



JUDICIARY OF
ENGLAND AND WALES

R (Howard League for Penal Reform and the Prisoners' Advice Service) v The Lord Chancellor

**Before: Lady Justice Gloster, Vice-President; Lord Justice Patten;
Lord Justice Beatson**

PRESS SUMMARY

The Court of Appeal partially grants the application for judicial review by the Howard League for Penal Reform and the Prisoners' Advice Service challenging the removal by the Criminal Legal Aid (General) (Amendment) Regulations 2013 of certain categories of prison law from the scope of criminal legal aid. The Divisional Court refused to grant permission for judicial review, but on 28 July 2015, this court (Sir Brian Leveson PQBD, and Tomlinson and Sharp LJ) granted limited permission to bring judicial review proceedings on the ground that it was arguable that, without the potential for access to appropriate assistance, the system could carry an unacceptable risk of unfair, and therefore unlawful, decision-making and retained the case in the Court of Appeal.

The categories of case challenged before this Court are: (1) pre-tariff reviews by the Parole Board where the Board advises the Secretary of State for Justice whether the prisoner is suitable for a move to open conditions; (2) categorisation reviews of Category A prisoners, defined as those whose escape would be highly dangerous; (3) access to offending behaviour programmes and courses ("OBPs"); (4) disciplinary proceedings where no additional days of imprisonment or detention can be awarded; (5) and placement in close supervision centres ("CSCs").

For the detailed reasons in the written judgment of the court, now available, the Court of Appeal grants the application for judicial review in relation to three of the five categories.

1. The high threshold required for a finding of inherent or systemic unfairness has been satisfied in the case of pre-tariff reviews by the Parole Board, Category A reviews, and decisions as to placement in a CSC.
2. That threshold has not been satisfied in relation to decisions about OBPs and the disciplinary proceedings from which legal aid has been removed.

In determining whether there is unfairness which is inherent in the system itself, the Court considered the following factors: the importance of the issues at stake; the complexity of the procedural, legal and evidential issues; and the ability of the individual to represent himself without legal assistance, having regard to his age and mental capacity, and the other assistance that is available. The Court focused on vulnerable prisoners, such as those with learning disabilities and mental illness, in considering the full run of cases that go through the system.

The Court stated (at [146]):

“We emphasise that we recognise that there may be safeguards other than legal aid and advice that will prevent inherent or systemic unfairness by enabling a prisoner to participate effectively in a category of decision-making. The government’s decision to remove legal aid from the five categories of decision-making that are the subject of these proceedings by the 2013 Amendment Regulations was made because it considers that there were adequate alternative means in place to ensure prisoners can participate effectively in areas in which support has hitherto been provided by legal advice and legal representation. The consequence is that almost no changes have been introduced to replace the gap left by the removal of legal aid. We have concluded that, at a time when ... the evidence about prison staffing levels, the current state of prisons, and the workload of the Parole Board suggests that the system is under considerable pressure, the system has at present not got the capacity sufficiently to fill the gap in the run of cases in those three areas.”

The judgment will be published on the judicial website (www.judiciary.gov.uk) and on BAILII (www.bailii.org).

This summary is issued to assist understanding of the Court’s decision handed down on Monday 10 April. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document.