

PRISONS AND PROBATION OMBUDSMAN

Learning lessons from PPO Investigations

Prisoners' property complaints

PRISONS AND PROBATION
OMBUDSMAN

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Foreword



I am pleased to introduce this thematic report which focuses on the lessons that can be learned from my office's independent investigations into complaints about prisoners' property.

Our complaint investigations have a number of roles: they help safeguard against unfairness in prison, provide a means for prisoners to gain appropriate redress, allow the legitimate ventilation of frustrations and, conversely, offer a means of affirming the appropriateness of actions and decisions by staff. While we investigate some very serious complaints, the most common subject of complaint is lost or damaged property. These complaints also have the highest uphold rates (where we find against the authorities and in favour of the complainant) and this suggests that prisons are not managing prisoners' property well.

Most property complaints concern small value items, but these can still mean a lot to prisoners with little. Unfortunately, too many of the issues involved could and should have been dealt with more quickly and efficiently by the prisons concerned.

Instead, despite perfectly sound national policies and instructions, which set out clear procedures and responsibilities, prisons too often refuse to accept their responsibilities when property has been lost or damaged. This leaves prisoners in limbo, creates unnecessary frustration and tension and leads to complaints, too many of which require independent adjudication. Using up scarce staff resources in this way, both in prison and then in my office, is not a good use of public money, particularly at a time of financial constraints. Hence this report, which looks at the lessons that should be learned to reduce property complaints in prison.

This report reviews the property complaints received in the first six months of 2012/13. The report focuses on encouraging staff to follow Prison Service instructions consistently and to take responsibility for resolving complaints where there is liability. Other lessons include greater use of simple technology, for example the use of photography to record property and evidence action. Learning these lessons could resolve many property complaints at source.

I would like to thank my colleague, Craig Weeks, for preparing this report. I will regularly be publishing further reports and bulletins setting out lessons from investigations so that we can encourage improvement in investigated services and, more generally, improve fairness and safety in custody.

A handwritten signature in black ink, reading "Nigel Newcomen". The signature is written in a cursive style with a long horizontal line extending from the end.

Nigel Newcomen CBE
Prisons and Probation Ombudsman

Executive summary

- This thematic report presents a review of property complaints made by prisoners which have been received by the Prisons and Probation Ombudsman (PPO). It provides an overview of cases received, a profile of prisoners' property complaints in 2012/13 and an in-depth examination of investigations from the first six months of that business year. It concludes with some lessons that should be learned to address shortcomings – and to avoid the need for complaints about prisoners' property coming to the Ombudsman in the first place.
- Since the inception of the Ombudsman's office in 1994, property has consistently been one of the most common categories of complaint. Over the past ten years property complaints have made up between 14% and 18% of all eligible complaints received. This proportion increased slightly to 21% in 2012/13.
- Between April 2012 and March 2013, the PPO received over 3,000 prison-related complaints which were eligible for investigation. One in five of these were related to property.
- Over half (57%) of the property-related complaint investigations that had been received in 2012/13 and had been subsequently completed¹, were either upheld or mediated in favour of the complainant.
- Looking specifically at 146 of these upheld complaints, five areas of concern arose:
 - Administration of property
 - Taking responsibility
 - Destruction of property
 - Religious items and volumetric control
 - Compensation
- Case studies of investigations are used to illustrate concerns and, where relevant, the actions taken by the prison in response to the Ombudsman's findings are highlighted.
- Seven lessons have been identified, all emphasising the importance of following procedures outlined in Prison Service Instructions (PSIs). Taking responsibility for damage or loss of items and the accurate completion of paperwork are key areas of learning.

¹ At the time of analysis (04/10/2013), 421 complaints eligible for investigation had been completed, a further 116 were ongoing.

This learning lessons thematic review examines property complaints received by the Prisons and Probation Ombudsman (PPO) from prisoners in England and Wales. The thematic review outlines the instructions regarding the management of prisoner property in prisons, an overview of the property complaints the PPO has received and a detailed review of recent cases, including the concerns and recommendations they have raised.

1. Introduction

“Prisoners are allowed to have sufficient property in possession to lead as normal and individual an existence as possible within the constraints of the prison environment”.
(Prison Service Instruction 12/2011)

Prisoners may hold items in possession during their imprisonment subject to the guidelines set out in Prison Service Instruction (PSI) 12/2011. In many cases, possessions are of personal value to the prisoner, especially where the items have religious or sentimental meaning.

PSI 12/2011 provides that prisoners' property may be held in two states:

- In possession – these items are held by prisoners on their person or in their cell. Property authorised as being in possession is subject to the privilege level of the prisoner and must not exceed an appropriate volume (known as volumetric control).
- Stored property – excess property can be stored locally in the prison or centrally at the National Distribution Centre (NDC) at Branston Depot. The PSI states that *“in principle [storage of property is] an exceptional or temporary measure”*. Items which have been removed from in possession for security or control reasons may also be stored by the prison.

Where property is either not authorised for possession at the prison or is in excess of volumetric control, it may be given to somebody outside the prison. This is known as 'handing out'.

1.1. Authorised items

The recent Incentives and Earned Privileges (IEP) PSI 30/2013 has introduced

a standardised 'facilities list' from which governors can select the items that are allowed in possession of prisoners in their establishment. This list is expected to contain items suitable for the *“specific population, the physical fabric and the regime of the prison”*. The IEP status of the prisoner controls what they may hold in their possession.

Property held in possession is limited to that which fits inside two standard size volumetric control boxes plus an 'outside item'. Governors can agree to allow more than the volumetric limit in 'exceptional' circumstances. Annex A of PSI 12/2011 provides a list of items that are outside of these volumetric control measures. These include legal papers, bedding and items held for the care of babies in mother and baby units.

The PSI provides that disability aids and items required by a person's religion must be allowed as in possession subject to risk assessment.

1.2. Confiscating items

Prison governors have the power to temporarily remove items from prisoners and, legally², must return the property upon the prisoner's release. An item can be removed when a prisoner is not authorised to have it or where the misuse of the item appears to threaten the *“good order or discipline, or security”* of the prison.

² As discussed in Paragraph 2.16 of PSI 12/2011: *“in the case of Coleman, the Administrative Court ruled that a prisoner may be temporarily deprived of their possessions but that there is no power to permanently deprive him/her of ownership”*.

Where an item is temporarily confiscated, governors are expected to inform the prisoner of the reasons for the decision.

The PSI states that, in cases where possession of the item is a criminal offence, where the item is inherently dangerous or where it presents a health hazard, the governor can permanently confiscate the item and arrange for its destruction. The recent Prisons (Property) Act 2013, due to be brought into force in 2014, will empower governors to destroy, or sell, any article found in the possession of the prisoner which they are not authorised to have or where ownership cannot be attributed.

1.3. Recording property

Under Prison Rule 43(2) it is a statutory requirement for prisons to provide clear documentation of each prisoner's property through a signed inventory:

"Anything, other than cash, which a prisoner has at a prison and which he is not allowed to retain for his own use shall be taken into the governor's custody. An inventory of a prisoner's property shall be kept, and he shall be required to sign it, after having a proper opportunity to see that it is correct."

PSI 12/2011 states that the record must be "comprehensive and legible" and any changes recorded clearly. Property records are expected to be retained in the prisoner's core record so that an audit trail is available in case of a claim of loss or damage. Where an accommodation clearance has taken place (for instance when the prisoner has been transferred to hospital or segregation), it is expected that a cell clearance certificate will be completed and kept with the property record cards.

On transfer, property is expected to be placed in bags and sealed with a security seal unique to the establishment and with its own unique number. This number should then be recorded on the prisoner's property cards.

1.4. Complaints and compensation

Complaints by prisoners about lost or damaged property are expected to be investigated in accordance with PSI 02/2012: Prisoner Complaints, and prisoners can claim for compensation where property is lost or damaged. PSI 12/2011 says that, if prisons follow the correct procedures, a reduction in the number of complaints and level of compensation paid will follow.

On reception, prisoners sign a disclaimer accepting that they hold in possession property at their own risk. However, the prison still has responsibility to pay compensation where the prison was clearly at fault (PSI 12/2011, Paragraph 2.82). An example of this is where personal clothing is damaged after being handed over for washing.

If the prisoner has exhausted the internal complaints process but they remain unhappy with the conclusion, they are able to submit a complaint to be investigated by the PPO.



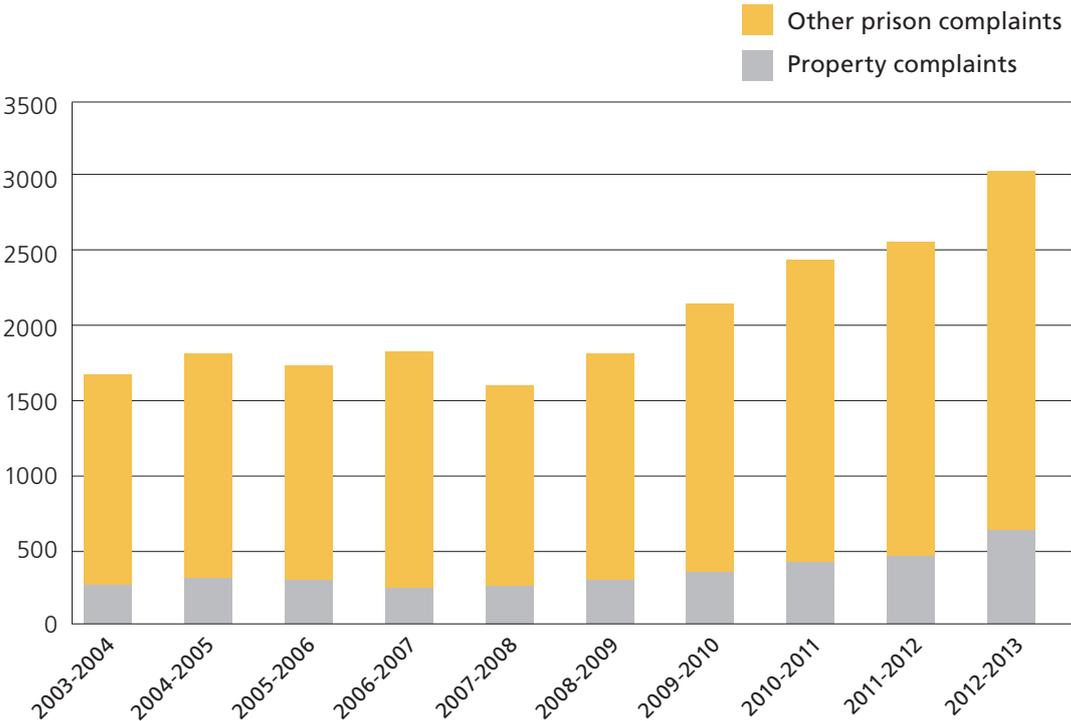
2. PPO property complaints overview

2.1. History of property complaints

Since the inception of the Ombudsman’s office in 1994, property has consistently been one of the most common categories

of complaint. Over the past ten years the number of property complaints has been between 14% and 18% of all eligible complaints received (Figure 1). This proportion increased slightly to 21% in 2012/13.

Figure 1: Eligible complaints received in the last 10 years by the PPO



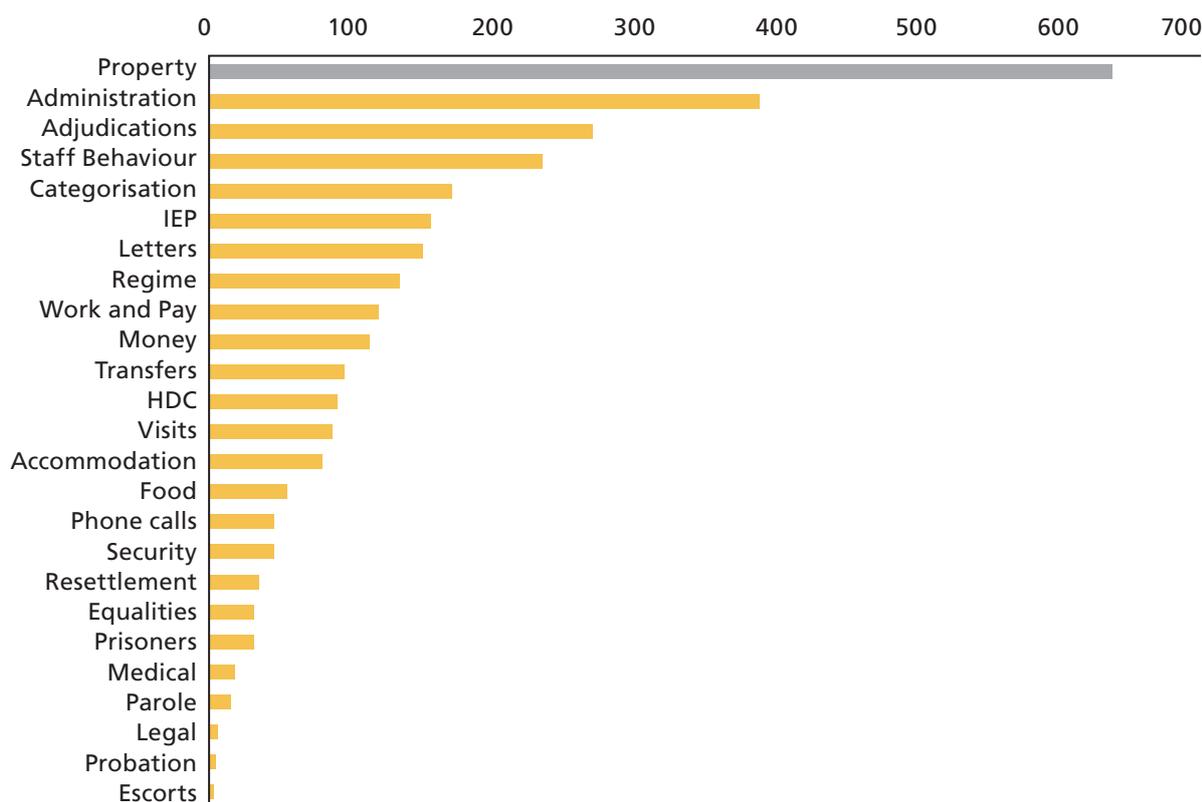
2.2. Property complaints 2012/13

Between April 2012 and March 2013, nearly 4,900 prison complaints were received by the PPO. Once received, complaints are assessed for eligibility to ensure they are within the Ombudsman’s terms of reference and the appropriate internal appeal avenues have been completed. Over 60% of the prison

complaints received (3,037) in 2012/13 were eligible for investigation.

One in five of the eligible complaints received by the PPO in 2012/13 were related to property, making it the most common type of complaint (Figure 2). Property complaints also had a higher eligibility rate (66%) than most other complaint types.

Figure 2: Eligible complaints received in 2012/13 by the PPO



2.2.1. Property complaints profile

Given the make-up of the prison population, it is to be expected that the majority of eligible property complaints received were from male prisoners (Figure 3). However, female prisoners were under-represented across all types of eligible complaints in the year, contributing just 1.7% of all PPO complaints despite making up nearly 5% of the prison population. This is even more marked for property complaints, where only one was from a female complainant in 2012/13.

Although the percentage of prisoners aged under 21 complaining about property issues is comparable to that for all complaints, young complainants are also under-represented against the prison population. There was only one

eligible complaint for offenders aged 15-17 received in the year and that was in relation to property.

Ethnicity of prisoners making property complaints is broadly similar to that of prisoners across all types of complaint to the PPO.

Eligible complaints from the high security estate are over-represented in the PPO’s caseload with 28% coming from high security prisons despite holding only approximately 7% of the prison population. However, when looking at property complaints specifically, the numbers are more evenly spread across all prison types with one in five (21%) of the property complaints relating to a high security prison.

Figure 3: Breakdown of eligible prisoners' property complaints 2012/13 by demographic/prison information

Eligible property complaints (N=638)		
Gender	Female	1 (0.2%)
	Male	637 (99.8%)
Age	15-17	1 (0.2%)
	18-20	10 (1.6%)
	21-24	68 (10.7%)
	25-29	114 (17.9%)
	30-39	207 (32.5%)
	40-49	157 (24.6%)
	50-59	61 (9.6%)
	60 and over Unknown	13 (2.0%) 7 (1.1%)
Ethnicity	Asian or Asian British	42 (6.6%)
	Black or Black British	135 (21.2%)
	Chinese or Other ethnic group	2 (0.3%)
	Mixed	25 (3.9%)
	White	408 (64.0%)
	Unknown/Not stated	26 (4.1%)
Prison type	High security prisons	135 (21.2%)
	Other prisons	503 (78.8%)

2.2.2. Property complaint investigation decision overview

Of the 638 eligible property complaints received in 2012/13, 88 (14% of the total) were not investigated as they were deemed to be subject to Paragraph 15 of the Ombudsman's terms of reference³. A further 13 were withdrawn by the complainant.

At the time of analysis⁴ 421 eligible property complaints received in 2012/13 had been investigated. Over half (57%) were upheld, including 33% where the PPO mediated a settlement with the prison, usually involving the prison agreeing to pay compensation for the property which had been lost or damaged while in their care. The remaining 43% of complaints were not upheld.

³ Paragraph 15 of the Ombudsman's terms of reference states that the "Ombudsman may decide not to accept a complaint otherwise eligible for investigation, or not to continue any investigation, where it is considered that no worthwhile outcome can be achieved or the complaint raises no substantial issue."

⁴ Figures as of the time of analysis (04/10/2013), a further 116 investigations were ongoing.





3. Thematic analysis

3.1. Overview

By looking in detail at complaints over a six-month period, it is possible to identify key themes. The analysis looked at 315 eligible prisoners' property complaints which were received by the PPO in the six months between April 2012 and September 2012.

At the time of analysis⁵, 315 complaint investigations had been completed, with 146 upheld and 104 not upheld. There were 36 which were either deemed to have no worthwhile outcome so were not investigated under Paragraph 15 of the Ombudsman's terms of reference or withdrawn by the complainant. A further 29 investigations were still ongoing.

Upheld complaints were considered in detail and the analysis found five major themes with related sub-themes. In many examples, the themes overlapped and contributed together to the issue raised by the prisoner.

3.2. Complaints not upheld

Where prisoner complaints were not upheld by the Ombudsman, it was considered that the prison staff had acted in a proportionate or reasonable way, in accordance with the guidance laid out

in the Prison Service instructions. The following points are common examples of the reasons the Ombudsman did not uphold the complaint:

- There was a lack of evidence that the prisoner was in possession of items they alleged were missing – in particular where the prisoner's property cards currently, or historically, did not show possession of the item.
- Compensation had already been offered by the prison and the Ombudsman felt the value was appropriate.
- A long period of time had passed between when the damage occurred and when the complaint was made to the Prison Service – meaning that it was not possible to ascribe responsibility for damage.
- It was reasonable for the prison to refuse the request – for instance, not allowing certain items on facilities lists or refusing to allow high value items of jewellery to be handed in to the prison.
- Possession of the items would have exceeded reasonable volumetric control levels and so refusal by the prison was justified.

Case study one: Mr A asked the Ombudsman to consider his complaint that he was not allowed to have a watch, a present from his wife, handed into the prison.

The prison had said that its facilities list prohibited valuable items being held and, by Mr A's own admission, the watch was worth in excess of £1,000.

The Ombudsman considered that the prison's response was reasonable and would not challenge how the prison managed its valuable items. Therefore, Mr A's complaint was not upheld.

⁵ 18/07/2013

Case study two: Mr B complained that, following a move to segregation, over 20 items of clothing were missing. Mr B said that, as he had left these items in his cell before he was moved to the segregation unit, he had no way of keeping his property safe.

During his investigation, the Ombudsman found that Mr B's cell had been sealed by prison staff immediately after he was moved to segregation and was only opened again prior to the cell clearance. Mr B's possessions were sealed in bags and subsequently listed by two officers, and signed by a senior officer as being checked and in order. The possessions were cross referenced with those on Mr B's property cards, listing any items found that were not on the cards.

The Ombudsman concluded that Prison Service staff had followed procedures correctly, ensuring that Mr B's cell was sealed and that the relevant paperwork had been completed. Although the Ombudsman could not say where Mr B's missing property had gone, he could not conclude that the Prison Service was responsible for its loss.

3.2.1. Property and photographs

Currently, it is not routine practice for photographs of property to be taken. Photography is generally only used when possessions become contaminated by body fluids as a result of a 'dirty protest'⁶ and need to be destroyed. Section 11.7 of Prison Service Order (PSO) 1700: Segregation provides guidance, stating that: *"Photographs will be taken of the property that is to be destroyed. The photographs should be stored in an envelope with the prisoner's property card and the prisoner notified that this action has taken place."*

This may be a missed opportunity as greater use of photographing prisoners' property could offer a low-cost method to better record the items held by prisoners and the condition they were in at various points. This would also offer an additional piece of evidence for prisons to defend themselves against spurious complaints (see for example case study three) and so reduce unwarranted compensation claims, as well as evidencing sound claims by prisoners.

The recent introduction of PSI 31/2013: Recovery of Monies for damage to prisons and prison property requires that prison staff obtain clear evidence of the nature and extent of damage. This provides another context in which the routine use of photography could provide important and objective evidence for both prisoners and adjudicators when such claims are contested.

The costs and benefits of whether and where to broaden the use of photography in managing prisoners' property would need careful evaluation. However, given the poor current state of property management, such an innovation might reduce some of the current wasteful expenditure devoted to investigating property complaints and paying compensation.

⁶ A dirty protest is where a prisoner has chosen to either defecate or urinate in a cell or a room without using the facilities provided. Although these actions may be undertaken as a protest, they may also be as a result of mental health problems.

Case study three: Mr C complained that, following his return from the segregation unit, his stereo was smashed and other items had gone missing. Mr C admitted that he had barricaded his cell and smashed up his sink and said that, following this, he had placed his items in bags on his bed before being taken to segregation.

During the Ombudsman's investigation, prison staff explained that due to the protracted length of the barricade, the severity of the damage in Mr C's cell and his refusal to cooperate with staff, they forcibly entered Mr C's cell in order to relocate him to the segregation unit. They said that when the intervention team entered Mr C's cell, electrical items and personal belongings were found damaged and saturated with water and spread across the cell. They said Mr C was very aggressive towards prison staff throughout the incident, throwing items at them.

The Ombudsman was critical that the relevant paperwork had either not been available or not been updated correctly. However, he decided that photographs of the cell and incident reports submitted by staff provided enough evidence to reasonably conclude that Mr C's items had been destroyed by his own actions, not those of prison staff. As the prison was not liable for the damage to the items, the complaint was not upheld.

3.3. Complaints upheld

From the upheld complaints in the sample, five themes emerged and are discussed in detail with illustrative case studies in the following sections:

1. Administration of property
2. Taking responsibility
3. Destruction of property
4. Religious items and volumetric control
5. Compensation

The complaints usually related to items that were missing, damaged or confiscated. Complaints often involved multiple items. The most common types of item were:

- clothing
- electrical items (e.g. radios, stereos)
- toiletries
- CDs/music
- jewellery/watches
- towels/bedding.

Complaints about property were most common at times of movement (either internally or to another prison) but also

included instances in cells, storage and at the prison laundry.

3.4. Administration of property

Issues related to the administration of property were prevalent across the upheld complaints in the sample. In nearly three-fifths of the upheld investigations, the complaints came as a result of a prisoner's movement, either internally within the prison or when transferring to another establishment; a time where administrative processes were most likely to break down.

The upheld complaints often raised concerns about the completion of property cards and cell clearance certificates. This documentation provides an audit trail for both prison staff and prisoners and so requires accurate completion and regular updates.

PSI 12/2011 provides detailed instructions related to both types of paperwork. In relation to property cards, Paragraph 2.13 stresses that *"it is imperative that all entries are comprehensive and legible...this discipline is important and will aid in the response to compensation claims and will also provide an effective audit trail for staff and management"*.

Detailed information is subsequently provided on the operational approach for accommodation clearances in Paragraph 2.78:

“Vacated living accommodation and any property within must be secured and checked as soon as possible. Governors must ensure that two members of staff are present at all such clearances, and arrange for all in possession property left by the prisoner to be recorded on a Cell Clearance Certificate, which will be kept with the relevant property record cards. If the accommodation was shared the remaining prisoner must normally be present to identify his/her property. It is good practice for the certificate and property cards to be completed or updated during the clearance. Any discrepancies between these records must be recorded. The property (other than perishable items) must then be placed in property bags and sealed...”

When these procedures were not followed, the Ombudsman was inclined to uphold the complaint, as demonstrated by case study four.



Case study four: Mr D complained that, after placing himself on Rule 45 Own Protection⁷ following a conversation with security staff, he asked staff to secure his cell, as he knew he was not going back and was concerned about other incidents of theft in the prison.

Mr D said all his property was intact when he left his cell but that, when he subsequently received his property back from prison reception, a substantial amount of clothing and other items were missing. Mr D also said a prisoner from his wing had been in the segregation unit bragging that he and others had robbed his cell.

Prison staff responded to Mr D's initial complaint saying that they had checked with the wing and that there was no evidence that his cell door was unlocked prior to the removal of his possessions to reception. In light of this, they said it was not possible to consider compensation for the items Mr D said were missing.

Although in possession property is the prisoner's own responsibility, responsibility passes to the Prison Service when the prisoner is placed in a position where they cannot exercise effective control over their property – including when moved to the segregation unit. In these circumstances, the Prison Service must secure the cell and ensure no-one enters it until it is cleared. Property must be cleared by two members of staff and listed on a cell clearance certificate, after it has been checked against the prisoner's property cards.

The Ombudsman found that this procedure was not followed; the prison were unable to produce a cell clearance certificate or any evidence that Mr D's cell was secured as soon as it was known he would not be returning to it. The prison was, therefore, found liable and compensation for the items was recommended.

⁷ Prison Rule 45 allows for prisoners to be moved to segregation away from general location either for their own protection when their safety is at risk or when there is a need to maintain order and discipline.

3.4.1. Prisoner transfers and storage

Transferring prisoners from one prison to another can be a particularly problematic time for the management of property. When a transfer occurs, items should be collected by prison staff and placed into property bags, with a unique security seal, ready to travel. These seals should then be matched against the Person Escort Record (PER). On reception at the new prison, the bags should be checked, with the prisoner present and all possessions logged on the property card. Where prisoners state that possessions are missing, prison staff are expected to note it on the cards.

Various complaints in the sample related to damage during transfer, including examples where damage was caused to electrical items that had not been packed properly by prison staff for the relocation to another prison.

The analysis also showed that transfers often brought to light concerns about items that had been previously held in storage. Items that had either been damaged while stored, or were missing entirely, were often identified by prisoners following their move. Stored items can have substantial financial or personal value, causing distress when lost or damaged.

Case study five: Mr E complained that jewellery, including earrings and a pendant, were missing following a transfer.

The property records showed that the items were listed as present in storage at the prison Mr E had left, but had not been received by the prison he had moved to. The first prison stated that the valuables had been placed in the pockets of clothing in one of the property bags. The clothing, held in storage, was checked four times at the new prison but nothing was found. Neither prison was willing to offer compensation for the items.

The prisoner's complaint was upheld. It was clear that Mr E had entrusted his possessions to the Prison Service and they were responsible for the loss. The Ombudsman was critical that the sending prison had placed items deemed to be too valuable to be held in possession into the pockets of clothing without any record or note to explain this had happened. He was also extremely critical that the prisons did not act promptly nor agree who would compensate Mr E. He concluded that the original prison was culpable and recommended that it should offer compensation.



Case study six: Mr F complained that his suit and tie that were held in storage were missing following a prison transfer. Mr F said these items were needed for court appearances and wanted compensation to replace them.

During the investigation, both prisons stated that the clothes could not be found and had been sent on transfer. However, the Ombudsman found that the prisons had neither the property cards nor cell clearance records to confirm this.

As the expected audit trail was not maintained by the prisons, the Ombudsman upheld the complaint and a mediated settlement was reached to compensate for the items.

Across the sample, there were a number of complaints related to items that had been held in storage. In addition to concerns about damaged or missing items following transfer, complaints also related to the inappropriate confiscation of items and delays in accessing stored possessions (case study seven).

Case study seven: Mr G complained to the Ombudsman following a refusal to hand out the keys to his flat.

Mr G had submitted applications to have his flat keys handed out of storage in order for his property to be cleared. He complained that these applications were refused and as a result the Housing Association had charged him for the cost of new locks and clearing his property. Mr G also said that all of his personal possessions had been destroyed when the flat was cleared.

Mr G said that, if he had been allowed to hand out his keys, the property could have been cleared by the time the tenancy ended and he would not have incurred the charges or lost his furniture and possessions. He asked for compensation.

During his investigation, the Ombudsman found that the prison were unable to explain why the application had been refused, as no audit trail was available. He also found that Mr G had delayed both making his request and trying to retrieve his possessions after the clearance, and had offered no explanation for these delays.

From his investigation, the Ombudsman took the view that the prison should have made arrangements for the keys to be released to the Housing Association, but they did not do so. However, he also acknowledged that Mr G was at fault over the timeliness of his application and his failure to arrange for his possessions to be retrieved after clearance. As a result, the complaint was partially upheld, with a recommendation that the prison compensate for the value of the flat clearance and new locks.

3.5. Taking responsibility

One area of frequent and unnecessary disagreement reflected in the sample, and experienced in the wider work of the Ombudsman's office, related to whether the sending or receiving prison should provide a reply to a complaint when a transfer has taken place. Examples showed that establishments were not willing to accept responsibility for the damage and so provide compensation. This included situations where damage may have been attributable to the escort company or courier (see case study eight).

Paragraph 2.3.8 of PSI 02/2012 states that the prison where the prisoner is located at the time they make the complaint is

responsible for ensuring that they receive a response. This does not mean they are necessarily responsible for providing the reply if the complaint is about another prison, but they must ask the other prison to provide a response and chase up if this does not happen. They should not simply tell the prisoner to contact the other prison or the escort company or courier. Paragraph 2.3.9 addresses this issue, stating that:

"It is essential that respective establishments agree at an early stage which of them is responsible for providing the substantive response (and paying the compensation if is upheld) when responding to complaints about loss of or damage to prisoners' property".



In addition, PSI 02/2012 (paragraph 2.7.5) outlines responsibility for the payment of compensation:

“Any compensation will be paid by the establishment where the loss or damage occurred (or by those responsible for transferring the prisoner if the loss or damage occurred in transit)”.

It is the Ombudsman’s view that the establishment the prisoner has left is responsible for the safe transit of the prisoner’s possessions – including the period of escort. As a result, that prison is liable for compensation. If the prison wishes to recoup the money from the escort contractor or courier, they can do so but should not expect the prisoner to do this.

Case study eight: Following a transfer between two prisons, Mr H discovered that his stereo was damaged.

Mr H complained to the sending prison. They stated that his stereo was undamaged on departure and directed him to complain to the transportation company (a prison contractor).

During his investigation, the Ombudsman found that Mr H’s stereo left his possession undamaged before being packed at the prison he was leaving. When it was unpacked and tested at his new prison, the stereo was damaged. It appeared, therefore, that the damage occurred either while it was packed and handled at the original prison, or during the transfer between the prisons.

The transportation company undertook an internal investigation, stating that it was not possible to determine when the stereo had been damaged, who had caused the damage or whether damage had existed prior to transport. The company concluded that they had carried out their contractual obligations, and had demonstrated the appropriate level of care and attention with Mr H’s property.

The Ombudsman concluded that, in line with PSI 02/2012 (paragraph 2.7.5), responsibility for damage to the stereo lay with the prison Mr H had left (as they were responsible for transit). The Ombudsman also found that it was not reasonable to expect a prisoner whose property has been lost or damaged to seek compensation direct from the Prison Service’s contractor - and, in all probability, become embroiled in a dispute as to whether responsibility lay with the contractor or the prison that packed the item.

The Ombudsman recommended a compensation settlement and an apology be provided to Mr H. He also expressed disappointment that the complaint had not been resolved quickly between the establishments involved and had required his office’s input. He also recommended that the Prison Service re-issue clear guidance to governors and directors as to their responsibilities in respect of lost or damaged items when prisoners’ property is transported from one prison to another by an independent carrier.

There were also examples where wing regimes or the actions of staff prevented the prisoner from being able to control their own property. In these circumstances, the Ombudsman took the view that responsibility for in possession items

moved to the Prison Service. Where complaints are raised in the internal prison complaints system, the Ombudsman expects this responsibility to be recognised and compensation to be offered where appropriate.

Case study nine: Mr I complained that, when he returned to the wing from work, nine items of clothing were missing from the cupboard in his cell. He said that he was not on the wing at the time the items went missing and that he could not afford to replace the items.

Mr I received a reply to his complaint saying that the cell doors were opened when movement for work started and that, with over 100 prisoners, staff could not unlock individual cells on request. Mr I was told that he had signed a disclaimer that his in possession property was his responsibility, and compensation was denied.

The Ombudsman's investigation found that prison staff were unlocking doors once movement for work had started. This meant that cells were potentially accessible to other prisoners while unoccupied. In this situation, prisoners were not able to secure their property and so liability for the items passed to the prison. In light of this, the prisoner's complaint was upheld and compensation recommended.

Subsequently, following other complaints at the prison, changes were introduced to ensure that staff wait until all prisoners return to the wing before cell doors are opened, reducing the risk of theft.

3.5.1. Acknowledging the loss of low value items

There were several cases in the sample where prisons refused to acknowledge the loss of low value items – as exemplified by case studies ten and eleven. Cases like these waste public funds on internal and

then independent PPO investigations and should have been resolved much earlier. In these examples, it was clear that the prison was at fault and that it would have been sensible, and much more cost effective, to have accepted responsibility and paid compensation.

Case study ten: Mr J collected a bag of items ordered through the canteen⁸ and discovered that it had been opened and a can opener (valued at £2.58) was missing from the order. The prisoner was then given conflicting information about whether the can opener should have been sent via the prison reception rather than in the canteen delivery, but it was never found.

A settlement was mediated with the prison, who offered a full refund.

⁸ 'Canteen' is the system through which prisoners can buy items. Prisoners are told how much they are allowed to spend and which items they can purchase.

Case study eleven: Mr K complained after being told that the prison's correspondence department were holding only one pair of socks that had been disallowed, rather than five pairs that he claimed had been posted in by family members.

The Ombudsman asked the prison correspondence department to search for the socks. However, they explained that the prison had a vast storage area for disallowed items through the post and would need senior authorisation to search for the items. Although the Ombudsman got agreement from a senior officer for further enquiries to be made, no further response was received from the prison, even with prompting.

Due to the time taken being disproportionate to the seriousness of the complaint, the Ombudsman agreed that the prison would pay a £5 goodwill gesture for the missing property.

3.5.2. Laundry

When items are handed over for laundry, they become the responsibility of the prison and Paragraph 2.82 of PSI 12/2011 states that:

"It is not reasonable to expect the prisoner to bear any loss or damage if he or she has handed it over to be washed in the prison laundry".

Despite this clear instruction, the Ombudsman continues to receive complaints where prisons have refused to compensate prisoners for items that have been lost or damaged in the prison laundry. The Ombudsman considers that prisons should be able to resolve such complaints internally by adhering to the guidance in the PSI and accepting responsibility for lost and damaged items.



Case study twelve: Mr L complained that a t-shirt he had placed in the prison laundry had not been returned to him. The prison stated that, as the prisoner had signed the in possession disclaimer, they would not accept responsibility for clothing that had been damaged or stolen.

The Ombudsman found that the prison wing did not monitor the flow of laundry and so required prisoners to decide for themselves when to go to collect their laundry, which provided the opportunity for items to be stolen by other prisoners.

The Ombudsman concluded that the prison was focusing on the signed disclaimer rather than who was at fault for the loss of the t-shirt. As the item was in their possession, paragraph 2.82 of PSI 12/2011 applied and the prison was deemed to be at fault. Following discussions with the prison, compensation for the item was agreed.

Case study thirteen: Mr M complained that several items of clothing and bedding were missing after being sent to the laundry.

Clothing in the prison was collected via a trolley and a ticket recorded what items had been placed in the wash. In response to Mr M's complaint, the prison initially stated that they had the laundry ticket recording the missing items, but then subsequently told him that there was no evidence of the record ticket and so no compensation would be offered.

During the course of the investigation, the Ombudsman was able to retrieve a copy of this laundry ticket which detailed all the items the prisoner had complained were missing. In light of this evidence and in consideration of the responses received from the prison to the original complaint, a suitable compensation payment was agreed with the prison.

3.6. Destruction of property

There were five upheld complaints in the sample related to the destruction of items. PSI 12/2011 (paragraph 2.16) provides specific guidance about property destruction in relation to the *Coleman* ruling⁹ and sets out the situations where permanent confiscation is permissible.

Although this guidance appears usually to be followed, the sample cases indicate that prisons need to ensure that prisoners are made aware of destruction protocols (case study fourteen) and that destruction is proportionate (case study fifteen). Both examples reflect the need for clear handing out procedures to be in place locally and to be followed by staff.

Case study fourteen: Mr N complained after his toiletries being held in storage were destroyed.

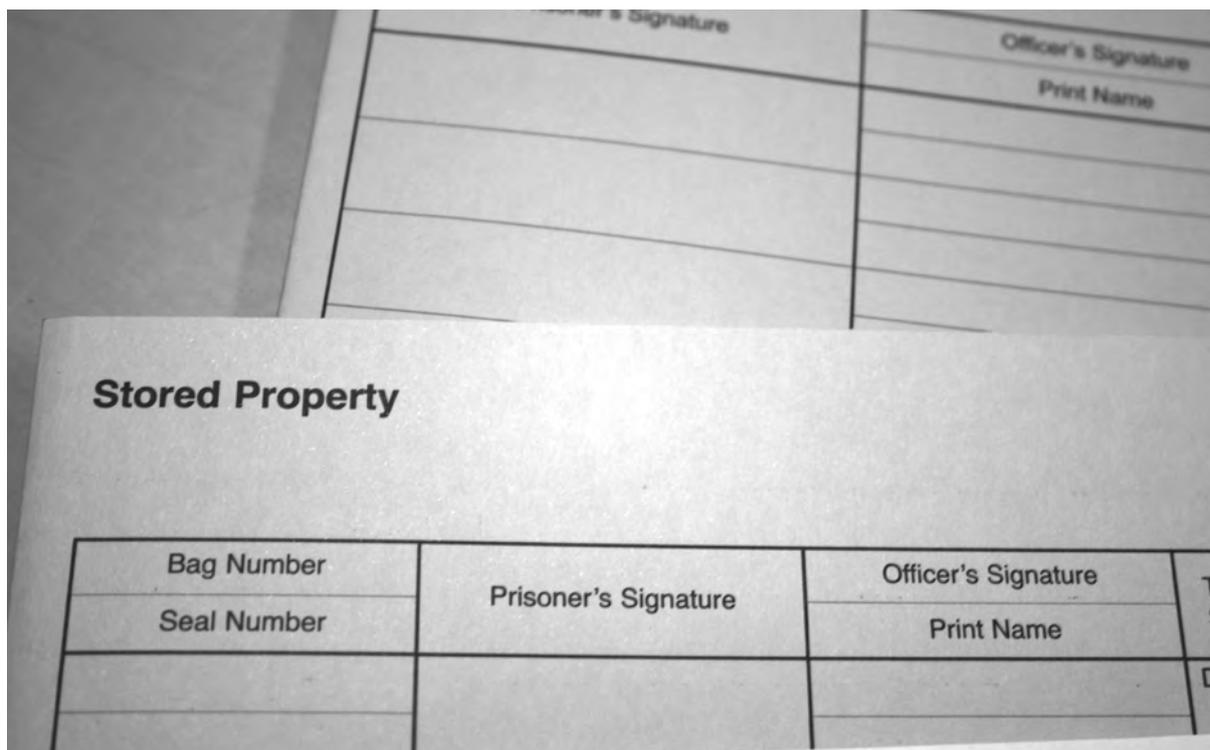
The prison's local policy was that only toiletries bought from the canteen could be held in possession and that non-canteen toiletries could only be held in storage for 28 days before being destroyed – as a consumable, toiletries are not subject to guidelines set out in paragraph 2.16 of PSI 12/2011.

Mr N had placed his non-canteen toiletries in storage, in line with the policy, on arrival at the prison but stated that he would have handed them out on a visit if he had known that they would be destroyed.

During the course of his investigation the Ombudsman found that, although the prison reception staff stated that they had told Mr N about the destruction policy, the disclaimer was not signed by him nor was there any evidence of a refusal to sign, suggesting that Mr N had not actually been told. It was also noted that neither the property cards nor the destruction log detailed the contents of the toiletries bag.

As the destruction procedure was not followed, the Ombudsman upheld the complaint and a mediated compensation settlement was agreed with the prison.

⁹ The *Coleman* Ruling will be superseded by the Prisons (Property) Act 2013 when brought into force.



Case study fifteen: Mr O complained following the destruction of three mini tools by reception staff on entry to the prison. The prison had told Mr O that they were destroyed on health and safety grounds. Mr O said that if he had known they were to be destroyed, he would have arranged to have them handed out.

The description of the tools offered by Mr O during the course of the investigation suggested that possession of them did not give rise to a criminal offence; that the items were not inherently dangerous; and their storage would not have presented a proven health hazard. As a result, they did not meet the criteria for disposal outlined in paragraph 2.17 of the PSI.

In conclusion, the Ombudsman found that the destruction of the mini tools was disproportionate and not in line with Prison Service guidance. Mr O should have been allowed to either store the items or arrange for them to be handed out.

The complaint was upheld and a recommendation for compensation made. The Chief Executive Officer of the National Offender Management Service (NOMS) also accepted a further recommendation that the prison should put in place a system enabling items to be handed or sent out if they cannot be stored.

3.7. Religious items and volumetric control

Equality and diversity considerations are a priority for the Ombudsman; in February 2013 he published a learning lessons bulletin providing a wider context to religious complaints.

Allowance of religious items in possession is detailed in paragraph 2.7 of PSI 12/2011, stating that:

“Prisoners must be allowed to have in possession, or have access to such artefacts and texts as are required by their religion. Details of these are set out in PSO 4550

Appendix 4 [now replaced by PSI 51/2011]. Prisoners may have additional religious artefacts or texts not detailed in this Order if they are not deemed by the Governor, relevant Chaplain or Minister to be a threat to security or good order. Governors have the discretion not to allow an artefact in possession if it constitutes a risk to health, safety, good order and discipline.”

In the sample there were a few investigations relating to religious items, one of which was the allowance of an item key to Islamic prayers (case study sixteen).

Case study sixteen: Mr P complained that, after moving prison, his property was checked by the prison’s Dedicated Search Team and his ablution jug was removed.

Mr P explained to staff that, as a Muslim, he was required to pray five times a day at specified times. Before every prayer, he was required to perform ritual ablutions. For this he needed a plastic ablution jug. Prison staff stated that ablution jugs were not on the facilities list and so would be held in storage.

The investigation found that, as a religious item, the ablution jug should be returned to Mr P. The Ombudsman recommended that the prison revise their facilities list to include the item.

In addition, the Ombudsman recommended that an amendment be made to PSI 51/2011 (Faith and Pastoral Care for Prisoners) to clarify which religious artefacts would be allowed in possession. With such a change, the Ombudsman hopes that complaints of this nature will cease.



3.8. Compensation

Where the Ombudsman finds the establishment liable for the loss or damage of prisoners' property, he will generally recommend compensation - or agree compensation through mediation. In deciding what sum of compensation is appropriate, the Ombudsman takes into account the current cost of replacing the item and, where applicable, wear and tear, and will normally expect to see receipts where the property is said to be of high value or a 'designer' brand, unless it was originally noted as such on the property card.

Across the sample, 113 (77%) investigations either recommended or mediated a compensation payment to the prisoner. As the number and types of items related to each complaint varied across the sample, levels of compensation recommended/mediated by the Ombudsman also varied (Figure 4).

Figure 4: Compensation values either recommended or mediated in the upheld investigations.

Compensation value	Number of investigations
Under £10	4 (3%)
£10 - £49.99	26 (18%)
£50 - £99.99	35 (24%)
£100 - £249.99	38 (26%)
£250+	10 (7%)
Compensation not applicable	33 (23%)

The Ombudsman upheld ten complaints where prisoners had been offered compensation by the prison that he did not consider to be adequate. In all but one of the investigations (case study seventeen), the loss had been acknowledged by the prison. In each case, an adjusted level of compensation was recommended or mediated with the prison.

Case study seventeen: Following an assault resulting in a broken jaw, Mr Q was moved to the healthcare wing and then to hospital. During this time, his secured cell was broken into by other prisoners and his property stolen. When Mr Q was returned from hospital, he was moved to another wing and staff did not tell him about the theft of his property until four days later.

The prison accepted that the cell had been broken into but stated in possession items were held at the prisoner's own risk. However, the prison offered a small financial settlement which Mr Q felt was substantially below the value of his items.

During the Ombudsman's investigation, it appeared that the prison had not conducted an internal investigation into the incident (the forced entry to the cell and theft of Mr Q's property). In addition, a cell clearance certificate had not been completed for the subsequent cell move. In light of these factors the complaint was upheld by the Ombudsman.

After studying Mr Q's property cards, the Ombudsman concluded that an increased sum of compensation should be offered. An agreement between the prison and Mr Q was mediated.

Case study eighteen: Mr S complained that items, including a watch and a personal CD player, were missing from his safe-box following a wing transfer. The prison governor had not accepted liability for the loss but offered a goodwill payment which the prisoner felt was substantially below the value of the items.

The Ombudsman's investigation established that no cell clearance forms had been completed and that there were discrepancies in what was recorded on Mr S's property cards.

The Ombudsman found that the prison was taking an inconsistent position: they had offered compensation despite reported doubts about the ownership of the missing items. If Mr S was not the owner of the items then compensation should not have been awarded; if he was, then a fair amount should have been offered.

In light of the inconsistency and the failure to follow cell clearance procedures correctly, a settlement was mediated with the prison governor and a more appropriate level of compensation agreed.

4. Lessons to be learned from prisoners' property complaints

The instructions and guidance to prisons provide a clear system for managing prisoners' property and for dealing with complaints about lost or damaged property. Despite this, too many unresolved problems with property arise leading to large numbers of complaints, a significant proportion of which arrive at the Ombudsman's office. There is clearly a need to improve adherence to policies and procedures, so that property issues are resolved internally and public funds not wasted on escalating matters unnecessarily.

The findings in this report highlight straightforward steps that prisons can take to make significant reductions in the number of complaints about property, and to ensure that complaints are resolved quickly and effectively internally when they do arise.

Accept responsibility where processes have not been followed

When a prisoner is transferred it is the responsibility of the sending prison to ensure that the prisoner's property arrives intact and undamaged at the receiving prison. If items are lost or damaged in transit, it is the responsibility of the receiving prison to ensure that the prisoner receives a response to complaints about their property. This does not necessarily mean that the receiving prison needs to provide the response, but they must ensure that the prisoner receives a response from the sending prison and should not tell prisoners to pursue complaints with the sending prison direct. The sending prison should accept responsibility for paying any compensation and should not tell prisoners to pursue complaints with the escort contractor or courier company, or with the receiving prison.

Prisons should ensure that all staff understand that the fact that a prisoner has signed an in possession property disclaimer does not absolve the prison of

all responsibility for prisoners' property. If a prisoner is not in a position to maintain control over his or her property, it becomes the responsibility of the prison. This is particularly likely to apply where prisoners have to leave their property in their cell when they are relocated or transferred; where property is in transit; when management practices mean that cells are unlocked when prisoners are at work or on association; or when property is sent to the laundry.

Items sent to the laundry are specifically addressed in the Prisoner Property PSI. Prison staff should be aware of this guidance and manage complaints related to laundry losses appropriately.

Respond effectively to prisoners' complaints

Prisoners' complaints about lost or damaged property should be considered individually: they should not be automatically rejected on the grounds that prisoners are responsible for their in possession property, and prisoners should not be told to complain to other prisons or third parties.

It is important that complaints are dealt with by staff who have the authority to offer financial compensation where that is appropriate. This will avoid complaints coming to the Ombudsman unnecessarily.

Ensure paperwork is completed correctly

It is mandatory for prisons to ensure that clear and accurate records are kept of prisoners' property. Records should be thorough and legible so an audit trail can be reviewed where disputes arise.

Specific actions staff should take include ensuring that:

- paperwork is reviewed and signed by the prisoner;
- cell clearance certificates are completed fully and kept with the relevant property cards, and

- governors undertake regular management checks to ensure property cards are accurately completed and amended to reflect prisoners' property levels (in line with paragraph 2.13 of PSI 12/2011).

Manage prisoners' possessions as required in Prison Service Instructions

Possessions can have substantial personal value to prisoners and the Prison Service Instructions provide detailed procedures for the management of these items. Times of movement, including transfer to other establishments, require staff to pay particular care and attention to these protocols. Proper handling and packing of items, particularly valuables, will reduce the likelihood of loss or damage and therefore claims for compensation.

To reduce complaints, prison staff need to ensure that:

- possessions are bagged carefully, sealed, and seal numbers noted;
- appropriate wrapping is used when forwarding property on to another establishment;
- valuable property should be carefully recorded and transferred by appropriate means;
- property in vacated cells is secured and checked as soon as possible so that items are not left to be taken by others;
- two members of staff conduct a cell clearance with the remaining prisoner in the cell if accommodation was shared, and
- access to locally stored items is proportionate and timely.

Use proportionality when destroying items

Prisoners' property should only be destroyed in line with PSIs and the reasons for destruction should be recorded. Prisoners should be informed before their property is destroyed and, where appropriate, given the opportunity to hand it out instead.

Follow volumetric control instructions for religious items

PSI 51/2011 (Faith and Pastoral Care for Prisoners) provides detailed information about the religious items allowed in possession. Staff should be aware of this when making decisions about volumetric control.

Wider use of photography

A low-cost option available to the Prison Service to better record the items, reduce compensation claims and more efficiently resolve complaints would be the wider use of photography. Photographs are already taken to evidence items destroyed following dirty protests, and its wider application could ward off unmerited complaints. The Ombudsman recommends the trialling of this technology in a variety of property management settings, for instance when storing valuable items, in order to assess where its use could be most effective.

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