

# Prison law funding under attack

**J**ustice Secretary Jack Straw presented the recent changes in prison law funding as measures to clamp down on 'trivial' cases being brought by prisoners with the connivance of lawyers seeking to exploit the legal aid system. They are of course nothing more than cuts intended to save money by squeezing lawyers' pay. According to some, practitioners' fees will fall by as much as one-third. As with other parts of the legal aid system, the fear is that expertise will be lost as firms either cut corners to make the work profitable or withdraw from it altogether.

The Legal Services Commission has justified the cuts by pointing to the dramatic increase in costs: up from £1m seven years ago to £22m in the last financial year. It fears that at the present rate of growth this could increase to £44m by 2011. Some of this increase can be attributed to a greater awareness of rights among prisoners and the willingness of solicitors to meet this demand, but blame for most of the increase must be laid at the government's door. It is the usual story of cost drivers caused by changes in criminal law having a knock-on impact on legal aid.

In the last five years the prison population has grown by around 9,000 to 84,150. Of these prisoners an increasing proportion are serving indeterminate sentences, increasing from under 3,000 to 11,773 in the last ten years. These prisoners cannot be released without an oral hearing before a Parole Board at which they have a right to be represented. Lord Woolf recognised four years ago that the growth in Parole Board hearings would be an additional expense that the state would have to meet or risk violating a prisoner's human rights.

Few prisoners serving life sentences are released: just 125 were released in the first six months of last year, while 65 were recalled in the same period. This, combined with the increasing number of prisoners serving indeterminate sentences, means that there are likely to be greater demands on the legal aid budget in years to come. An increase in criminal offences has also had a knock-on effect on prison numbers and potential prison law cases.

A change of government in the general election next year might usher in still harsher criminal justice policies with the inevitable consequences for legal aid and the rest of the criminal justice budget. Conservative Shadow Justice Secretary Dominic Grieve's comment at LAG's 'Legal aid at 60: Bridging the justice gap' conference in June could well be an indication of things to come. He said about summary justice, which has been a popular policy under the Labour government: 'Conservatives are instinctively against such measures.'

LAG does not argue that fixed fees for prison work are wrong in principle. However, as with the other areas of legal aid which fixed fees have been applied to, we do have fears that the amounts being proposed could potentially undermine quality. A tightening of the sufficient benefit test and supervisor standards will go some way to meeting our concerns on this issue, but with the cuts in fees it is perhaps inevitable that increasingly the work will be allocated to more junior staff. This can be a false economy; such staff often lack the experience to deal with a case as efficiently as a more practised (but more expensive) fee-earner colleague. There are also problems specific to Parole Boards which make it difficult to arrive at a fair fixed fee for such work. Unlike the criminal courts system, Parole Boards do not have the same powers to summon witnesses and to make directions. This can lead to delays that are no fault of practitioners. There is also the problem of removing solicitors' travel from the fixed fee, which is a bizarre decision given that prisoners have to be seen in prison.

Perhaps one of the most important points to be made about prison law legal aid is that access to it acts as an important check on prison conditions and a prisoner's rehabilitation, and it is particularly worrying that Jack Straw has launched a further attack on the availability of public funding at all for such challenges. LAG is conscious of the ineffectiveness of prison in rehabilitating offenders. This is largely due to the system being starved of the resources necessary to do this. It is perhaps unpopular to argue so, but prisoners have rights to decent living conditions and to access to services that help them in their rehabilitation, such as training and education. Enforcement of these rights can at least assist in prompting the government to do more as, ultimately, the inhumane treatment of prisoners rebounds on society through increased reoffending.

■ This month LAG publishes *Prisoners: law and practice*, a new book by Simon Creighton and Hamish Arnott. See opposite and page 36 of this issue for details.

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