



Refusing an adult prisoner access to an educational course – key human rights considerations

QUICK REFERENCE

Which Articles from the ECHR might I need to consider?

- Article 2 of the First Protocol to the Convention – right to education

What is the relevant case law?

- *R v. (1) Governor of HM Prison Frankland (2) Secretary of State for the Home Office Department, ex parte Lawrence Willoughby* 2000 WL 571289

What is the relevant guidance?

- *Prison Rules 1999, rule 32*
- *Prison Service Order 4205*
- *Prison Service Order 4200*

This guidance is aimed at CJS staff responsible for deciding prisoner access to educational courses. Prisoners should be encouraged to use educational facilities so long as they are addressing their offending behaviour and that there is no risk posed to the public. A prisoner can be refused access to education on the basis of risk and the potential for the misuse of skills s/he might learn.

What rights might I need to consider when refusing an adult prisoner access to an educational course?

Article 2 of the First Protocol to the Convention provides that no person shall be denied the right to education. However the impact of this Article is limited as it has attracted a reservation from the UK.

In addition to Article 2, rule 32 of the Prison Rules 1999 provides that every prisoner able to operate from the education facilities provided at a prison should be encouraged to do so. Prison Service Order 4205 clarifies 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.

Any decision on prisoner access to courses 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. (See *R v. (1) Governor of HM Prison Frankland*



(2) *Secretary of State for the Home Office Department, ex parte Lawrence Willoughby 2000 WL 571289.*)

A governor would be entitled to refuse an adult prisoner access to a course on the basis of risk and the potential for misuse of skills s/he might learn. The decision must be reasonable and rational. The risk would have to be genuine and one that could be clearly demonstrated as 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.

What practical steps should I take?

A number of factors are listed below that a governor should consider when deciding whether to deny an adult prisoner access to an educational course. A governor should give reasons for his/her 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 be considered.

Factors for consideration (there may be other considerations that are relevant):

- i) Whether the course will reduce the prisoner's re-offending behaviour (please refer to the outcome targets in PSO 4205). 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/her prospects of finding employment on release (certain categories of prisoner are often required to attend specific offending behaviour programmes and the position with regards to these types of programme may be slightly different).
- ii) Whether there are genuine reasons for believing the course is likely to increase or exacerbate the risk the prisoner poses to the public and that the reasons are specified (where they can be given without threatening prison security). It would be good practice to record these decisions.
- iii) That all relevant considerations and evidence has been properly considered and that undue emphasis has not been put on a particular factor(s) or irrelevant considerations taken into account.
- iv) That the prisoner's interests and any benefits of the prisoner attending the course have been considered.
- v) That it is not an arbitrary decision and that the prisoner has not been singled out but assessed on a similar basis to other prisoners using the same criteria (subject to different categories of offender etc.).
- vi) The extent of available resources.
- vii) Whether there are any suitable alternative courses or programmes that could be undertaken by the prisoner which teach broadly similar skills.

Further information

More detailed information can be found in the document 'Human Rights and prisoner access to education' that can be accessed via CJS online.