrop of the 1990 Strangeways prison riots. Prisoners' demands for basic human rights had been escalating, and, with the publication of the Woolf report in 1991, it seemed the authorities were finally cottoning on to the fact changes had to be made.

It is now almost impossible to imagine how sparse the legal landscape was for inmates at this time. There was no such thing as prison law, at least not in the sense we know it today. No other organisations dealt with these cases. With some very honourable exceptions, lawyers in private practice were not interested. There was no training courses or text books or procedural rules. Prisoners, however, wanted to pursue legal challenges but were hampered by the fact that the only information they were given about their conditions and the relevant legal processes was a very basic information booklet distributed by the Prison Service.

Prisons were still felt to be litigation no-go areas. This was despite a number of important challenges launched by prisoners themselves. The judgment of the 1975 case brought by Sidney Golder before the European Court of Human Rights (*Golder v UK* [1975] 1 EHRR 524) had long since declared: "Justice does not stop at the prison gates."

Closer to home, cases such as *R v Board of Visitors of Hull Prison* [1979] 1 WLR 1401) and *R v Deputy Governor of HMP Parkhurst* [1988] 1 AC 533 were rejecting the standard government argument that the 'good administration' of prisons would in some way be undermined by judicial intervention.

The problems faced by litigators can be boiled down to this simple fact: the Prison Service had no concept of open reporting. Prisoners had no idea of the issues that they needed to address when they were applying for re-categorisation or parole, or challenging decisions that led to segregation and transfer. Lifers were not even told how long their tariffs were.

Strangeways changed all this, and PAS was the product of a shared ambition to strike while the iron was hot. Legal reform groups including Liberty, Nacro and the Prison Reform Trust were hoping to establish a prisoners' equivalent of the Larry Gostin project. As legal director of MIND until 1982, Gostin had pioneered a route to defend and extend the rights of people with mental health problems using carefully selected test cases. And so, in a hastily converted basement of the Howard League for Penal Reform, PAS was born.

Vicky King was appointed as the sole caseworker employed to set up and develop PAS. In the face of institutional apathy, it was only through a series of contacts and her sheer persistence was King able to win disclosure of the basic documents necessary for PAS to function. By 1993, with the appointment of its first solicitor, Simon Creighton, PAS was now in a position to litigate as well as deal with casework for the first time.

Fresh starts

It is perhaps reassuring how extreme the conditions of 20 years ago seem to today's lawyers. But with an estimated 8,000 callers using our advice line each year and another 3,000 or so letters seeking help, there's a long way to go.

The demands on PAS' national advice line and letters continues to grow – last year we saw a ten per cent increase in

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calls compared to the year before. Some 40 per cent of these calls and letters are from prisoners who have unsuccessfully tried to get legal advice and assistance from elsewhere.

With the axe falling on funding across the legal aid sector, to be replaced by private tenders and centralised services, there will be a continued increase in the need for services such as PAS. Any reforms must bear this demand from prisoners in mind – because of the tensions inherent to this area, prisoners' cases will almost certainly continue to be a major area of law for years to come.

Since its inception PAS has remained an independent non-governmental organisation refusing to take money from the Home Office and Prison Service. It relies instead on a small but dedicated group of supporters and charitable trusts whose loyalty allows our work to continue. At a time when more and more organisations working around criminal justice are being incorporated and controlled by the state and private companies, the independence will be more important than ever.

In my somewhat biased view, PAS remains important because, although linked to the policy and campaign work of the sector more generally, it has developed the space to focus on providing an expert advice and legal service for prisoners themselves. The need for its work will continue because prisons remain, in terms of their decision making, openness and accountability, often strikingly unfair places. Creeping privatisation of the sector will do nothing to alleviate that.

Matthew Evans is the managing solicitor at PAS

The caseload

- 1991:** PAS instigates the policy review allowing prisoners serving determinate sentences to see their parole reports and the reasons for parole refusals.
- 1992:** A successful challenge overturns the refusal to grant an application for compassionate release for a long-term prisoner suffering from AIDS.
- 1995:** The team heads to Europe on behalf of a prisoner who had been required to defecate in a bucket to prove he had not swallowed drugs – and received compensation in a friendly settlement.
- 1996:** Staff write their first legal text book on prison law, with Simon Creighton and Hamish Arnott continuing the tradition today.
- 1998:** After the introduction of deliberately punitive close supervision centres, a PAS challenge forces the Prison Service to concede its selection procedures were unfair.
- 2000:** PAS teams up with Inquest to publish a report demonstrating how the new Human Rights Act affects the treatment of prisoners and their deaths in custody.
- 2001:** A new approach to cell sharing risk assessments is prompted following a ECHR case led by PAS and Liberty on behalf of Christopher Edwards, who had been killed by his cellmate.
- 2003:** PAS successfully argued (*R (Lord) v Secretary of State for the Home Department* [2003] EWHC 2073 Admin) that under the Data Protection Act Category A (the highest security category) it should have access to previously secret reports prepared in respect of their reviews.
- 2006:** PAS settles its first damages claim on behalf of clients racially discriminated against under the Race Relations Act.
- 2010:** PAS bags a hearing in the Supreme Court. Noone successfully challenges the way short consecutive sentences were calculated, affecting an estimated 17,000 prisoners.