

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM:

THE COURT OF APPEAL CIVIL DIVISION

C1/2014/0269/QBACF/C1/2014/0269(A)/FC3

R (on the application of COLL)

Appellant

-v-

THE SECRETARY OF STATE FOR JUSTICE

Respondent

-and-

THE HOWARD LEAGUE FOR PENAL REFORM

Intervener

SUBMISSIONS ON BEHALF OF THE HOWARD LEAGUE FOR PENAL REFORM

1. The central issue in this appeal is whether the Respondent's distribution of "approved premises"¹ for women ("APs") amounts to unlawful discrimination against them by reason of their sex, contrary to the Equality Act 2010 ("the 2010 Act").
2. By order dated 9 February 2017 the Howard League has been granted permission to intervene in the appeal, and to file evidence on a *de bene esse* basis. The Howard League has filed a witness statement from its Chief Executive, Frances Crook, OBE, and is grateful for the opportunity to make these brief written submissions. References in

¹ Namely premises approved and regulated by the Secretary of State under ss1(2)(d) and 13(1) and (2) Offender Management Act 2007 and the Offender Management Act 2007 (Approved Premises) Regulations 2014 (SI 2014/1198), in which accommodation is provided (a) for persons granted bail in criminal proceedings (within the meaning of the Bail Act 1976); or (b) for, or in connection with, the supervision or rehabilitation of persons convicted of offences.

parentheses to 'FRC' are to the witness statement of Frances Rachel Crook OBE, dated 20 February 2017. References in parentheses to 'App' are to the Appendix (Core Bundle).

3. The Howard League has particular expertise in the subject matter of this appeal due to its extensive and ongoing record of research, legal work, casework, policy and campaigning in relation to the criminal justice system and to women in particular (FRC §§1.1 – 1.5; and Exhibit FC/1).
4. The Howard League does not intend to make submissions on the discrimination law issues in this appeal regarding the interpretation of the 2010 Act, including whether any discrimination found to have occurred is “direct” (contrary to s.13 thereof) or “indirect” (contrary to s.19), or the nature of any applicable “*provision, criterion or practice*” (for the purposes of ss.19(1) and (2) of the 2010 Act).
5. Generally, it is hoped that Ms Crook’s evidence will assist the Court by providing it with “*a more rounded picture than it would otherwise obtain*” when considering the significant public interest issues raised by this appeal (per Lord Hoffmann, *E v. The Chief Constable of the Royal Ulster Constabulary (Northern Ireland Human Rights Commission intervening)* [2008] UKHL66, [2009] 1 AC 536, at paragraph 2).
6. Given the well recognised differences in the characteristics, and needs, of male and female offenders, the Howard League accepts and indeed endorses the argument that accommodation for women released on bail and in particular for those released on licence from custody should be different from that provided for men.
7. However the Howard League submits that AP accommodation for women is not only different but less favourable to women as the very small number of units and their geographic spread – with none for example in Wales or London – means that women are less likely to be accommodated near their former homes, families and sources of support including statutory services such as children’s services.
8. As Ms Crook’s evidence explains, while a minority of women may need to be accommodated away from their home area in order to avoid, for example, a former partner, most will suffer detriment from being located in an AP further away from home: women in prison are already particularly vulnerable and therefore it is particularly

important that they can maintain contact with family members and support services, in particular their children and children's services who are likely to have become involved upon the mother's imprisonment (FRC §§3.9 - 3.14).

9. Accordingly the Howard League submits that the evidence before the Court shows that:
 - (i) In relation to the provision of APs, women are indeed treated "*less favourably*" than men for the purposes of s.13(1);
 - (ii) They are also thereby placed at a "*particular disadvantage*" on account of their sex for the purposes of s.19(2)(b); and
 - (iii) They are also thereby subjected to a "*detriment*" for the purposes of s.29.
10. The particularly adverse experience of women in other aspects of the prison system as described by Ms Crook (FRC Section 2 and §3.1 - 3.8) and Baroness Corston ("*[p]rison is disproportionately harsher for women because prisons and the practices within them have for the most part been designed for men*" (§ 5; App. 248)) compounds the less favourable treatment, disadvantage and detriment caused by the AP provision.
11. Moreover the evidence from Ms Crook as to the deficiencies in the manner in which the criminal justice system caters generally to the needs of women (FRC Sections 2 and 3) and as to feasible alternative approaches (FRC Section 4) illustrates the sort of crucial matters that bear on the questions of whether:
 - (i) Any indirect discrimination can be justified under s.19(2)(d); and/or
 - (ii) Any direct or indirect discrimination is a proportionate means of meeting a legitimate aim and thus rendered lawful by paragraph 26(1)(b) and/or 26(2)(c) of Schedule 3.
12. As to these two issues, the Howard League notes that the Respondent has not appealed Cranston J's finding that she has not complied with the public sector equality duty under s.149 of the 2010 Act and that she has not addressed the "*possible impacts*" or assessed

“whether there is a disadvantage, how significant this is, and what steps might be taken to mitigate it” (§ 65; App. 44) in respect of AP provision. This must bear on whether the Respondent can show justification for either of the two purposes set out in the preceding paragraph.

13. The Howard League submits that Ms Crooks’ evidence illustrates that the less favourable treatment, disadvantage and detriment suffered by women in the provision of APs is a result of the Respondent’s failure to provide APs according to an evidence-based scheme that would respond to the needs and characteristics of women offenders, and indeed that this reflects a wider flaw in the approach to the provision that is made for female offenders.

HENRIETTA HILL QC
Doughty Street Chambers

SALLY IRELAND
Garden Court Chambers

20 February 2017

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Clifford Chance LLP

10 Upper Bank Street

London

E14 5JJ