Maintaining family ties can help to prevent prisoners reoffending and can assist them to settle successfully in the community on release. Maintaining family contact while in prison also reduces isolation and the pain of imprisonment for both prisoners and families.

However, the deprivation of a prisoner’s liberty inevitably limits their ability to interact with family and friends, leaving prison staff to balance the potential benefits of maintaining family ties against their fundamental responsibility for ensuring security and public safety. This balance is not always easy to achieve, nor do staff always get this right. As a result, my office receives a steady stream of complaints from prisoners about family ties issues.

This bulletin highlights learning for the Prison Service from our investigations into some of these complaints and identifies what I believe is a proper balance. Learning these lessons could help resolve complaints at the earliest opportunity, promote contact between prisoners and their families, support rehabilitation and save scarce public resources by eliminating the need for a prisoner to escalate their complaint to my office.

Nigel Newcomen CBE
Prisons and Probation Ombudsman

Introduction

Imprisonment has an inherently adverse effect on a prisoner’s family, particularly if there are dependent children. The right to a family life is enshrined in law in Article 8 of the European Convention on Human Rights as the “Right to respect for private and family life”. Article 8 is a qualified right, which requires a balance between the rights of the individual and the needs of the wider community or state interest. In prison, there will be circumstances where it is permissible for this right to be overridden by the need to maintain national security, public safety and the protection of the rights and freedoms of others.

Prisons must ensure that the right balance is struck between allowing prisoners contact with their family, facilitating visits and allowing other forms of communication, while managing the risks prisoners pose to others and ensuring that public protection and security are not compromised. More broadly, prisons have an obligation to consider the impact imprisonment can also have on family members who are not imprisoned – yet can often feel like they too are being punished.

This learning lessons bulletin looks at examples of the complaints the Ombudsman received from prisoners between 2009 and 2013 about issues to do with maintaining ties with their family and friends. Prisoners have limited means to keep in touch with their families: they can receive visits at the prison, send and receive letters by post (if they are sufficiently literate), make (but not receive) telephone calls, and, if eligible, attend close relatives’ funerals in the community through the temporary release scheme. In the main, however, they do not have legitimate access to the mobile telecommunications and information technology that so dominates personal communication in the community.
Visits

“Visits are seen as crucial to sustaining relationships with close relatives, partners and friends, where appropriate, and help prisoners maintain links with the community”. (Prison Service Instruction 16/2011)

Research has indicated that receiving visits during imprisonment increases the likelihood of a prisoner reporting that they had found employment and accommodation on their release from prison, which in turn contributed to lower rates of reconviction in the year after release.

Visits enable prisoners to socialise face to face with their friends and relatives while they are in prison, albeit in a controlled and restricted environment. All of the forms of communication available to a prisoner, a visit allows the highest level of interaction with their relatives or friends. Visits allow prisoners to be in close physical contact with their family and in some prisons, certain types of visits can last a whole day (usually known as family days). Family days are more flexible, and allow a greater level of contact – such as a prisoner being able to play with their children or prepare and eat meals together. Such contact can be particularly important in helping maintain close relationships with those who live considerable distances from the prison or who, through child care responsibilities or age and infirmity, struggle to visit regularly.

Case study A

Ms A, a life sentence prisoner, complained about the decision to end family days for lifers at her prison. She said that she no longer received visits as a result. Ms A’s only regular visitors were her elderly and disabled parents who lived a very long distance from the prison. They found the journey difficult and, in order to visit Ms A, they had to stay overnight near the prison. This was expensive as their income put them just above the threshold for financial assistance with visits. They had been willing to make the long journey and stay overnight when they could spend a whole day with Ms A but, although they still wanted to visit her, they found it too tiring and expensive now that they could only spend an hour or two with her on a normal visit.

The prison responded and said that, while the prison realised she was disappointed with the decision to remove lifer family days, they did not have the funds or staff resources to facilitate such events.

The Ombudsman found that, although lifer family days had been stopped, the prison still provided six children’s visits days per year, which the prison confirmed were not oversubscribed. The Prison Service has an obligation under Prison Rule 4 to actively encourage prisoners to maintain outside contacts and meaningful family ties, and the Ombudsman did not consider that it was meeting this obligation in Ms A’s case. He recommended that the prison either reinstate lifer family days or allow visits over both days of a weekend for prisoners in Ms A’s position. They opted for the latter.

Arranging prison visits involves considerable administration and, when there is a fault in the system, visits may be cancelled at short notice. This can impact not only on the prisoner but also their family members, who may have travelled some distance at both emotional and financial cost. This happened to Mr B for a visit with his wife and son.

Case study B

Mr B complained to the Ombudsman that his wife and son had waited three hours to be admitted for a booked visit, but they were then turned away without seeing him.

When the Ombudsman investigated, he found conflicting information about which procedures had been followed by prison staff. The only explanation was a fault in the prison booking system which meant that the prison had no record that the visitors had turned up and, as a result, the visitors had not been issued with the pass they needed to get from the gate to the visits hall.

The Ombudsman recommended that the governor of the prison apologise to Mr B for the missed visit and the inconvenience and disappointment to him, his wife and son. He also recommended that another visit be booked to be taken at Mr B’s convenience.


Closed visits are another source of complaint to the Ombudsman. Closed visits prevent the prisoner and visitor from having any form of physical contact, in order to prevent the passing of illicit items. This is most often achieved with a physical screen or barrier, but may also be achieved through strict supervision in a ‘non-contact’ visit. Prison Rules\(^3\) state that closed visits are an administrative measure – not a punishment. As such, they can be applied on the basis of intelligence, regardless of whether or not a prisoner has been charged at a prison hearing (adjudication) with smuggling prohibited items. The Ombudsman receives complaints from prisoners who are frustrated at being placed on closed visits on the basis of intelligence they have not seen or that they dispute. In such cases, the Ombudsman’s role is to consider the quality of the intelligence and whether it was reasonable for the prison to impose closed visits on the basis of that intelligence.

**Case study C**

Mr C was put on closed visits following a positive drug test. Mr C complained that the positive drug test was for a prescribed medication which had come from the healthcare department in the prison. Mr C said that placing him on closed visits was punishing his family even though they had done nothing wrong.

PSI 15/2011 states that a single positive drugs test should not necessarily be taken to provide sufficient evidence that a prisoner is smuggling or is at risk of being persuaded to do so. It says that closed visits should not normally be imposed after just one failed drug test but only after repeated drug test failures (unless there are other aggravating factors).

The Ombudsman’s investigation found no evidence from the prison that Mr C had been suspected of smuggling drugs through visits and upheld his complaint, as sufficient grounds were not found for placing him on closed visits.

The case of Mr C illustrates the complications of balancing prisoners’ rights and prison security.

Imposing closed visits on all prisoners might well help to restrict the flow of illicit drugs and other contraband, but to do so, would be wholly disproportionate (as well as logistically impossible). Prisoners and their families and friends have the right to enjoy visits that are as unconstrained as possible, consistent with the requirements of good order, discipline and security.

**Letters**

Corresponding by post is an important way for prisoners to keep in touch with the outside world. However, the desire a prisoner may have to maintain contact with their family has to be balanced against any risk that they may pose to family members.

Prisoners are entitled to one weekly statutory letter\(^4\). All letters are opened (but not all are read) by prisons to ensure that they do not contain any unauthorised items. The complaint from Mr D highlights the balance the Prison Service must achieve between the need to protect the public and a prisoner’s right to a family life.

**Case study D**

Mr D sent a Christmas card and letter to his teenage granddaughter, which was intercepted by the prison and not sent. Mr D complained that the prison had breached his right to respect for private and family life.

Due to the nature of his offence, Mr D was subject to public protection measures to safeguard children. This meant that he had to make a special application to be allowed to correspond with a child. The Public Protection Manual\(^5\) requires the Prison Service to carry out a fully comprehensive, multi-agency risk assessment of the prisoner and a ‘best interests’ assessment for the child before deciding what, if any, form of contact is appropriate.

In Mr D’s case, he should have made an application to have contact with his granddaughter. This would have initiated the risk assessment process which would have concluded whether any contact was allowable.

As Mr D had not applied for permission, the Ombudsman found that the prison’s actions were reasonable and were in line with the prison’s duty to ensure the safety and well-being of vulnerable children, and to protect the public. Mr D’s complaint was not upheld.


\(^4\) Unconvicted prisoners and those held under an Immigration Detention Warrant are entitled to two statutory letters per week.

Telephone calls

While letters are a good and traditional way of keeping in touch with family and friends, access to telephones in the community is ubiquitous and, moreover, too many prisoners have inadequate literacy skills for letter writing. Telephone calls are, therefore, a hugely important means of maintaining contact from prisons.

Once again, there is a need to strike a balance between prisoners contacting their family and friends by telephone and protecting people from unwanted calls from prisoners. The Prison Service records all calls and monitors a sample of them. It also uses a PINphone system to ensure that prisoners are only able to ring telephone numbers that have been checked and approved.

The Ombudsman receives a number of complaints from prisoners where the prison has not justified the restrictions that they have placed on an individual’s calls. This can be seen in the case of Mr E.

Case study E

Mr E complained that he was required to give 48 hours’ notice before telephoning a relative.

The prison said that the 48 hour delay was in place because Mr E had previously broken Prison Rules (PSI 49/2011\(^6\)), by discussing subjects with his relative that he was not permitted to over the phone. They had, therefore, required him to give 48 hours’ notice so that they could arrange for a member of staff to monitor his calls as they took place.

The prison had monitored Mr E’s calls in this way for six months and, during this period, Mr E had not breached the rules. The prison, therefore, decided not to continue monitoring Mr E’s calls with his relative, however they had kept the 48 hour notice period in place.

The Ombudsman found that there had been no breaches of Prison Rules for more than six months and that Mr E’s calls to his relative were no longer being routinely monitored. This indicated that there was no longer a need for the 48 hour notice period.

He recommended that the 48 hour notice period condition be removed immediately, pointing out that it could be reinstated again if Mr E broke the rules again.

Case study F

Mr F complained that he was not provided with a PIN account when he arrived at prison which meant that he was unable to contact his family.

In line with PSI 49/2011, Mr F should have been offered a telephone call within his first 24 hours of entering prison. As he was under public protection restrictions, the prison could have made the call on the prisoner’s behalf, but this did not happen.

The prison’s local policy stated that checks on prisoners subject to public protection restrictions should take no longer than seven days. It took nearly three weeks for Mr F to receive his PIN account, but no reason was given for this delay.

The Ombudsman considered it unreasonable that Mr F’s PIN account was not activated until almost three weeks after his arrival at prison. The Ombudsman considered the delay to be an unreasonable amount of time to deny a prisoner access to outside communication. No reason for the delay was given to the Ombudsman, nor does it appear that any reason for the delay was given to Mr F.

The Ombudsman recommended that the prison’s local policies be updated and aligned to current Prison Service Instructions; and that arrangements should be put in place to ensure that all new PIN accounts are dealt with within seven days.

\(^6\) PSI 49/2011 Prisoner Communication Services.
Special leave to visit a dying relative or attend a funeral

Most prisoners may be considered for temporary release under a special purpose licence to visit a dying relative or attend a funeral. Special purpose licences are normally only granted in the case of close relatives. All temporary release is unescorted and subject to a risk assessment. Where a prisoner is not suitable to be allowed temporary release, they may still be allowed to attend a funeral under secure escort for which there is a separate risk assessment.

Funerals are an important opportunity for the bereaved to pay their respects to the person who has died and to receive emotional support from relatives and friends. They are a significant part of the grieving process for anyone who has lost a close relative, and may be even more significant for prisoners who may not have been able to maintain regular contact before the death.

Applications to attend funerals should, by their nature, be treated with considerable urgency, especially when it is often necessary to contact third parties, such as the prisoner's offender manager, to request information as part of the risk assessment.

Although the Ombudsman generally becomes involved only once it is too late to affect attendance at the funeral, he has upheld a number of cases where prisoners have not been allowed to attend a relative’s funeral. This may allow the bereaved prisoner some comfort, but also potentially ensure lessons are learned for the future.

Typically, complaints concern delays in processing applications, incorrect information being used in the risk assessment and prisons not correctly applying Prison Service Order 6300 (Release on Temporary Licence). The case of Mr G highlights a number of these issues, including the need for timeliness in processing special purpose licence applications.

Lessons to be learned for maintaining family ties

Prison Service Instructions and guidance fully support the maintenance of prisoners’ positive contact with family and friends and set out how prisons should facilitate this. Nevertheless, the Ombudsman still sees examples where prisons fail to achieve an appropriate balance between supporting family ties and ensuring security and public protection. Practical failures include prisons not processing applications in a timely manner, not following the procedures, failing to apply them in a fair and consistent way or not providing a reason for limiting contact between a prisoner and their family.

The findings in this bulletin highlight straightforward steps that prisons can take to reduce the number of complaints related to maintaining family ties, and to ensure that complaints are resolved quickly and effectively through the internal system when they do arise.

Case study G

Mr G complained to the Ombudsman that he was refused a special purpose licence to attend his brother’s funeral.

Mr G applied to attend his brother’s funeral on the day he was informed of his brother’s death. The
Lessons to be learned

Lesson 1
Prisons should ensure they follow and apply Prison Service Instructions when considering and facilitating contact between prisoners and their families.

Lesson 2
Prison visits arrangements should accommodate, as far as possible, prisoners’ different family set-ups. For example, they should ensure that any extended visits are available for reasons other than children’s visits.

Lesson 3
Prisons should ensure that they use all available information to inform their decisions when assessing contact between a prisoner and relative or friend. Prisons should not rely on outdated information, and should review, as necessary, any restrictions that are in place.

Lesson 4
Prisons should process applications to maintain family ties in a timely and prompt manner. This is especially important for applications to attend funerals, which, by their nature, should be treated with considerable urgency.

Lesson 5
In all internal complaint responses, prisons should provide as full an explanation as security allows for their decision, setting out the reasoning behind their decision.

The Prisons and Probation Ombudsman investigates complaints from prisoners, young people in secure training centres, those on probation and those held in immigration detention. The Ombudsman also investigates deaths that occur in prison, secure training centres, immigration detention or among the residents of probation approved premises. These bulletins aim to encourage a greater focus on learning lessons from collective analysis of our investigations, in order to contribute to improvements in the services we investigate, potentially helping to prevent avoidable deaths and encouraging the resolution of issues that might otherwise lead to future complaints.

The Prisons and Probation Ombudsman’s vision is:
To be a leading, independent, investigatory body, a model to others, that makes a significant contribution to safer, fairer custody and offender management.

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