



ADVICE ON REFUSING A PRISONER ACCESS TO AN EDUCATIONAL COURSE ON THE BASIS OF RISK

This advice addresses the question of whether the decision of a governor to refuse an offender access to an educational course on the basis of risk and potential misuse of the skills would be likely to be successfully legally challenged.

The starting point for guidance on education for adult prisoners is rule 32 of the Prison Rules 1999, which provides that every prisoner able to operate from the education facilities provided at a prison shall be encouraged to do so. It also sets out that educational classes shall be arranged at every prison and, subject to any directions of the Secretary of State, reasonable facilities shall be afforded to prisoners who wish to do so to improve their education by training by distance learning, private study and recreational classes, in their spare time.

The focus in prison education is on reducing offending behaviour, partly through improving basic skills and providing vocational training. PSO 4205, the current Prison Service guidance on education in prisons, outlines that the purpose of education within prison is to address the offending behaviour of inmates, by improving employability and thus reduce the likelihood of re-offending on release.

It sets 'outcome targets' for prison education, which include:

1. All education and training, and where possible PE, undertaken during the core day **will** be aimed at reducing offending behaviour as part of a prisoner's sentence plan. Course details **will**, therefore, explicitly and routinely identify the criminogenic factors being address and should also identify measurable outcomes.
2. The education programme must enable prisoners to achieve nationally accredited qualifications in key and basic skills up to level 2, which will enhance their employability on release...



The PSO allows a great deal of discretion to the individual prison. Governors should, of course, be aware of the above guidance and take it into account when making decisions about allowing a prisoner access to an educational course. Other relevant guidance can be found in PSO 4200, which contains the Prison Core curriculum, and the European Prison Rules. Governors should also be aware of Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms¹, although the impact of this article is limited as it has attracted a reservation from the United Kingdom². Further, the article refrains from prescribing the content or purpose of the education and teaching to be provided.

Any guidance is subject to the overriding principle that the prison service has a duty to predict, assess, manage and reduce the risk to the public posed by the prisoner in question. Indeed, there is caselaw on this point.

In *R v (1) Governor of HM Prison Frankland (2) Secretary of State for the Home Office Department, ex parte Lawrence Willoughby (2000)* the offender applied for judicial review of a decision taken on behalf of the Governor of HM Prison Frankland refusing the offender permission to begin an Open University course in maths on the basis of risk. The offender was serving a life sentence in respect of an offence of false imprisonment and had also been sentenced to concurrent sentences for indecent assault and assault occasioning actual bodily harm. The offender had a history of committing sexual offences against young women. The latest offences had been committed at Southampton University where the offender had been enrolled to read for a maths degree. The application was refused on the basis that the governor of a prison was entitled to refuse to allow a prisoner access to further education on the basis that it may increase the risk he posed to the public. The rational decision-maker was entitled to do whatever he could to reduce the risk of re-offending and should nothing which might increase that risk.

In our view a governor would be entitled to refuse a prisoner access to a course on the basis of risk and the potential for misuse of skills he might learn. However, each case must be assessed on its facts and the decision must be rational and reasonable and take into account



all the relevant information. In assessing potential misuse a governor would need to have in mind a genuine risk which can be demonstrated to be clearly capable of existing (it should not be too speculative). There must also be a proper link between the risk and the course that the offender wishes to attend.

When a governor is considering whether he should properly refuse a prisoner access to an education programme on the basis of risk he should consider the following factors:

- i. Whether the course will reduce the prisoner's re-offending behaviour. All education and training, and where possible PE, undertaken during the core day should be aimed at reducing offending behaviour as part of a prisoner's sentence plan (please refer to the outcome targets in PSO 4205).
- ii. That the governor has genuine reasons for believing that the course is likely to increase or exacerbate the risk the prisoner poses to the public and that he specifies what those reasons are (where such reasons can be given without threatening prison security). It would, of course, also be good practice to keep a record of any reasons.
- iii. In coming to that conclusion that the governor has properly considered all of the relevant considerations and evidence. Further, that he has not put undue emphasis on a particular factor(s) when making this decision nor taken into account irrelevant considerations
- iv. In coming to that decision the governor has also considered the prisoner's interest in attending the particular course and any benefits of the prisoner attending that course
- v. That it is not an arbitrary decision. The prisoner has not been singled out but has been assessed on a similar basis to other prisoners using the same criteria (subject to different categories of offenders etc.)
- vi. The type of course the prisoner wishes to attend. Emphasis is placed on basic skills courses, vocational training, specific offending behaviour programmes as well as other courses that will reduce a prisoner's re-offending and improve his prospects of finding employment upon release (please note that certain categories of prisoners are often required to attend specific offending behaviour



programmes, as such the position with regards to these type of programme may be slightly different).

- vii. The extent of available resources.
- viii. Whether there are any suitable alternative courses or programmes that could be undertaken by the prisoner which teach broadly similar skills.

This is not an exhaustive list. It is intended as a suggested list of factors a governor should consider when addressing this issue. Of course, it may be that other considerations are also relevant. A governor should give reasons for his decision and that decision may be reconsidered in light of a change in behaviour /attitude etc. If representations are made in response to a refusal, these should, at least, be considered.

¹ Article 2 of the First Protocol provides, "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

² The reservation means that the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable expenditure.