

Written evidence submitted by The Association of Prison Lawyers (ATJ0156)

APL response to Justice Committee Call for Evidence on Access to Justice

About APL

The Association of Prison Lawyers (APL) was formed in 2008 by a group of specialist lawyers, comprising of barristers, solicitors and legal representatives across England & Wales. We represent and provide training for our members, and endeavour to represent their views in policy development and engage with relevant stakeholders as appropriate to try and ensure that law, policy and practice in this area is made on an informed basis.

Prison lawyers play an important role in representing people in prison, and especially before the Parole Board, ensuring that cases are progressed in a timely manner and enabling release where that is safe, providing legal advice and representation in disciplinary matters and picking up on abuse and errors in the system.¹ Legal representation also benefits victims involved in the process who are otherwise prone to suffer from increased delays.

About this response

APL welcomes the opportunity to respond to the Justice Committee Call for Evidence on Access to Justice. APL acknowledges the broad terms of references and the need for a focused and succinct response that does not merely repeat information already in the public domain. As such this response deals with the specific questions below, referencing other work where appropriate.

Evidence in respect of specific questions

1. How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

1. In recent years, changes to the prison and parole system have been the focus of significant change and reform, resulting in increasingly complex and lengthy processes (see Annex).
2. At the same time, the lack of investment in prison law legal aid has led to a huge decrease in the number of providers by 85% since 2007.² In the last decade, the number of provider offices completing prison work in each year has decreased by 63%: that is more than any other area of work, with the exception of categories purposefully reduced by LASPO, such as welfare benefits and debt.

¹ The right of people in prison to access the courts (and by extension lawyers to assist them to do that) is a fundamental right that has long been protected by the common law. The courts have characterised this as a constitutional right which cannot be abrogated (*R v Lord Chancellor ex p Witham* [1998] 2 WLR 849).

² In 2007/8, there were 996 offices undertaking prison law work² compared with just 150 offices with prison law contracts as of September 2024: <https://www.gov.uk/government/publications/directory-of-legal-aid-providers>

3. In August 2023, APL's sustainability report found that three-quarters of prison lawyers surveyed did not think they would be doing prison law legal aid work in three years' time. The report further highlights issues with poor recruitment and retention rates, and the emotionally distressing nature of the work.³
4. The APL welcomes the proposal, announced in May 2025, to increase prison law rates by 24%, which will finally honour the findings of the 2021 Bellamy review⁴ and the CLAAB in 2024.⁵ Our consistent ask for several years has been to seek an increase to put us back to at least 2011 levels. If implemented, the current Legal Aid Consultation on solicitors' fees in criminal legal aid work will go a significant way towards achieving this: it will bring fees up to around two-thirds of the rates in 2011.
5. As APL noted in its response to the consultation on fees, while the proposed increase is a good first step, it has not yet been confirmed and it will not be enough to ensure long-term sustainability for legal aid providers.⁶ At the very least, there must be an on-going commitment for fees to increase with inflation. A further review to ensure prison law is properly remunerated in the future is required.

2. What is the role of supplementary advice services in supporting access to justice?

6. Prisoners are theoretically entitled to the same access to legal advice that any other citizen should be entitled to. Yet their ability to access advice services is strictly circumscribed by the restrictions of detention, which prohibit access to the internet or the ability to attend advice services or call numbers that are not on their prison PIN. Various efforts to open up access to justice for people in prison have been trialled in a patchy way.⁷ There is no means to enable holistic access to justice for people in prison, despite the well-established constellation of unmet legal need for people in prison, whose ability to refrain from further offending may in turn be exacerbated by those issues.⁸

3. What is the impact of those acting without legal advice and / or representation having on access to justice?

³ The silent demise of legal aid prison law, August 2023, available at <https://www.associationofprisonlawyers.co.uk>

⁴ <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

⁵ <https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024>

⁶ <https://www.associationofprisonlawyers.co.uk/apl-response-to-criminal-legal-aid/>

⁷ See, for example, Advice Services for Prisoners, by Professor Kevin Wong for the Policy Evaluation and Research Unit at Manchester Metropolitan University (MMU) and the Advice Services Alliance (ASA). Available at

https://web.archive.org/web/20221101124447/https://mmuperu.co.uk/wp-content/uploads/2022/07/Advice-for-Prisoners-Report_22_07_29.pdf; see also: <https://mmuperu.co.uk/blog/criminal-justice/advice-services-for-prisoners/>

⁸ See for example, <https://howardleague.org/wp-content/uploads/2021/01/Howard-League-submission-on-the-Future-of-Legal-Aid-2.11.2020.pdf>; <https://howardleague.org/wp-content/uploads/2016/03/Access-to-Justice-Denied.pdf>

7. The concerns are obvious, but worryingly, undocumented. There is no way of tracking and monitoring the extent to which people in prison do not access legal advice and representation across various areas of law. The Parole Board does not publish data of the number of unrepresented prisoners at each stage of the process. However, the increasing complexity of Parole Board matters means that where prisoners are unrepresented, there is a real risk of delay and injustice (see Annex).
8. There are no “legal services officers” in prisons any more and no requirement in the prison policy frameworks to actively facilitate access to justice. It is very difficult to know how many prisoners are unrepresented or without legal advice in civil and social welfare matters.
9. The scope of prison law has reduced dramatically since 2010 meaning that prisoners who are not facing parole proceedings or adjudications will often not come into contact with a prison lawyer, who may in turn be unable to sign post them to other legal services.
10. Even where a matter is within scope, the very limited means test will often deprive prisoners who cannot afford to pay privately for appropriate legal support. The current means test for most types of prison law work requires a person and any partner to have less than £1000 of capital between them and income of less than £99 per week between them. This is very low. While the last administration agreed to increase the eligibility thresholds, this decision is yet to be implemented. The difficulties in obtaining evidence of means also places a huge burden providers who are paid very small fixed fees for this work in any event. Prisoners may be ineligible for public funding because their partners receive disability benefits which take them over the meagre thresholds for public funding.

4. Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.

11. The key concern is the inability of prisoners (and those on probation) to tap into existing services, which should become a function for HMPPS to “facilitate” as part of its core purpose. This should not be overly expensive and as part of the Sentencing Bill, there is already a commitment to more funding for Probation.

9. What role is there for digital innovation and data collection in supporting access to justice?

12. The prison estate suffers from chronic lack of investment in access to technology and digital solutions. APL has repeatedly raised concerns about the

absence of video links for lawyers in many prisons and is engaged with representatives from the Ministry of Justice to improve the situation.⁹ However it is still a serious and pressing issue. A further recent survey of members over two days in September 2025 found that:

- Seven prisons did not facilitate video links at all.
 - Fourteen prisons were reported as having significant issues with access to video links, including limited video links available, lead times of over four months to book a video link which led to deadlines being missed, delays in response to requests for urgent video links, no video links for psychological assessments.
13. There is also absence of adequate private consultation facilities in many prisons. It is not acceptable for sensitive discussions to take place in communal visits rooms in the earshot of other prisoners and staff. This means that where prisons do not provide reasonable video link or phone conferencing facilities, there is no way to take proper and confidential instructions from prisoners for their legal cases.
 14. Further, the proposal for all prisoners to be released on electronic tagging needs to be considered carefully. There are questions about whether or not it is necessary and proportionate for it be applied in a blanket fashion. Where it is used, it needs to be supported with appropriate infrastructure and there needs to be an acknowledgement that tagging is not free or possible for those without a stable home: as the cost of living crisis continues, those unable to meet their electricity bills may find themselves at risk of a return to prison for no reason other than their ability to pay.
 15. Unreliable postal systems cause significant delay getting funding forms to and from our clients (which affects deadlines and, in some cases, causes listed hearings to be deferred/adjourned) . The absence of an electronic system to which prisoners can have access for completing funding forms or contacting their lawyers confidentially, impedes access to justice.
 16. A concerted effort is required to ensure that technological solutions are made fit for purpose for those in prison or under probation supervision.

10. How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?

⁹ See Justice Barred (January, 2024) and Justice Still Barred (May, 2024), available at <https://www.associationofprisonlawyers.co.uk/>

17. At present, prison law legal aid lawyers are often not paid for the work that they actually do. This is because the fixed fee system means that payment for work completed is often not made unless the work is equal to the modest fixed fee or exceeds three times the amount of the fixed fee. This means many lawyers do huge amounts of unpaid work on most cases: in many cases the fixed fee is used up by the basic preparation meaning any complications and additional hearings result in completely unpaid work.
 18. Cases that meet the escape threshold have recently been subject to increased scrutiny, often not conducted in fair or transparent ways. LAA assessments often result in the case being rejected and only paid at the fixed fee, with firms losing thousands of pounds of work as well as the unpaid time spent preparing files for manual billing (files are generally paperless but have to be printed out and sent to the LAA in hard copy purely for the purpose of assessment).
 19. The APL sustainability report (August 2023) sets out in some detail the way practitioners consider that prison law work has grown in complexity; the prevalence of additional underfunded work.¹⁰
 20. There are no interim payments for disbursements or profit costs. When files run for years, this can cause huge cashflow problems, especially when experts and other disbursements need to be paid before the end of the case.
11. *What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?*
21. The Cyber attack has taken its toll on prison lawyers. It has made it much harder to obtain prior authority for experts. Payments for prison law work and related civil work has been delayed, placing great strain on providers. APL is not aware of any specific mitigations proposed by the LAA for prison law work in response other than an emergency email for urgent applications for prior authority once this issue was raised.

APL
30 September 2025

¹⁰ https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_7_AUGUST_2023.pdf; see also, the Annex

Annex: a summary of the increasing complexity of prison law work

Prison lawyers play a vital role in upholding the rule of law, protecting the rights of some of the most vulnerable individuals in society, and ensuring fairness and accountability within the prison system.

Practitioners deal with complex, traumatic and often urgent matters that have profound implications for liberty, rehabilitation, and public safety. These include parole reviews, adjudications, recall challenges, and decisions about segregation and categorisation.

In recent years changes to the prison and parole system have been the focus of significant change and reform, resulting in increasingly complex and lengthy processes. Specific issues in relation to the parole process include:

- a. **Fact-finding hearings:** After the Worboys (DSD) case, parole reviews now frequently involve investigations into alleged, but unproven, allegations. This widens the scope and complexity of cases and requires skilled preparation and advocacy to minimise delays and ensure fairness.
- b. **Reconsideration and setting aside reviews:** The reconsideration system was introduced 6 years ago. This is a whole new stage to parole reviews, effectively an appeal system but on judicial review grounds, which follows after the hearing itself has concluded. They are particularly complex and time-consuming: they involve the application of public law principles, are reserved for specialist, accredited Parole Board members and are publicly reported. Additionally, there is a new “setting aside” process which means release decisions can be set aside if there are new developments: lengthy representations are often required. Work on both reconsideration and setting aside applications is effectively whole separate case but forms part of the single fixed fee.
- c. **Transparency: public and victim observed hearings:** The government and the Parole Board are committed to an increase in transparency and to expanding victims’ rights to participate in the parole process. Victims can now attend parole hearings. Hearings can be held in public. Summaries are now produced in most cases and a plan to move towards redacted decisions will require further work by legal representatives. Legal representation of prisoners is critical to making this sensitive process work. The number of requests by victims to observe hearings increased five-fold since 2022/23. Where victims attend the hearing, it will invariably take longer and rightly require additional case conferences, directions hearings and care and attention by the legal representative.

- d. **Top tier referrals (forthcoming):** The Victims and Prisoners' Act introduces referrals by the Secretary of State to the High Court to review release decisions.¹¹

The Parole Board values skilled legal representation - a point underlined in its response to the Ministry of Justice's consultation in May 2022:

*"There has been a significant reduction in the number of legal firms prepared to carry out prison law work over the last decade and we fear that unless there is some increase to fees there is a danger that there will be insufficient lawyers to represent prisoners involved in the parole process, which would have a significant detrimental effect on timeliness, victims and the public purse."*¹²

September 2025

¹¹ APL's concerns about this measure are set out in our evidence to the V&P Act Scrutiny Committee:
<https://bills.parliament.uk/publications/52104/documents/3794>

¹² <https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2022/12/Martin-Jones-to-Rikki-Garg-and-PB-response-to-Legal-Aid-review.pdf>