

Prisons and Probation Ombudsman
for England and Wales

Annual Report 2003–2004

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CONTENTS

	Page
■ Mission Statement and Statement of Values	3
■ Making a Difference	4
■ Review of the Year	7
■ Investigating Deaths in Custody	12
■ Yarl's Wood	18
■ Case Summaries:	
■ Bang to Rights	22
■ On the Out	27
■ The Dark Side	32
■ Prop	39
■ Down the Block	43
■ Gate Happy	48
■ On Probation	52
■ Summary of Costs	58
■ Terms of Reference – Complaints	59
■ Terms of Reference – Fatal Incidents	66
■ Members of the PPO Office 2003-2004	71

Mission Statement and Statement of Values

Mission Statement

To provide prisoners and those under community supervision with an accessible, independent and effective means to resolve their complaints and to contribute to a just and humane penal system.

Statement of Values

- To be accessible to all who are entitled to make use of the office of the Prisons and Probation Ombudsman and actively to seek removal of any impediment to it.
- To be independent and to demonstrate the highest standards of impartiality, objectivity, thoroughness, fairness and accuracy in the investigation, consideration and resolution of complaints.
- To be fair in the treatment of all complainants without regard to criminal history, race, ethnicity, gender, disability, sexual orientation, age, religion, or any other irrelevant consideration.
- To be effective by ensuring that complaints are dealt with as quickly as possible and that recommendations are well founded, capable of being implemented and are followed through.
- To be constructive in helping the Prison Service and National Probation Service improve their handling of complaints, to eliminate the underlying causes of them and to bring about a just and humane penal system.

- To be empowering by creating and maintaining a working environment in which staff are respected, engage in continuous learning, obtain job satisfaction and have equal opportunities for personal and career development.
- To be accountable to stakeholders for the fulfilment of our mission statement, our values and aims and objectives.
- To be efficient in the management of resources and deliver value for money.

Making a Difference

The work of the Ombudsman's office is very much a collegiate affair. Although colleagues have different individual roles to play, the culture is non-hierarchical and places a strong emphasis on team working.

This year's PPO Annual Report is quintessentially a team effort. It reflects the range of activities we have taken on and the changes to the structure of the office necessary to deliver them.

My own responsibility for the two Yarl's Wood inquiries and three death in custody investigations has taken me away from Central London for much longer than I had anticipated. I can take no credit for the magnificent way in which the complaints investigation role has developed. Indeed, I wish to pay tribute to all those – the Assessment and Implementation team, the specialist Investigators, and the Assistant Ombudsmen under David Barnes's leadership – who were actually responsible for our performance. Despite yet another significant rise in demand for our services, we have cut waiting times and restored a reputation for timeliness.

Our working procedures have also continued to evolve. A centralised, paper-based approach has been replaced by more local, more restorative methods. Fewer than one-in-twenty complaints received now leads to a formal report. Indeed, while it is always possible to say that in a particular case we could have avoided a full report, I think the proportion is now

pretty much at an irreducible minimum. (That said, there are still some occasions when we are forced into producing a formal report because the Prison Service declines to accept an informal recommendation.)

I must not give the impression that the challenges to the office this year have not resulted in some strains. Senior managers have been diverted from their core tasks and there has been significant turnover amongst Investigators. In the run-up to the decision by Ministers to entrust to us the responsibility for all death in custody investigations, there was considerable uncertainty. Since the Ministerial announcement, there has been a huge volume of activity designed to ensure that we are properly equipped for the new role. Overall, I think our record of change management (extension of remit to probation, new ways of working, meeting the challenge of deaths in custody) bears comparison with any. But it has not always been a smooth ride.

Alongside all this change we have still found time to develop and support our staff. We encourage flexible working patterns and new recruits invariably speak well of our induction and training. We also achieved remarkably high levels of participation in the Home Office's 'Out of Office Experience', a scheme designed to bring officials and frontline services closer together.

We were able to do so because we already had similar arrangements of our own in place. The only continuing blot is our inability, thanks to the constraints of the Home Office-wide IT contract, to replace our pre-Windows casetracking software. This is now so old that, without urgent remedial action this January, it would have collapsed entirely. It remains the biggest threat to business continuity as well as being a continuing drain on efficiency and productivity.

Elsewhere in this Annual Report, I set out the way we have approached the investigation of deaths in custody. As I have said on a number of occasions, conducting such investigations thoroughly and sensitively is a humbling – and daunting – responsibility. Finding the best way to involve bereaved families is perhaps the greatest challenge.

At present, these investigations are conducted on an administrative basis. That may be no bad thing in that we can iron out the methodology before establishing it in statute. However, like my predecessor before me, I do not think it proper that what has become an important and influential part of the prisons and probation infrastructure should operate without legislative authority. I know that is the Government's view too, and there is every expectation that we will be included in a Home Office Bill this autumn. Those who know me understand that the demands of convention sit uneasily on my shoulders. So in concluding this introduction by offering my thanks to friends and colleagues in the main Home Office, the Prison Service and the National Probation Service, and in the PPO office itself, I am doing much more than expressing a customary courtesy. The performance of the office, and our embrace of major new public responsibilities, simply would not have been possible without the combination of goodwill and encouragement from the outside, and talent and hard work from within.

It is a great honour to serve as Ombudsman and a pleasure to commend this Annual Report and the work it represents.

Stephen Shaw

Prisons and Probation Ombudsman for England and Wales

Review of the Year

During 2003–2004, I received a total of 3,527 complaints about the Prison Service – an 11 per cent rise on the previous year. In this second full year in which I have been dealing with probation complaints, I received 282 complaints about the National Probation Service (an increase of 47 per cent). In addition, 1,616 (46 per cent) of the complaints about the Prison Service met my eligibility criteria. Although still less than half, the proportion of complaints that I can investigate immediately has grown significantly in recent years. Regrettably, the eligibility rate for complaints about the National Probation Service was just 10 per cent.

These figures show that the volume of work received continues to grow. The higher proportion of complaints that meet my eligibility criteria is to be welcomed, and reflects the impact of the Prison Service's revised complaints system. I have also continued to encourage my assessment staff to take a more flexible approach to the eligibility criteria where possible. Nevertheless, it is disappointing that failure to exhaust the internal complaints system remains the most common reason for the ineligibility of complaints about both prisons and probation.

Breakdown of prison complaints received by eligibility

Category	2002-2003		2003-2004		Percentage Change	
	Received	Eligible	Received	Eligible	Received	Eligible
ADJUDICATIONS	295	191	269	176	-9	-8
ASSAULTS	95	26	90	32	-5	-23
SECURITY	242	131	271	143	12	9
FOOD	55	29	42	21	-24	-28
GENERAL CONDITIONS	376	157	432	205	15	31
REGIME ACTIVITIES	201	117	259	150	29	28
LINKS	306	136	318	138	4	1
MEDICAL	127	24	156	52	23	117
PRE-RELEASE	143	46	335	193	134	320
PROPERTY & CASH	526	247	618	281	17	14
RACE	40	15	37	7	-8	-53
SEGREGATION	22	12	12	8	-45	-33
TRANSFERS & ALLOCATION	224	75	241	73	8	-3
MISCELLANEOUS	494	170	447	137	-10	-19
TOTAL	3,146	1,376	3,527	1,616	12	17

Performance

The office investigated 1,529 complaints in 2003-2004, an increase on last year's total of 1,485. This is a remarkable achievement given the additional responsibilities we have also taken on.

Despite the increase in the total number of complaints received, we determined eligibility in 79 per cent of cases within ten days. Our target is to do so in 75 per cent of cases. The dedicated team of Assessment Assistants and Officers can rightly be proud of this outcome.

We completed 66 per cent of investigations within twelve weeks.

This compares very favourably with 41 per cent during 2002-2003.

Average costs

The office spent £2,592,991 this year. The average cost of assessment was £134 per complaint, while the average cost of a completed investigation was £1,189.

Complainants and types of complaint

Once again, the high security estate generated most complaints from prisoners (27 per cent). Just 3 per cent were from young prisoners and another 3 per cent were from women. I describe on pp. 20-21 the steps taken to raise awareness of my office among both groups.

As in 2002-2003, complaints about property (18 per cent) have formed the largest proportion of my postbag. Complaints about adjudications have fallen to just 8 per cent. This is no doubt in part due to the fact that governors no longer have the power to impose punishments of added days. A breakdown by complaint categories appears below.

Breakdown of prison complaints investigated by type

ADJUDICATIONS	174
ASSAULTS	29
SECURITY	142
FOOD	23
GENERAL CONDITIONS	185
REGIME ACTIVITIES	139
LINKS	128
MEDICAL	36
PRE-RELEASE	171
PROPERTY AND CASH	266
RACE	4
SEGREGATION	6
TRANSFERS & ALLOCATION	72
MISCELLANEOUS	126
TOTAL	1,501

Uphold rates and recommendations

We locally resolved, or wholly or partially upheld, 420 complaints about the Prison Service (28 per cent). The figure last year was 483 which equated to 33 per cent.

We upheld two complaints about the National Probation Service, and partially upheld ten.

We made formal recommendations in 114 prison cases. In the same period, the Director General accepted the recommendations made in 97 cases and rejected one. Other cases where recommendations were made are still under consideration. Of the 13 recommendations we made to the National Probation Service, all were accepted.

Customer satisfaction survey

During the course of the year, we reviewed with colleagues from the Home Office Research, Development and Statistics Directorate mechanisms for obtaining feedback from our users. New questionnaires (one for eligible and one for ineligible complaints) were piloted in two prisons, and revised in the light of comments received.

The new questionnaires were used to collect information about complaints made in the second quarter of 2003–2004. A total of 197 eligible and 265 ineligible questionnaires were sent out. Just over one third of the eligibles and 41 per cent of the ineligibles were completed and returned.

The survey found that most of the prisoners using the Ombudsman's service were male prisoners between the ages of 30 and 59. Of those who responded, 59 per cent had had their complaints rejected. More than half the prisoners felt that most or all of the issues relating to their complaint had been explored. Ethnic minority prisoners were generally less satisfied than others, but the majority of prisoners said they would use the Ombudsman's service again.

Access to the Ombudsman – women and juvenile projects

I have long been concerned about the very few complaints received by my office from juveniles and women prisoners.

This year, I set up two project teams of Investigators to examine possible barriers to access. They visited a number of juvenile establishments and women's prisons collecting information and giving presentations to prisoners and staff. They found that each establishment was very different in its approach and understanding of complaints. Some felt that problems were dealt with appropriately at wing level and therefore the formal complaint system was very rarely used. Others had high numbers of complaints submitted, but only rarely were any taken beyond the first stage of the formal process.

The juvenile project team discovered that there was often little knowledge of our work amongst trainees, staff and members of the Independent Monitoring Board. As a result, we developed posters and leaflets targeted specifically at juveniles. We also developed a further programme of training presentations for trainees and staff at all juvenile establishments.

The team concluded that the complexities and delays of the formal complaints system meant that it was unlikely juveniles would be willing to use it. My colleagues have recently been involved in the Prison Service's initiative in developing a simplified complaints system for use by juvenile establishments, which will be piloted at HMYOI Werrington. I very much welcome this development.

The women's project team looked at the reasons why complaints from women prisoners were not usually taken further than the first stage of the formal procedure. They found that the majority of these complaints had either been resolved, or circumstances had changed and no further action was required. They also concluded that women's prisons were quite well informed about the procedures, but that women prisoners tended to use more informal ways of 'negotiating' settlements to their complaints.

Investigating Deaths in Custody

As Ombudsman, I am now responsible for providing independent investigations of all deaths in prisons, probation accommodation and immigration detention. I am hugely grateful for the support of my own colleagues, and those in the Prison Service and elsewhere in the Home Office, that has enabled this to come about. By any standard, the transfer of responsibility for death in custody investigations represents a significant development in public policy. It is also one achieved, I suspect, in record time.

In 2003, there were 93 apparently self-inflicted deaths in prison, 88 deaths by natural causes, and one apparent homicide. In the probation estate, there were 11 deaths. Among immigration detainees, there have been three deaths in five years. Until now, the Prison Service, the National Probation Service and the Immigration Service have conducted their own investigations when someone died in their care.

A consultation exercise on the proposals that my office might take on this role was conducted by the Home Office during 2003. At that time, it seemed the earliest possible date when this could occur was 2005. However, in August 2003, the Minister for Correctional Services, Paul Goggins, asked me to conduct a special investigation at HMP Styal. This was prompted by the death of a prisoner on 12 August, the sixth woman to die at Styal since August 2002. As well as investigating the circumstances of the most recent death, the Minister asked me to consider what could be learned from this series of tragedies that might help to prevent further loss of life. Then, in September, I was asked to conduct another special investigation, after an apparent homicide at HMP Manchester.

It was following these two special investigations that the Minister announced on January 6 this year that, from 1 April 2004, the office of the PPO would be entrusted with the investigation of all deaths of prisoners, residents of probation hostels and those people in places of immigration detention or under Immigration Service managed escort.

What benefits is it hoped this change will bring? After all, the current Director General of the Prison Service and his immediate predecessors have attached the highest priority to reducing self-inflicted deaths in prisons. The Prison Service had developed a detailed and sensitive methodology for its investigations, which included disclosure of the investigation report and associated evidence to bereaved families. The Service had also adopted the practice in a number of cases of appointing an advisory panel, including people from outside, to assist the Investigator. Several of my colleagues have served on advisory panels in the course of the year.

However, investigations conducted by the agencies in whose care the death has occurred will always be perceived as less than comprehensive, whatever the truth of the matter. Moreover, in practical terms, Prison Service investigations have been undertaken by operational staff alongside their other duties. By concentrating investigations among a dedicated team of investigators in an independent office, I believe we can enhance confidence in the process on the part of bereaved relatives and the public at large. My aim is to conduct searching investigations of consistently high quality, and ultimately help reduce the incidence of avoidable deaths and self-harm.

I now have a standing commission to investigate deaths in custody and I set the terms of reference for each investigation. My own overarching terms of reference are reproduced at the end of this report, but it may be helpful here to draw attention to what they say about the purpose of fatal incident investigations. In broad terms, the objectives are to:

- establish the circumstances and events surrounding the death, including especially the care provided by the service in question but also relevant outside factors;
- examine whether changes in operational methods, policy, practice or management arrangements would help to prevent a recurrence;
- in conjunction with the NHS where appropriate, examine relevant health issues and assess clinical care;

- identify any concerns over practice or conduct that may need to be examined by others;
- provide explanations and insight for bereaved families; and
- assist the Coroner's inquest in achieving fulfilment of the investigative obligation arising under article 2 of the European Convention on Human Rights.

When someone dies in prison or detention or in approved premises, family members are entitled to be treated with the utmost consideration. My Investigators will try to ensure that families are able to contribute to investigations. (It is arguable that there are no more important questions than those posed by the family in the quest to understand how the death occurred.) To that end, I am appointing Family Liaison Officers to provide a consistent contact point so that families can choose the time and the form of engagement with the investigation with which they feel most comfortable.

I am also conscious that a death in any institution, particularly a closed one, causes shock, hurt and grief among other members of that community. I know that the investigation may itself be a source of stress for staff and prisoners still coping with sadness and trauma.

Fellow prisoners may well have insights into the experience of those who take their own lives and may have experienced similar despair themselves. There is some evidence that self-inflicted deaths cluster so that one death may be followed by others. I am determined that my investigations will be probing and rigorous but they must also be conducted with sensitivity. I aim to draw on the experience and insights of interviewees in a joint endeavour to prevent future deaths.

Following the model developed by the Prison Service, my reports and the evidence on which they are based will be disclosed in full to the next of kin, the relevant Service and to the Coroner. In addition, they will be published in anonymised form on PPO's website.

Building the team and the expertise to fulfil this sobering new responsibility cannot be achieved overnight, and I and my colleagues have approached the work in a spirit of humility. A core team was set up to recruit new staff, and to set up the systems, prepare the information base and training programme, and to work out arrangements with the agencies. The new staff will join the office in the course of 2004–2005. There is currently a transitional phase in which my Investigators work alongside experienced Investigators from the Prison Service (similar arrangements have been agreed with probation and immigration). We have much to learn from them. But from 1 April 2004, all these investigators have been working on my behalf, delivering their evidence and findings to me. I have been drawing my own conclusions and issuing my own reports. I anticipate that the transitional arrangements will be phased out during the autumn, and that by the end of the calendar year my own team will be fully operational.

Three death in prison investigations

Investigation at HMP Styal into a death in August 2003 and the series of deaths since August 2002

My investigation arose from an incident on 12 August 2003. The prisoner who died was the sixth to have died at Styal in a period of 13 months. The Minister asked me to investigate the circumstances and events surrounding her death and to examine that death in the context of the previous tragedies.

This was the first investigation of a death in custody that my office had conducted. Indeed, it was the first such independent investigation, and the first with such broad terms of reference.

I formed a single team comprising members of my own staff and Prison Service Investigators. I obtained advice from healthcare consultants and the National Poisons Information Service (London). No less significantly, I invited evidence from the national representatives of trade unions and voluntary groups, and received much practical and wise advice that I referred to in my report.

My report inquired into regimes, facilities and procedures at Styal during the period covered by the six deaths. Overall, I formed an impression of a jail full of women imprisoned for repeated petty offences, committed to fund longstanding and damaging drug addiction, and then suffering the pains of withdrawal with inadequate symptomatic relief in an environment that offered little distraction or social support. It was evident that staff on Styal's remand wing were accustomed to seeing women displaying the distressing physical symptoms of drug withdrawal and that they could do little to help them.

During my investigation the prison introduced a methadone detoxification programme. This had been a longstanding objective for which the prison had been unable to secure sufficient resources. Some of those who gave evidence to me argued that meeting women's healthcare needs should be at the heart of the regime for the vulnerable population on the remand wing. I endorsed this view strongly in my report.

Factors affecting some or all of the six women who died at Styal included drug abuse, mental health problems, fractured relationships and unstable living arrangements. The population of the remand wing at Styal is an intensely vulnerable one. Most of the women there are affected by poly-drug dependence or mental health problems, often in combination. It is difficult to see that repeatedly imprisoning them, without support in the community upon discharge, serves either their interests or those of society.

All the recommendations I made as a result of my investigation were accepted by the Prison Service.¹

¹ Ministerial Statement, 23 January 2004.

Investigation at HMP Manchester into an apparent homicide by a prisoner on 15 September 2003

The events of 15 September 2003 will be the subject of criminal proceedings and I may not comment on them in detail here.

My investigation was conducted in parallel to a police investigation. I am conscious of the difficulties that can sometimes arise when two investigations are ongoing at the same time. However, in this case I readily agreed a protocol with the Greater Manchester Police and this worked extremely well.

Indeed, I should say more generally that I have been greatly encouraged by the ready assistance that I and my Investigators have received from the police in all our death in custody investigations.

My report examined a variety of matters including the post-incident response by prison staff.

One issue I have raised with the Prison Service is the contact the prison had had with the bereaved family. Ensuring that such contact is achieved and maintained sensitively is a major challenge – as I have discovered in each of my death in custody investigations. It is a challenge that my office also faces.

I wish to ensure that engagement with bereaved relatives is an overriding priority at all levels of Prison Service management.

Investigation of a death at HMP Wakefield on 13 January 2004

As with Styal and Manchester, I formed a team jointly from my own office and from the Prison Service. The investigation team reviewed prison records and spoke to a number of staff and prisoners. We also received correspondence from a number of parties, including ex-prisoners and those held in other jails.

As with the other two investigations, I am constrained as to what I may say publicly before the inquest is held. This is both out of respect to the bereaved relatives and in acknowledgement of the primacy of the inquest as the public forum for exploring the circumstances surrounding a death in custody. Contact with the Coroner is a crucial first step in all of my fatal incident investigations.

Here I should simply record that my report reviewed the prisoner's entire prison career from when he first entered custody. I also explored in some detail events in Wakefield over the Christmas period just before his death.

Other sections of my report included a review I commissioned of the prisoner's medical care whilst in prison custody, and details of the actions taken by staff following discovery of his death.

Yarl's Wood

In June 2003, I was asked to take over the 'overarching' inquiry established by the Home Secretary into the major disturbance and fire that occurred at Yarl's Wood Removal Centre in February 2002. My terms of reference were to inquire into the events at the centre on the night of 14/15 February 2002 and their causes, and to make recommendations designed to minimise the risk of recurrence in the Immigration and Nationality Directorate (IND) custodial estate in relation to contracts and agreements with service providers, the operation of removal centres, building design and construction, and any other matters considered relevant. Self-evidently, the scope of the inquiry was huge and it has necessitated my being away from the office for many days.

This work had been begun by Mr Stephen Moore, Head of Security Group in HM Prison Service. He, like me, was enjoined to take full account of the inquiries being undertaken by Bedfordshire Police, Bedfordshire Fire and Rescue Service and Group 4. He was also to ensure his inquiry did not impede any criminal investigation. This latter objective caused his efforts to stall while criminal proceedings against 12 detainees were pursued. I was more fortunate. The trials concluded roughly six weeks after I took

over the inquiry. At this point, the police made available to me all the material they had collated during the course of their investigation. It filled a small room at Biggleswade police station and included over 1,000 statements by staff, detainees and others.

I also obtained copies of the internal reports drawn up by the Fire Service and the operator, Group 4 (GSL), and other relevant logs and documentation. The company presented a submission to the inquiry, setting out their own views on the causes of the disturbance.

My colleagues and I also trawled through many of IND's policy files. These revealed the background to the commissioning of Yarl's Wood and set out the reasons why various decisions were made. We conducted a literature review and invited contributions from a range of interested parties. Included in the responses were a number of signed statements from ex-detainees describing their experience in the centre before the fire, the build up in tension at the centre in the preceding weeks and their treatment after the event. In all, we interviewed over 50 people, including the Director General of IND at the time of the fire and his deputy, senior managers of Group 4, the then centre manager, current and ex-employees at Yarl's Wood and some former detainees.

My findings and conclusions will be made public in due course, but I would like here to draw attention to the many examples of individual courage (on the part of detainees, staff and members of the emergency services), and the success of the eventual operation that restored order. I can also record that it quickly became apparent that no single factor was responsible for the disturbance.

Safe and ordered removal centres must be active places, with good staff-detainee relationships, leading to a high level of dynamic security. They also need to have legitimacy in the eyes of those detained – and my report will place a heavy emphasis upon procedural fairness regarding both the decision to detain and people's treatment in detention.

I have been encouraged, however, to see that lessons have been learned in the more than two years since the disturbance. For example, both Yarl's Wood and Harmondsworth have benefited from millions of pounds-worth of remedial investment, and the new removal centre at Colnbrook has been built to a far more robust specification. Nevertheless, I believe it is

important that all the lessons are brought together and formally recorded in context for posterity. In this way, we can ensure they are not lost or forgotten. I hope my findings will shape thinking on immigration detention for many years to come.

Yarl's Wood 2 – The Daily Mirror Allegations

On 8 December 2003, while I was still heavily embroiled in my inquiry into the fire of February 2002, the *Daily Mirror* carried the front page headline:

“Intruder II: Mirror reporter lands job as security guard at asylum centre ... and discovers a culture of abuse, racism and violence that SHOULD appal us all.”

These were extremely troubling allegations. Home Office Ministers asked me to investigate the claims as quickly as possible.

I spoke to the *Daily Mirror* reporter responsible for the article and reviewed in detail GSL's own investigation into the allegations. My team spoke to many Detention Custody Officers and detainees at the centre.

I concluded that most of the things that the reporter said happened did happen. I also concluded that there was not a culture of abuse, racism and violence at Yarl's Wood. At first blush, these were contradictory findings.

However, the reporter's allegations were largely based on what was said during the five week training course which he attended. When taken out of context, some of these remarks were, at the least, unfortunate. There were also a number of remarks that were simply unacceptable, regardless of context. However, while my report makes uncomfortable reading, these remarks were attributable to a small handful of people. While it is of concern that they felt able to speak as they did, I noted that two of the three no longer worked for the company. I was satisfied that GSL had taken appropriate action.

I found no evidence to support the assertion that staff had an unwonted enthusiasm for Control and Restraint (C&R) or were violent towards detainees. C&R involves the use of force, intended to cause pain to those who do not comply. Most of the comments to which the reporter took exception derive from this basic premise. I did, however, find a heightened use of C&R at Yarl's Wood compared with other removal centres. I suggested that this situation needed to be carefully monitored by the company, the contract monitor and the Independent Monitoring Board.

The *Daily Mirror* article also referred to specific instances of assault by staff on detainees. I found that a number of these had been insufficiently investigated by the company and recommended that a full inquiry be carried out.

I also made over 20 other recommendations. These related to a range of matters, including training for staff, multi-lingual signage, a support scheme for ethnic minority staff, recording of complaints and raising the profile of the Independent Monitoring Board.

An anonymised version of my report into these matters has since been published on the IND website.

Bang to Rights

Adjudication appeals continue to form a significant part of the workload of the office. We look both at the finding of guilt and the appropriateness of the punishment. I continue at present to consider appeals about all adjudications including those heard by district judges. However, I was advised last year that the Prison Service was planning to transfer all responsibility for such independent adjudications to the Department for Constitutional Affairs. This would therefore take complaints about these adjudications outside my remit.

I have on several occasions since been told that the hand-over is imminent. However, it has not happened at the time of writing. Of more concern is that there is little information as to whether prisoners will have any right to appeal against the outcome of adjudications heard by district judges. It is worth noting that I have identified flaws in a number of such adjudications and the Prison Service has agreed to quash these cases.

Here are a number of adjudications I have reviewed this year:

Mr A (11157/03) complained that he had been adjudicated on following a positive Mandatory Drugs Test (MDT). Mr A said that he had decided to complain after reading about a similar case in my Annual Report last year.

Mr A had been charged on two counts after testing positive for cannabis and opiates. During an interview with my Investigator, Mr A agreed that the finding in respect of the cannabis charge was correct. However, with regard to the opiates charge, Mr A maintained that he had admitted during the adjudication that he had taken an unauthorised medicinal product for toothache and that this product was not a controlled drug under the Misuse of Drugs Act 1971. It appeared the adjudicator accepted this, but went on to find the charge proved. However, as the evidence was that Mr A had merely taken pain killing tablets, I did not consider the finding was safe. My Investigator asked, based on our findings, that the Area Manager reconsider the original appeal. The Area Manager agreed and quashed the adjudication.

Mr B (12278/03) complained about an adjudication where he had been found guilty of disobeying a lawful order. During a search of Mr B's cell, prison staff found three budgies in his birdcage, and six budgie eggs concealed in his kit bag. As Mr B had previously been told not to breed budgies, and that prisoners were only allowed to keep two birds, he was placed on report.

Mr B agreed that the adjudication had been procedurally correct. However, his argument was that the order was not lawful because there was no written rule regarding the breeding of birds in cell. I did not accept this argument. During the investigation it became clear that Mr B was aware of the local rule concerning the breeding of birds and possession of eggs. Despite not being a written order, staff were entitled to ensure that the local rule was complied with. I did not uphold Mr B's complaint, but I certainly understood that he found the keeping of birds beneficial to his well being, and an interesting hobby. Understandably, Mr B was upset at the idea of disposing of the fertilised eggs. In this particular case, my Investigator established how the confiscated eggs were disposed of. Much to everybody's relief, it transpired that the eggs had been taken to the prison aviary and a female bird was encouraged to sit on the eggs as a surrogate mother.

Mr C (13027/03) complained about an adjudication in which he had been found guilty of fighting with another prisoner. Mr C said that he had not thrown any punches and the adjudicator had been unwilling to listen to his version of events.

My Investigator found that, during the hearing, Mr C had asked to call a number of witnesses who he said would confirm he had not thrown any punches. The adjudicator did not allow Mr C to call these witnesses. In addition, written statements from staff presented at the hearing were not explicit that Mr C had thrown any punches, only that he had been restrained. I took the view that the adjudicator had not conducted sufficient enquiries to satisfy himself that a fight had taken place, as set out in the Prison Discipline Manual. I upheld Mr C's complaint and recommended the adjudication be quashed.

Mr D (12883/03) complained about the outcome of an adjudication during which he was found guilty of possession of cannabis. During a cell search, cannabis had been found on the floor of Mr D's cell, which he occupied jointly with another prisoner. Mr D's defence was that the drugs belonged to a third prisoner who had left the prison to go to court that morning, leaving his jacket in Mr D's cell.

My Investigator examined all the paperwork in this case. The adjudicator had accepted that Mr D shared a cell with another prisoner, and that a third prisoner had recently vacated the cell. Mr D told the adjudicator that the cannabis belonged to the third prisoner and not his cellmate. The cannabis had been found on the floor and not in any one prisoner's property. The Prison Discipline Manual allows for joint control to be considered in cases such as this. I accepted the view that it was the responsibility of Mr D and his cellmate to either report or dispose of the cannabis in their cell if it did not belong to either of them. I did not think that it was unreasonable for the adjudicator to reach the conclusion that both Mr D and his cellmate exercised control over the cannabis. I did not uphold Mr D's complaint.

Mr E (11601/03) complained about the outcome of an adjudication during which he was found guilty of absconding from prison. Mr E said that his solicitor was not at the hearing, and his medical records were not available to the adjudicator. The original hearing, held on 18 September 2002, was adjourned so the charge could be heard by an Independent Adjudicator (IA). He subsequently found the charge proved on 25 October 2002 and punished Mr E with 28 additional days.

My Investigator found that there was no written record of the adjudication and no evidence that the preliminaries were revisited when the adjudication was reopened. Additionally, there was no evidence that Mr E's request for legal representation had been considered, or any record of Mr E's defence or mitigation. The IA stated, in a memo written retrospectively, that he could not remember if Mr E had requested legal representation or not. However, he did say that, had Mr E made such a request, it would have been rejected on

the grounds that he had already had sufficient time to arrange this. Guidelines for the conduct of adjudications make clear that the IA shall first enquire into any charge referred to him not later than, save in exceptional circumstances, 28 days after the charge was referred. In Mr E's case, this period was extended to 37 days. Given the serious flaws in the conduct of this adjudication and the failure properly to record the defence and mitigation, my Investigator referred this case back to the Area Manager who, in turn, agreed to quash the adjudication and remit the punishment.

Mr F (10071/04) complained about the outcome of an adjudication at which he was found guilty of destroying or damaging any part of a prison or any other property other than his own. The charge was found proved and he received a punishment of seven days cellular confinement and loss of privileges. The Prisoners' Advice Service (PAS) wrote to the Office of Contracted Prisons (OCP) and asked that the adjudication be reviewed urgently on the grounds that their fax request for the relevant adjudication paperwork had been ignored. PAS said they had therefore been unable to provide Mr F with the legal advice he sought. They said the adjudication had also been conducted without the Reporting Officer (RO) being present, pointing out that Mr F contested the RO's evidence and would have wished to question her. The Deputy Assistant Director of OCP replied and said that the adjudication finding and punishment would stand. PAS asked me to investigate.

My Investigator reviewed all the paperwork relating to this adjudication and spoke to OCP, PAS and Mr F. The details of the charge were that the RO had issued Mr F with two warnings under the Incentives and Earned Privileges Scheme. Immediately after this, the RO saw Mr F throw his television down the landing. He then said to her, 'Issue me with a warning for that.' The record shows that the adjudication commenced on 17 December 2003 and Mr F asked for legal advice and legal representation. The hearing was adjourned and reconvened on 31 December 2003. Again, Mr F requested legal representation and asked for an adjournment because his solicitor had not received the paperwork she had requested via a fax to the prison.

The hearing was adjourned and reconvened on 7 January 2004. The record shows that Mr F asked for legal representation and for the hearing to be adjourned because his solicitor had still not had a reply from the prison. Mr F also asked that the hearing be presided over by an Independent Adjudicator, because he felt that the governor was not competent to deal with complex points of law. The governor told Mr F that he was capable of conducting the hearing. At that point, Mr F walked out of the adjudication room. The hearing continued in his absence and the charge was found proved. The governor recorded that he advised Mr F of the punishment and that, at that point, Mr F attempted to attack him.

The Prison Discipline Manual states that, if the accused or his or her legal representative asks before the hearing for a copy of all the statements to be submitted in evidence so as to prepare a defence, these should be supplied. It is clear from the adjudication record that the adjudicator was aware of this request. I could not say whether the outcome of this adjudication would have been any different had the paperwork been sent to Mr F's solicitor. However, the adjudicator was aware that a request for copies of the adjudication paperwork had been made and that the request had not been complied with. I was satisfied that the failure to comply with that request was a serious flaw in this adjudication and rendered the outcome unsafe. I upheld Mr F's complaint and recommended that the adjudication be quashed.

On the Out

Maintaining links with family and the community is essential to prisoners and to their chances of successful resettlement on release. Restrictions on visits, letters and telephone calls understandably generate a substantial number of complaints.

Mr G (11294/03) complained that a letter he had written to a national newspaper and copied to the Prisons Minister had been stopped from being posted by the prison. Mr G said that the content of the letter had not infringed Prison Rules and was a serious comment in response to an article published in the newspaper. He also said that, as a result of this incident, all his mail was made subject to routine monitoring.

My Investigator shared Mr G's view and asked the Prison Service to look again at the complaint, reconsider the decision not to allow the letter to be sent, and to review the routine monitoring of Mr G's mail. The Prison Service agreed and consequently decided to allow the letter to be sent.

Mr H (11752/03) complained that his relatives were being singled out by a passive drug dog handler following a total of 23 positive indications on members of his family. Mr H said that these indications by the dog had led to the imposition of closed visits for him and his family. Mr H believed that the dog was indicating incorrectly due to either cross contamination of the dog's scent or the dog handler deliberately tugging on the dog's lead in order to prompt an indication. Mr H said no drugs had ever been found on a member of his family.

As part of the investigation, my Investigator examined Prison Service guidance, the prison's own drug dog programme, a report by the Head of the Dog Inspectorate, relevant statistics and security intelligence. Records showed that Mr H was placed on closed visits for a period of three months and his sister banned from visiting for a period of three months, following a number of indications from two of the three drug

dogs at the prison. Both dogs were licensed and the training reports on the handlers were very positive. My Investigator spoke to the Head of the National Dog and Technical Support Group who advised that, although it was possible for a handler to tug on a dog's lead in order to prompt the dog to sit, this was very unlikely as dogs and handlers are not trained to operate in this manner. Additionally, dogs are able to work effectively for up to eight hours without losing sensitivity to smell, and a dog's sense of smell was not contaminated following a positive indication. Security intelligence provided substantial evidence that Mr H was involved in the drug market. In the circumstances, the staff had reasonable grounds for concern. I concluded that the Prison Service had acted proportionately in imposing closed visits and did not uphold Mr H's complaint.

Mr I (10579/03) complained that his application for a friend to visit him had been refused. Mr I's friend was an ex-prisoner. The Prison Service said that Standing Order 5 set out the rules relating to visits by ex-prisoners. They were not refused solely on the grounds that they had been in custody, but other factors were taken into consideration. In this case, Mr I's friend had been convicted of drug offences.

My Investigator contacted the prison for clarification of the reasons for refusing Mr I's friend permission to visit. A Senior Officer advised that, in addition to the conviction for drug offences, the friend had been released from prison on Home Detention Curfew (HDC) and it had been decided that a visit would have seriously impeded the rehabilitation of both men. My Investigator contacted the Prisoner Administration Group (PAG) in Prison Service Headquarters. They advised that there were no specific rules regarding those on HDC visiting other prisoners and that the guidance in Standing Order 5 applied. PAG advised that Mr I's friend should re-apply when his period on HDC had lapsed. Mr I's friend did indeed make such an application on two separate occasions, both of which were rejected. The most recent application response stated that:

'This is the second application for [Mr I's friend] to visit. He was initially declined because he was on HDC. However, more importantly, he was convicted of supply of drugs. I feel that we should discourage persons with this kind of conviction from visiting.'

This decision was endorsed by the Governor.

Standing Order 5 states that prisoners may be visited by persons other than close relatives. However, such visits may be disallowed on the grounds of security, good order and discipline, for the prevention of crime or because the Governor has reason to believe the visit would seriously impede the rehabilitation of the prisoner. Given the stringent performance targets the Prison Service is asked to meet, I am sympathetic to the desire to take all measures possible to prevent drugs entering a prison. However, while Mr I's friend has a conviction relating to drugs, there was no evidence that he was in any way involved with drugs whilst he was in prison custody and no evidence to suggest that he was likely to pose a threat to the good order of the establishment. I considered it unreasonable to refuse to allow Mr I's friend to visit purely because of a previous conviction, for which he had served a sentence of imprisonment. I noted the comments of the Senior Officer regarding rehabilitation. Standing Order 5 refers to the rehabilitation of the serving prisoner. There is no provision for a prison to consider the rehabilitation of visitors. I did not consider that the prison had sufficient reason for refusing the application for Mr I's friend to visit. I therefore upheld Mr I's complaint and recommended that the Governor reconsider the decision.

Mr J (11566/03) complained that he had been denied inter-prison visits to see his partner. Mr J said that, at a previous prison, he had been allowed an inter-prison visit every three months and he could not understand why his current prison could not do the same. The prison said they did not have the resources to facilitate an inter-prison visit, although they would allow Mr J's partner to visit providing the other prison could facilitate the escort.

My Investigator spoke to staff at the prison and at Area Office. It seems that the Management Consultancy Services (MCS) profile for the prison did allow for the allocation of staff to inter-prison visits. Nevertheless, due to staff shortages, the prison prioritised medical escorts, compassionate visits and lifer town visits. I was satisfied that this decision was taken in order to ensure emergency visits and progression for life sentenced prisoners. However, the prison cancelled inter-prison visits without considering how to address the situation in the long term. I therefore upheld Mr J's complaint. I recommended that the Governor schedule an inter-prison visit for Mr J within two months of the date of my report. I also recommended that he devise a strategy for managing inter-prison visits despite staff shortages and to ensure that all eligible prisoners are given an opportunity to maintain family ties. I envisaged that such a strategy would provide inter-prison visits on a less frequent, yet scheduled, basis.

Mr K (12401/03) complained that he had been waiting over 10 months for his stepdaughter to be registered as an 'approved Cat A visitor'. The prison had said that the police, who had been unable to see Mr K's stepdaughter in order to verify the application and documents and to authenticate the photographs, were causing the delay.

My Investigator contacted the police, who immediately sent an officer to the address. Mr K's stepdaughter was subsequently approved and the paperwork was sent to the prison, enabling the visits to go ahead.

Mr L (10291/03) complained that the PIN phone system restricted his ability to keep in touch with friends and family because there was a limit on how many telephone numbers he was permitted to register. Mr L said that the current limit of 20 domestic and five legal telephone numbers on the PIN phone system was a breach of his human rights and was preventing him from keeping in touch with his friends and family. The Prison Service replied that the current system was in line with Prison Service Order (PSO) 4400.

My Investigator spoke to Mr L who said that, as a young man who had been in prison since the age of 18, it was important for him to keep in touch with his peer group as well as his family. Mr L said that this was an important part of his rehabilitation. He agreed that prisoners should have their numbers checked, but felt the system should be upgraded to allow unlimited numbers. The Prison Service told my Investigator that the limit of 25 numbers was not imposed due to technical constraints, but was seen as reasonable. In excess of 90 per cent of prisoners did not use their entitlement of 20 domestic numbers. Governors had been advised to use their discretion when dealing with appellants and told to ensure that the limits did not hinder prisoners' access to justice. The Prison Service said that many Governors had exercised this discretion and cited examples. My Investigator also spoke to the PIN phone clerk at the prison and was told that there was no restriction on the number of changes a prisoner could make to the names and numbers on their list. She said that almost all requests for numbers to be deleted or added were dealt with within 24 hours.

I understand that many prisoners, like Mr L, have found adjusting to the limits placed on the number of people they can telephone a difficult experience. As I understand it, the PIN phone system was not intended to reduce the number of people a prisoner could telephone. The intention was to eliminate phone cards, which were sometimes a cause of bullying and used as a form of currency, and to exercise control over who prisoners telephone. One reason for this was to prevent harassment of victims.

I did not think that I could reasonably ask the Prison Service to undertake to operate the system without any limit. However, the advice I received was that the limits on numbers in the PIN phone system were not rigid. Mr L told my Investigator that he did not need more than five legal numbers at the moment. However, should this position change, then the Governor of the prison had discretion to allow him access to more. Similarly, it appeared that there was nothing to prevent Mr L from making regular changes to his domestic list. I did not uphold Mr L's complaint.

The Dark Side

Crossing over to the 'Dark Side' is an expression used by prisoners held on remand who are subsequently convicted. These are some examples of complaints concerning the day-to-day reality of prison life.

Mr M (12971/02) complained about the sanitation facilities on his wing in a local prison. He said that there was no internal sanitation and prisoners were forced to empty their cell pots into two lavatories, which also had to be used in the normal way afterwards. Mr M described the wing as degrading and humiliating.

I noted that sufficient staff were deployed to facilitate 24 hour access to the toilets and that my Investigator found the wing to be clean and free from smells. Nevertheless, it was clear that, on occasion, prisoners had to use pots in their cells and that the facilities for disposing of the contents were inadequate. The rising prison population has put great strain on the Prison Service. I do not underestimate the difficulty of maintaining decent conditions in such circumstances. But there can be no excuse for insanitary and degrading practices. I upheld Mr M's complaint. Like the Chief Inspector of Prisons before me, I recommended that, if nothing could be done in the foreseeable future to improve conditions significantly, the wing in question should be closed.

Mr N (11355/03) complained that, following a cell search, five anti-racist magazines had been confiscated and he wished to have them returned. The prison said that he would not be permitted to have the magazines as they had been removed due to their content and had been placed into Mr N's stored property. The Governor told Mr N that he was obliged to accept advice from Prison Service Headquarters that the magazine was a far right racist magazine and, as such, was unacceptable.

Mr N wrote to me and said that the publisher of the magazine was an anti-racist publisher. Mr N acknowledged that he had been a member of a right wing racist group prior to his arrest, but said he was not seeking access to far right magazines. The Prisoners' Advice Service also wrote to the Governor in support of Mr N and said that, having read two copies of the magazine in question, they had been unable to find any reference to material which could cause concern with regard to racism. PAS said that, whilst the magazine did contain excerpts from material which could be described as racist, the articles accompanying these excerpts clearly showed that the magazine did not support the views expressed. Both PAS and the magazine's editor sent copies to my Investigator. The editor's accompanying letter said that, 'We are clearly not a racist publication – in fact, we are anti-racist and anti-fascist. We cannot prevent all types of people reading our magazine'. A bookshop specialising in a wide range of publications across the political spectrum was also contacted for its view on the magazine. Staff there replied that they considered the magazine to support conspiracy theories in general rather than to be sympathetic to particular groups, but cautioned that they had not seen it for some time.

Prison Service policy on the issue of allowing publications states:

'The Governor may withhold or withdraw any newspaper, periodical or magazine or any particular issue, or any book, if he or she considers that the content presents a threat to good order or discipline.'

Having read the magazines, I was unable to concur with PAS or the magazine's editor concerning the content. Whilst not blatantly racist or fascist, a subversive undercurrent ran through the articles and I doubted that anti-racist or anti-fascist groups would regard them as representing their interests. On those grounds, I did not think it unreasonable for the Governor to have exercised discretion in deciding that the magazine was unsuitable to be issued to Mr N. I did not uphold his complaint.

Mr O (12123/02) complained about the lack of care he had received following his involvement in two suicide attempts. The first incident had taken place while he was himself receiving treatment for depression in the prison's Healthcare Centre. During his stay, a prisoner had attempted suicide and Mr O had intervened. He then accepted a transfer on the basis that it was a progressive move and would allow him to receive counselling. However, it appeared that no-one told the receiving prison about the incident, and he was made to share a cell with a prisoner on suicide watch. When that prisoner self-harmed, Mr O raised the alarm and provided assistance.

There was no evidence that, in the aftermath of this second incident, any thought was given to providing Mr O with counselling or other assistance. I concluded that the Prison Service had failed Mr O and, as a result of my recommendation, it agreed to pay for his counselling post-release.

Mr P (13336/03) complained that staff using the prison gymnasium were leaving the stereo on at high volume late at night and into the early hours. He said that it was common for the stereo to be left on as late as 1am and to be turned on again at 6am. Mr P said that he did not want the stereo to be confiscated, but locked away so that staff using the gymnasium outside normal hours would not have access to it.

My Investigator contacted a Senior Officer at the prison who agreed that, in future, the duty officer would be made directly responsible for the task of locking away the stereo at the end of each session. The Senior Officer considered this to be a more effective solution than simply asking the last person who used the gymnasium to lock the stereo away.

Mr Q (10263/03) complained that chicken legs in the prison shop were sold by piece rather than by weight. Specifically, he complained that all chicken legs cost 50p, whatever the size.

My Investigator contacted Trading Standards who advised that prisoners should be told the weight of the item before they purchased it. During the investigation, the prison contacted my office and said that, from now on, chicken would be sold in pre-packaged packs with the weight displayed.

Similarly, Mr R (10868/03) complained that, on two occasions, he was served with a baguette that was smaller in size than normal.

My Investigator contacted the prison kitchen manager who agreed they had looked smaller than usual. He agreed that, in future, any undersized baguettes would be returned to the supplier.

Mr S (11091/03) complained that his human rights were being abused because he could be strip searched by a male officer who might be homosexual or bisexual.

My Investigator established that prison officers are not required to declare their sexual orientation as a condition of their employment. The only requirement of the officer conducting the search is that he or she is of the same gender as the prisoner. I did not uphold Mr S's complaint.

Mr T (13355/03) complained that prison staff addressed him by his surname only. He said that prisoners were required to address staff as Mr, Mrs, Ms etc. while prison staff were not obliged to use similar titles when referring to prisoners.

I had no hesitation in upholding Mr T's complaint. I agreed that both prisoners and staff should be addressed appropriately and with respect. However, I was pleased to learn that the Prison Service has now introduced Pro-Social Modelling Courses which are designed to tackle this very issue. It is obvious that prison culture cannot be changed overnight, but I applaud the Prison Service for taking such a positive step in its pursuit of dignity and decency in the treatment of prisoners. In all the circumstances, whilst upholding Mr T's complaint, I did not see the need for formal recommendations.

Mr U (10567/03) complained that he had been unfairly dismissed from his job as a cleaner. He said that he had been sacked from his job for no reason and had received no warnings or complaints about his work. Staff had said that the procedure that should have been followed was for him to have received a verbal warning, followed by a written one. Only after this could his employment have been terminated. The Prison Service responded to Mr U's complaint and said that he had been sacked from his job due to the poor standard of his work. As the prison did not have a regular cleaning officer to supervise the cleaners, several different members of staff had seen his work over a period of time. There were three red entries on his history sheet regarding his failure to complete or attend work. Mr U wrote to me and said that only one member of staff had complained about his work and that he was not aware of any red entries on his history sheets. Mr U asked for his job back and to be compensated for loss of earnings.

My Investigator obtained copies of Mr U's wing history sheets and talked to staff at the prison. Two entries appeared on the history sheets which seemed to refer to an earlier job on the servery. Both entries referred to Mr U's poor attitude to work and unacceptable standard of behaviour. Further entries referred to the employment which formed the subject of Mr U's complaint. The first said that Mr U was late getting ready for work, so the cleaning officer left without him. The next said that Mr U had been dismissed from his job. My Investigator spoke to the Senior Officer in charge of Mr U's wing. He remembered that Mr U was always the last to join the work party before it moved to the visits area to start work. The Senior Officer said the final straw had been when the work party was ready to leave and Mr U was found to be still in his bed.

There was no evidence that Mr U had received any warnings about his work, his timekeeping or any other concerns during the time that he was employed as a cleaner. In this respect, I upheld Mr U's complaint. It did not necessarily follow, however, that it was inappropriate for Mr U to be dismissed. The passage of time and the failure to keep adequate records meant that there was no record of why he lost

his job. I noted that he had previously been dismissed for failing to attend, and for the poor standard of his work. Concerns had subsequently been raised about his performance as a servery worker and the Senior Officer recalled that his general conduct on the wing was poor. In all the circumstances, it seemed likely that Mr U had given adequate grounds for his dismissal and, for this reason, I did not consider he should be compensated for loss of earnings. However, I concluded that he should not have been dismissed from his job as a cleaner without the formal procedures being followed. The failure to do so meant that Mr U could not appeal against his dismissal. I recommended that the Governor should apologise to Mr U for the way he was dismissed and remind staff of the procedures that they must follow when addressing poor performance at work.

Mr V (13132/02) complained about the Prison Service's decision to retain him as a Category A prisoner.

My Investigator reviewed all the paperwork and representations in this case. The Category A gist showed that Mr V had been convicted and sentenced to 15 years imprisonment for attempting to steal jewellery in a much publicised raid. Mr V's solicitors were concerned about the publicity surrounding the offence and said that the Category A Committee should not allow the notoriety of the attempted robbery to influence its judgement when making a decision about Mr V's security classification. They said that, while the offence itself was audacious, this did not in itself mean that Mr V was highly dangerous. The solicitors referred to sentence planning documents which stated that Mr V admitted his part in the offence and had said that he was aware of the effect the offence had had on people who had witnessed the crime. He also said he felt ashamed and remorseful for his actions. Mr V's solicitors referred to the Security Manual, in particular to Annex 9 which sets out the criteria which justify reporting in a prisoner as a potential Category A. These include:

- v. where an attempted or actual robbery involved acts of life-threatening violence to the public or police;

- vi. where loaded firearms were discharged at people;
- vii. where an offence of armed robbery committed by a professional robber of considerable standing resulted in large amounts of money being stolen.

The solicitors said that they believed that Mr V did not fit into any of these criteria because there were no acts of life threatening violence, no firearms and no armed robbery. They maintained that Mr V did not carry or use weapons and did not attempt to injure anyone, and that he was not a professional robber. They therefore concluded that Mr V did not pose a grave danger to the public, police or security of the state.

My Investigator obtained police and prison files which detailed the circumstances of the offence and described Mr V's involvement. The files referred to Mr V's role as having discharged ammonia at the scene to deter members of the public from intervening. Mr V was also considered a prominent member of the gang, who provided the technical advice on intercepting police radio wavelengths.

According to the Security Manual, a Category A prisoner is one 'whose escape would be highly dangerous to the public, or police, or the security of the state, no matter how unlikely that escape might be, and for whom the aim must be to make the escape impossible.' I considered all the information in light of the guidelines contained in the Security Manual. Decisions relating to whether a prisoner should remain in the highest security category must not be taken lightly, and only after careful consideration of all the relevant information. I was satisfied that the correct procedures were followed in this case. The information I saw contradicted Mr V's solicitor's view that his role in the offence was 'very limited'. The representations put forward by Mr V's solicitors had to be balanced against the very serious nature of the offence, and the Category A Review Committee clearly considered that there remained a significant risk of Mr V re-offending in a similar way if he was unlawfully at large.

In all the circumstances, I was satisfied that the decision of the Category A Review Committee was a reasonable one based on a careful consideration of all the relevant information. I did not uphold Mr V's complaint.

Prop

Not surprisingly, property complaints make up the largest proportion of our workload. It is almost inevitable that, with such a transient population, personal items of prisoners' property will be lost or damaged from time to time. In addition, as technology advances, what a prisoner may or may not have in possession is a constant theme for debate. Prisoners' property is laboriously recorded and re-recorded by hand on what are known colloquially as prop cards.

Mr W (13391/03) complained that he was not being issued with soap that conformed to his vegan principles. The Prisoners' Advice Service wrote to me and enquired if this contravened Prison Rule 28 (1) which states, 'Every prisoner shall be provided with toilet articles necessary for his health and cleanliness, which shall be replaced as necessary.'

My Investigator contacted a governor at the prison who explained that they always met the needs of prisoners with medical reasons for special toiletries, but Mr W did not fall into this category. Whilst current HQ guidance advised that toiletries must be provided to prisoners, and that they should not be prevented from taking care of their personal hygiene, it did not dictate that anything other than basic soap be provided free of charge, unless a prisoner conformed to vegan principles on religious grounds. As Mr W did not belong to any religion with vegan requirements, the prison's decision complied with the policy. However, as cost did not appear to be a determining factor, I took the view that it would be right to provide Mr W with soap which allowed him to maintain personal hygiene and uphold his vegan values. The prison agreed and decided, in this particular case, to provide Mr W with a generous range of vegan toiletries free of charge.

Mr X (10822/03) was deported to the Czech Republic following a period of custody in the United Kingdom. The Embassy of the Czech Republic wrote to me and asked for assistance in trying to trace some of his property. The missing property included a large suitcase containing clothes, a video recorder, video cassettes and gifts, a set of golf clubs, a golf bag and a golf cart.

My Investigator made inquiries with the Prison Service and Immigration Service and checked Mr X's property records. Immigration records showed that Mr X was arrested by police on arrival, and taken to a police station without being seen by immigration staff. The Immigration Service said that their first contact with Mr X was when he was served with a deportation order, some 11 months after he had been placed in the custody of the Prison Service. My Investigator found that both the stored and in-possession property inventories showed that the Prison Service never received the missing items. In order to be able to uphold Mr X's complaint, I would have to have been certain that the missing property had, at some stage, been in the care of the Prison Service and that they were in some way at fault. I was unable to find any evidence that the Prison Service ever received this property. I could not, therefore, uphold Mr X's complaint.

Mr Y (12959/03) complained that he had ordered a radio from Argos, via Aramark (prison shop contractor). Mr Y said that he had ordered the radio at a cost of £120, but had noticed in a newspaper that the price of the radio had been reduced by £20 on 3 September 2003. £120 had been deducted from his account on 2 September, but he did not receive the radio until 19 September. Consequently, Mr Y felt that he was entitled to a refund of £20. The prison replied to Mr Y and said that the transaction had been completed prior to the sale start date and consequently he was not due any refund. Mr Y questioned this and asked to see a copy of the bill of sale, which would have recorded the date. The prison was unable to provide this. As a result, Mr Y returned the radio and was given a full refund. However, he still felt that he had been exploited and asked me to investigate.

My Investigator visited the prison and spoke to the Prisoners' Monies Clerk and staff in Aramark. The Investigator was told that there was no difficulty in ordering items from Argos which were offered at a sale price. However, there was a difficulty in managing the use of sale catalogues and leaflets, as often the items no longer existed or were out of stock. Where it was known that the price of any particular item had been reduced, the prison would accept the order at the reduced

price. Aramark said that they often refunded prisoners who had been overcharged for items that had subsequently been offered in a sale. Although it was unfortunate that the prison was unable to provide a copy of the receipt in this particular case, I could find no evidence to suggest that Mr Y had been disadvantaged, particularly as he had been given a full refund for the radio. Mr Y accepted the outcome of the investigation during a visit from my Investigator.

Mr Z (12885/03) complained that he had made two applications to hand property out on a visit. The first was for a property bag containing a dressing gown which was to be collected by his wife. The second was a property bag containing magazines to be collected by his solicitor. Mr Z said that the dressing gown had been given to his wife, but no magazines had been given to his solicitor.

My Investigator spoke to staff at the prison. Mr Z had indeed made two applications to hand out property. However, when his wife had visited, Mr Z was asked to sign his property card to confirm exactly what property was to be handed out. My Investigator noted that Mr Z had signed for both property bags to be handed out to his wife. My Investigator spoke to reception staff at the prison who recalled that when Mr Z's wife collected the property, she had remarked that she did not realise she would be collecting magazines, and there was too much for her to carry. An officer suggested that she could donate them to the visitors centre, and Mr Z's wife agreed to do this. The officer said that Mr Z's wife could have returned the magazines to the property store had she chosen to do so. As Mr Z had signed for both packages to be handed out and because Mr Z's wife took the decision to accept the property that was handed out, I was unable to uphold his complaint.

Mr A (10298/03) complained about the way that volumetric controls on property were implemented. In particular, Mr A said that he had been limited in the amount of clothing he could have in possession. He said his property met volumetric controls and, since he had been allowed these items at prisons in the high

security estate and at other category B prisons, he thought it unfair for the prison to impose restrictions. The response from the Prison Service was that the standard limit for all prisoners' in-possession property was that which fitted into two volumetric control boxes. Additionally, prisoners may have in possession one sound system or one outsize item. The application of volumetric control did not replace any other controls on property, e.g. a prison's privilege list. However, it would limit the number of items from the privilege list that any prisoner could have in possession. A prisoner who reached the limit on in possession volume would not be permitted further items unless he gave up property in return.

The crucial point here is that prison governors remain free to impose additional restrictions on possessions as part of the local facilities (privileges) list. This means that, regardless of the fact that Mr A's property fitted into the two volumetric control boxes, if he held more than the permitted number of any particular item, the excess would not be issued to him. In this particular case, only one fleece top, for example, was allowed in possession. Any other fleece tops would need to be handed out or sent for storage. Whilst I could understand Mr A's frustration at being informed that items which met the facilities criteria in one prison were not permitted in another, the guidance on volumetric control makes quite clear that it does not replace local restrictions. Instruction to Governors (IG) 104/95 not only specifically permits local controls but, by implication, encourages restrictions on the number of items of a particular type that can be held in possession. Whilst I understand the problems caused to prisoners by variations in the privilege lists between prisons, the imposition of a standard privilege list would limit prison governors' ability to respond to local circumstances and could lead to a more restrictive possessions list than is generally the case at the moment. I did not uphold Mr A's complaint.

Down the Block

The Segregation Unit in a prison is often referred to by both staff and prisoners as 'the block'. This forbidding image is increasingly out of line with the efforts in the best units to reintegrate disruptive prisoners into the mainstream. Prisoners can be segregated for a number of reasons, for the good order of the prison, as part of a punishment or, in some cases, for their own protection. Whatever the reason, segregation understandably generates a substantial number of grievances.

Mr B (12234/03) complained about the amount of exercise to which prisoners in the segregation unit were entitled. Mr B served seven days cellular confinement between 12–18 July 2003. He said that, on some days, he received less than one hour of exercise and, on three days, he received less than thirty minutes. The Prison Service response to Mr B's complaint was that the segregation unit was close to capacity. There were only two exercise areas on the unit and, for health and safety reasons, only one prisoner was allowed in each of these areas at a time. There were six hours a day available for exercise and this only allowed 12 prisoners a full hour. If more prisoners wanted exercise, then the time needed to be shortened. The Prison Service quoted Prison Rule 30, which states that, 'Subject to the need to maintain good order or discipline, a prisoner shall be given the opportunity to spend time in the open air at least once every day, for such period as may be reasonable in the circumstances.' The Prison Service concluded that the prison had acted in accordance with the Prison Rules.

My Investigator discussed Mr B's complaint with the governor in charge of the segregation unit. The Investigator pointed out that Prison Service Order (PSO) 4275 states Governors must ensure that prisoners subjected to severely restricted regimes (e.g. those held in the segregation unit for reasons of Good Order or Discipline [GOOD] or as a punishment) are provided with the opportunity to spend a minimum of one hour in the open air each day. The governor explained that the operational capacity of the segregation unit was 28 and, during the period that Mr B was in the unit, it was operating at almost full capacity. The governor outlined the issues the prison was considering

in order to ensure compliance with PSO 4275. There were three options: dividing the exercise areas up further to create four separate areas, allowing some prisoners who had been risk assessed to exercise with each other, and using another area adjacent to the segregation unit for exercise. Having considered this response, I was satisfied the prison was making an effort to provide the maximum amount of exercise available within the physical restrictions of the segregation unit. I upheld Mr B's complaint, but made no formal recommendation.

Mr C (13066/03) complained that prison officers acted contrary to Prison Service Instruction (PSI) 15/2003 by physically restraining him and removing him to the segregation unit so that a DNA sample could be taken by the police. Mr C was given an order to go to the segregation unit to provide a DNA sample. As he did not comply, Control and Restraint techniques were used by staff to remove him from his cell. Whilst under restraint, several hairs were removed from his head and chest by the police. Mr C complained and said PSI 15/2003 stipulated that prison staff could only use reasonable force, 'if a prisoner offers violence to resist the taking of a sample and the police officers request the help of prison officers ...' Mr C argued that, since the police did not request assistance, and the sample was taken by the prison officers, the prison's actions towards him constituted an assault. The Governor responded and said that the hair was removed by the police, not prison officers, in accordance with the Police and Criminal Evidence Act 1984 as contained in Annex A of PSI 15/2003. As Mr C had refused to give his consent, reasonable force was used to carry out a legal requirement, so the actions of the prison and police officers did not amount to an assault.

The removal of Mr C to the segregation unit was video recorded by the prison. The video shows he was under restraint from the point of removal, right up to having the samples taken by the police. On arrival at the segregation unit, police officers asked Mr C if he was going to give a DNA sample. Mr C refused and prison staff positioned him so that the police could remove the hair samples. The entire process from first restraint until release lasted approximately 16 minutes. My

Investigator obtained a letter from the Deputy Director of Security to the Prison Officers' Association (POA). The letter discussed the POA's concerns about the use of force to secure attendance for sampling and difficulties which had arisen in carrying out the exercise due in part to 'the less than crystal clear advice in the PSI'. The letter continued:

'We have a legitimate and lawful right to demand, and secure, the attendance of any prisoner in any part of the prison as we deem necessary in pursuit of our lawful duties ... It is not acceptable to wait until violence is offered to police officers before intervening. Prison staff can, and must, use reasonable force to secure co-operation with the police, as is consistent with the powers of a constable. The police are not trained to use force in prison conditions ... and we would not want or allow them to use their (inappropriate) techniques in our prisons.'

My Investigator asked Prison Service HQ if any further advice had been issued to prisons. She was sent a copy of a letter from the Director General of the Prison Service to the POA. It said, in part:

'We exercise that duty by being prepared to ensure that prisoners are taken to a place within the prison where the police can carry out their duty ... of taking a DNA sample by force where the prisoner concerned seeks to physically resist the police attempts to take a sample with consent ... I had believed that the instruction already issued was clear but, as there obviously is some remaining confusion, I have copied our correspondence to all Governors so they are clear what the exact position is.'

Mr C's complaint raised a number of issues. With regard to the use of force, Mr C had been asked on two previous occasions to provide a DNA sample. The video evidence is clear that Mr C was unhappy at the prospect of going to the segregation unit to provide a sample, and he swore at staff. I was unable to say whether Mr C would have been physically violent in his resistance, had he been given the opportunity to continue to delay. Before he was restrained, he did not appear about to use violence. However, as he was unwilling to attend the sampling area voluntarily and had refused to do so on two previous occasions, the use of force to secure his compliance was not unreasonable.

Mr C was taken to the segregation unit and straight to the police sampling team. The sample was then taken under restraint. This meant that he was already being restrained before the police spoke to him. The practical effect of this was that it would have been very difficult for him to have offered violence to the sampling team. As he was already under restraint, all the officers had to do was alter the position they were holding him in, to allow the sample to be taken. The video does not appear to show that Mr C's behaviour indicated the likelihood of physical violence or that the police requested assistance from the C&R team. That is not to say that Mr C might not have become violent, but PSI 15/2003 does not sanction action by prison staff

on the basis of what could occur. When Mr C was removed to the segregation unit, he should have been located in a cell, had the restraints removed and allowed time to calm down from a tense situation. The taking of a sample by the police should have been a separate and distinct event from the removal from his cell. By making it one continuous process, the prison had blurred the boundaries between the actions of the prison staff in securing Mr C's attendance and their involvement in assisting the police to take a sample. After seeing a copy of the draft report on this issue, the Governor agreed that PSI 15/2003 was not sufficiently clear. However, he defended his staff's actions as appropriate on the grounds that, as Mr C clearly was determined not to provide a DNA sample voluntarily, releasing the holds only to reapply them would cause further discomfort to Mr C and risk further injury to him and to staff.

In my consideration, I did not discount the possibility that Mr C, once located in the segregation unit, might have had to be restrained again. The Governor's argument, however, that 'the most effective management of the risk' meant it was acceptable not to follow the protocol was not tenable because the protocol was devised precisely to address the problem of non-compliance and to manage prisoners such as Mr C. Paragraph 14 of PSI 15/2003 is unequivocal:

'Officers assigned to escort prisoners and to be present when samples are taken ... must render assistance to the police officers carrying out the sampling only if the prisoner proffers violence to resist the taking of a sample and only if the police officers request assistance.'

Whilst I was satisfied that Mr C was removed from his cell under restraint for legitimate reasons and was not assaulted by the police or prison staff,

I was not persuaded that PSI 15/2003 had been fully complied with. In this respect, I upheld Mr C's complaint. I recommended that the instructions concerning prison staff's use of force in DNA sampling contained in PSI 15/2003 be clarified. I also recommended that the prison alter its practice of taking prisoners under restraint to the segregation unit, and then directly to the police sampling teams. I understand that a new Prison Service Order about DNA sampling, which includes an expanded section on the use of force, should be issued shortly.

Mr D (12834/03) complained that the clothes he was wearing were contaminated with excrement when a prison officer bumped into him after she had been dealing with a prisoner on 'dirty protest' in the segregation unit. The items of clothing were a pair of jeans, a fleece top and a pair of training shoes. The prison offered to pay for the items to be cleaned, but refused to pay compensation. The items were taken away and bagged, then subsequently destroyed when Mr D transferred to another prison.

My Investigator wrote to the Governor of the prison and suggested that the Prison Service pay for the clothing. The sum of £100, which reflected the second-hand value of the clothing, was proposed. Both Mr D and the Prison Service agreed to this resolution.

Gate Happy

Gate Happy and Gate Fever are expressions used by prisoners to describe their emotions on preparing to leave prison. However, the prospect of impending freedom can often give rise to concerns from prisoners, particularly in relation to decisions about early release. Complaints about early release have grown substantially.

Mr E (10564/04) complained about being refused Home Detention Curfew (HDC). The prison's HDC Board refused his application on three counts. First, they noted that the outside probation report had concluded there were reasons to believe that Mr E would not comply with HDC. Second, the prison Probation Officer had concerns that no targets had been met. Finally, they were concerned by his attitude to race.

My Investigator contacted the prison, but could find no evidence of any targets that had not been met, and absolutely no details of an 'attitude to race'. Having examined carefully the outside probation report, it was noted that it actually said, 'there are no reasons to believe that Mr E will not comply with HDC'. The Governor agreed to review the matter again, and subsequently granted Mr E his HDC.

Mr F (13343/03) and Mr G (13344/03) were two co-defendants charged with inflicting grievous bodily harm. Both were due for early release on HDC. The Governor refused the applications on grounds of public protection.

My Investigator spoke to the Governor who explained that, in these particular cases, he was using the term public to refer to the defendants themselves. The Governor had considerable concerns that, if they were released back to their homes, they would be at risk from possible revenge attacks by the victim's family and friends. The local press were also very much against any early release. My Investigator suggested that if an alternative address could be found away from

their local area, this might reduce the Governor's concerns. Mr F and Mr G provided additional addresses which were considered suitable, and they were both released on HDC on New Year's Eve.

Mr H (10455/04) complained that he had been considered ineligible for HDC. The Governor responded and said he had reviewed the paperwork and decided that the original decision was correct.

My Investigator found that Mr H was serving a sentence for a sexual offence. Prison Service Instruction (PSI) 31/2003, which announced changes to the HDC scheme from July 2003, states:

' ... the Home Secretary has decided that, in order to maintain public confidence in the scheme, offenders serving sentences for certain current offences and prisoners with any history of sexual offending must be considered unsuitable for release on HDC unless exceptional circumstances exist ... it is extremely unlikely that prisoners currently serving sentences for sexual offences will be approved for release on HDC'

I concluded therefore that, in view of Mr H's conviction, he must be presumed unsuitable for early release on HDC. I did, of course, consider Mr H's personal circumstances. However, I did not accept these were exceptional and I did not uphold his complaint.

Mr I (10880/03) complained that he was not ordered to wear a seatbelt whilst being escorted in a taxi to outside hospital. He also said that he had to 'squeeze' in between the escorting officers. One of the escorting officers responded to his complaint and said that 'nature's cruel will' had deemed that he was of a larger size, and he understood that it could be a bit of a squeeze in the back of a taxi.

My Investigator found that under the Motor Vehicles (Wearing of Seatbelts) Regulations 1993, persons detained in custody and those escorting them are exempt from wearing seatbelts. The Highway Code places the responsibility for wearing a seatbelt on the passenger. I was

therefore unable to uphold Mr I's complaint. However, I recognised that it was not reasonable, or maybe even possible, for a handcuffed prisoner to put on a seatbelt unaided. I therefore wrote to the Governor to note the issues raised in the prisoner's complaint.

Mr J (11674/03) complained about having to wear handcuffs when he travelled in a cellular vehicle. He said he was concerned about the health and safety implications of prisoners wearing handcuffs in these circumstances. He was also concerned that he had to wear a seatbelt with his hands cuffed. He expressed doubts that, in the event of an accident, he would be able to escape through the emergency hatch.

My Investigator spoke to Mr J. He reiterated his concerns about what might happen in the event of a road traffic accident. He stressed that he would be unable to release the seatbelt because he was wearing handcuffs. The Investigator spoke to the Prison Service's Technical Services Manager, Transport Services, responsible for the specification of Category A prison vans. He explained that vehicles transporting prisoners in custody are 'exempt in law' from having seatbelts fitted. He said it was down to individual prisons and risk assessments to decide whether to fit seat belts and use them. The Technical Services Manager said he had conducted a study into the wearing of seatbelts in prison vans, and found that a prisoner was three and half times more likely to self harm in a prison van than be involved in a road traffic accident. He also pointed out that a seatbelt could be used as a weapon. He added that, as far as road traffic accidents were concerned, it was extremely unlikely that, in the event of an accident, nobody would be in a position to assist a prisoner unlock the cell door or release the hatch mechanism.

My Investigator then obtained a copy of a memorandum sent from the Director of High Security Prisons following an escape incident. It stated that, 'until further notice, all Category A prisoners being transported on escort in cellular vehicles (including Cat A vans) must be restrained in single standard handcuffs at all times whilst in the cell of the vehicle.' This instruction had been rescinded by the time I investigated Mr J's complaint. However, it appeared this had not been

communicated to the prison in question. My Investigator also obtained a copy of the risk assessment that had been carried out on Mr J. It showed that he was considered to present a high risk of escape.

The Security Manual allows prisoners on escort to travel without handcuffs if they are inside the cubicle of a secure vehicle which has a cell door restraining chain in place. This particular prison's vehicles were not, at the time, fitted with cell door restraining chains. As such, the prison had adopted a policy that all prisoners must wear handcuffs when travelling in these vehicles. Although I sympathised with him, and understood his personal concerns about health and safety, I did not uphold Mr J's complaint. I did not believe the decision he should wear handcuffs in secure vehicles when travelling out of prison was unreasonable in the particular circumstances. A risk assessment was conducted, and he was considered to present a high risk of escape. The prison had also conducted a health and safety risk assessment on its cellular vehicles and considered them to be low risk. However, I repeated a previous recommendation that the continuing blanket policy of handcuffing all Category A prisoners in cellular vehicles cease immediately, and that each prisoner should be risk assessed before any decision is taken.

On Probation

The number of complaints that I receive about the National Probation Service (NPS) remains modest. Nevertheless, I have been struck by the strength of feeling shown by those who believe they have been treated unjustly by a Service that has a significant impact upon their everyday lives. Moreover, as word of my responsibility for probation spreads, the number of complaints eligible for me to investigate is rising slowly but steadily. However, many of those complaining about the Probation Service continue to contact my office direct before completing, or even starting, the NPS complaints procedure, thus rendering their complaints ineligible.

My colleagues who deal with complaints about the Probation Service have found themselves acting as brokers on behalf of many of these 'ineligible' complainants. Dictionary definitions of the word broker are sometimes less than flattering. But there is one definition that encompasses the role adopted by my Investigators – that of 'a go-between, a negotiator or intermediary'. The actions of my colleagues as go-betweens have almost always been welcomed by Probation Areas and enabled issues to be dealt with swiftly, at an early stage, without invoking formal procedures. There has been a saving of resources for my office and for the Probation Areas, together with an increased level of satisfaction for those complaining.

Complaints about the National Probation Service are often more complex than those about the Prison Service and, on the whole, focussed on individual officers. Those subject to supervision, be it through community sentences or licences, seem acutely aware of the NPS's powers when conditions are not met or requirements are infringed. But those complaining to me seem much less clear about the contribution that the Service is expected to make towards crime reduction. The requirement on the NPS to protect the public and prevent future offending – alongside meeting the needs of offenders – is often at the heart of complaints.

Mr K (8/2003) was a prisoner shortly to be released on licence with a condition of residence in a probation hostel.

He provided my Investigator with information suggesting that his safety could be compromised were he to reside where directed. A telephone call to his resettlement officer ensured that the information could be taken into consideration in the assessment of risk.

Mrs L (104/2003) complained on behalf of her son who was nearing the end of his prison sentence and was eligible for temporary release on licence. His release was delayed because the necessary assessment of home circumstances report had not been received from the home probation officer.

There was an impasse as the prison insisted the necessary report had not been received while the probation office insisted it had been sent. The problem was a simple one – the use of an incorrect fax number – but had been exacerbated by each Service failing to talk to the other. A few telephone calls from my Investigator identified and resolved the problem, enabling the home visit to go ahead.

Mr M (113/2003), serving a life sentence, complained that he had not been contacted by the Probation Service for more than eighteen months since his last allocated probation officer had moved on. He said that he had received no replies to the many letters he had sent.

My Investigator discovered that, not only had the previous supervisor moved on, but the office that dealt with Mr M had been closed down and the work transferred elsewhere. Mr M had not been informed of the transfer so had been writing to an office that no longer existed. The new officer allocated to him had been away on long term sick leave and Mr M's case had been overlooked. My Investigator brought Mr M's case to the attention of the Operations Manager in the Probation Area who agreed to make contact immediately.

Mr N (70/2003) complained that the Probation Area had failed in its duty towards his son by failing to obtain medical treatment that he needed during his licence and by subsequently recommending, without justification, that his licence should be revoked. He also complained that his approaches to the Probation Area had not been acknowledged.

My investigation found that attempts had been made to secure treatment for Mr N's son but these were not supported by his GP who did not agree that treatment was necessary. Examination of probation records showed that officers had made several attempts to assist Mr N's son who had had 20 unacceptable absences. There was no evidence that the decision to recommend recall was made in haste. However, my investigation found evidence to confirm that the Probation Area had not responded to a number of Mr N's inquiries and, although strictly outside my remit, I upheld this aspect of his complaint.

Ms O (85/2003) complained that she was treated unfairly by the officer supervising her Community Rehabilitation Order. There were several strands to her complaint. She said that the requirements of the order had never been properly explained to her, that she had been required to report more frequently than was necessary, that the officer had used insulting language towards her, and that inappropriate discussions had taken place with members of her extended family without Ms O's permission.

This was a sad, complicated case. Ms O's offence had occurred as a result of her belief that her male victim – a family member – had committed a serious sexual offence against her but had never been charged. She believed that she had been dealt with unjustly by the system. My Investigator found evidence confirming that discussion with the family had taken place without permission, although other areas of Ms O's complaint could not be upheld. The Area Appeals Panel had previously upheld this aspect of the complaint although no explicit apology had been offered to Ms O. The Chief Officer agreed to make a formal apology to Ms O, thus providing an acceptable settlement.

Mr P (235/2003), a life sentence prisoner, complained that a probation officer visiting him to prepare a report for the Parole Board had bullied and deceived him. He also complained that the subsequent report contained inaccuracies and a wrongful assessment of risk. Mr P disputed the proposal that he should live in a hostel on release rather than returning home to live with his parents as he wished to do.

The requirement for offenders to reside in hostels during the early part of licences is a recognised way of managing the risk that they may pose. My Investigator found evidence to support the assessment of risk. In Mr P's case, the fact that his index offence had been committed in his parents' home added weight to the decision. However, the report made damaging statements about Mr P's parents without sufficient evidence to support them. I upheld this aspect of Mr P's complaint and recommended that the Probation Area should consider issuing instructions to define how third party information may be fairly presented in reports.

Mr Q (10/2004) wanted to care for his elderly mother when he was released from prison. He complained that the home probation officer had, at first, led him to believe that his mother's address would be acceptable and that the officer's subsequent decision to reject the address was unfair.

My investigation found that, when offenders are to be released, the Probation Service is required to seek the views of their victims and take those into account when deciding if proposed plans for residence are acceptable. There was evidence that the victim of Mr Q's offence lived in the same area as his mother. The victim had been consulted by the Victim Contact Unit as required and objected to Mr Q living in such close proximity. I found that the supervising officer had carefully considered all available evidence and had followed the correct procedures, balancing the rights of offender and victim. I did not uphold Mr Q's complaint.

Mr R (21/2003) wanted to return to live at a home address previously approved by the Probation Service. He complained that, as the address had been accepted as suitable previously, the Service had no valid reason to change the assessment.

My Investigator discovered that Mr R had been imprisoned for a sexual offence involving the internet and a child victim. He had been released on licence but recalled when he acknowledged engaging in similar risky behaviour. I found the Probation Area had considered all the factors contributing to risk and decided that these could be best managed by close supervision of Mr R. I agreed that the proposal for hostel residence was fair and proportionate and I did not uphold Mr R's complaint.

Mr S (136/2003) complained that the information provided to the Parole Board by his home probation officer was inaccurate and unfair. He said that the officer had been overbearing and biased and that the report gave him no credit for completing a course during his sentence.

My Investigator found evidence to indicate there was little connection between the work that Mr S had completed on the course and the seriousness of his offending. Other reports, that Mr S had accepted, described him as failing to address issues around his offences, and the home probation report was not the only one to express concern about the level of risk remaining. My view was that the probation officer's report had taken account of all the available information and had made supportable recommendations. I was satisfied that the Probation Area had acted fairly and professionally.

Mr T (100/2003) complained that the parole assessment report prepared by his home probation officer contained a number of inaccuracies and misrepresented his situation. He did not accept the report's findings that he was unsuitable for parole, and he complained that the reporting officer was a member of the police force which conflicted with his role as a probation officer.

The investigation drew upon evidence from prison and probation records and the list of previous convictions. All the evidence confirmed that the information in the report was accurate and that the officer's opinions were supported by the evidence. I discovered that the probation officer was fully trained and experienced. He was seconded to a unit, based in the local police station, where officers from various sections of the criminal justice system work together as part of an initiative to protect the public. The officer could not be criticised for explaining his involvement in the unit in order that Mr T could be clear about the specialised role. I did not uphold Mr T's complaint.

Summary of Costs

Running costs

	£
Staffing Costs (Salaries)	1,486,093
Non-pay Running Costs	180,120
Share of the Departmental Overhead*	926,778
TOTAL	2,592,991

Casework costs

	£
Average cost per completed assessment	134
Average cost per completed investigation	1,189

* Based on 2002-2003 figures inflated by 3%, as official Home Office figures were unavailable at time of publication. From 2003-2004, this figure also includes the full cost of being located in Home Office-managed accommodation.

Terms of Reference – Complaints

On 1 December 2003, Sentence Enforcement Unit and Lifer Unit functions were transferred from the Prison Service to the Home Office Correctional and Rehabilitation Policy Directorate. On 6 January 2004, the Home Office announced the creation of the National Offender Management Service. The Ombudsman's terms of reference apply to the Home Office Correctional and Rehabilitation Policy Directorate and the National Offender Management Service in the same way as they apply to the Prison Service and the National Probation Service.

1. The Prisons and Probation Ombudsman, who is appointed by the Home Secretary, is independent of the Prison Service and the National Probation Service for England and Wales (NPS) and reports to the Home Secretary.
2. The Ombudsman will investigate complaints submitted by the following categories of person:
 - individual prisoners who have failed to obtain satisfaction from the Prison Service complaints system and who are eligible in other respects, and
 - individuals who are, or have been, under the supervision of the NPS or housed in NPS accommodation or who have had pre-sentence reports prepared on them by the NPS and who have failed to obtain satisfaction from the NPS complaints system and who are eligible in other respects.
3. The Ombudsman will normally act on the basis only of eligible complaints from those individuals described in paragraph 2 and not on those from other individuals or organisations.
4. The Ombudsman will be able to consider the merits of matters complained of as well as the procedures involved.

5. The Ombudsman will be able to investigate:

- decisions relating to individual prisoners taken by Prison Service staff, people acting as agents of the Prison Service, other people working in prisons and members of the Independent Monitoring Board, with the exception of decisions involving the clinical judgement of doctors and those excluded by paragraph 6. The Ombudsman's Terms of Reference thus include contracted out prisons, contracted out services and the actions of people working in prisons but not employed by the Prison Service, and
- decisions relating to individuals described in paragraph 2 taken by NPS staff or by people acting as agents of area boards in the performance of their statutory functions including contractors and not excluded by paragraph 6.

6. The Terms of Reference do not cover:

- policy decisions taken by a Minister and the official advice to Ministers upon which such decisions are based;
- the merits of decisions taken by Ministers, save in cases which have been approved by Ministers for consideration;¹
- the personal exercise by Ministers of their function in the setting and review of tariff and the release or mandatory life sentenced prisoners;
- actions and decisions outside the responsibility of the Prison Service and the NPS such as issues about conviction, sentence or immigration status; cases currently the subject of civil litigation or criminal proceedings; and the decisions and recommendations of outside bodies including the judiciary, the police, the Crown Prosecution Service, the Parole Board and its Secretariat.

Submitting Complaints and Time Limits

7. Before putting a grievance to the Ombudsman, a complainant must first seek redress through appropriate use of the Prison Service and NPS complaints procedures. Complainants will have confidential access to the Ombudsman and no attempt should be made to prevent a complainant from referring a complaint to the Ombudsman.
8. The Ombudsman will consider complaints for possible investigation if the complainant is dissatisfied with the reply from the Prison Service or the NPS area board or receives no final reply within six weeks (in the case of the Prison Service) or 45 working days (in the case of the NPS).
9. Complainants submitting their case to the Ombudsman must do so within one calendar month of receiving a substantive reply from the Prison Service or, in the case of the NPS, the area board. However, the Ombudsman will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the Ombudsman, unless the delay has been the fault of either of the Services.
10. Complaints submitted after these deadlines will not normally be eligible. However, the Ombudsman has discretion to consider those where there is good reason for the delay, or where the issues raised are so serious as to override the time factor.

Determining Eligibility of a Complaint

11. The Ombudsman will examine complaints to consider whether they are eligible. To assist in this process, where there is some doubt or dispute as to the eligibility of a complaint, the Ombudsman will inform the Prison Service or the NPS area board of the nature of the complaint and, where necessary, the Prison Service or area board will then provide the Ombudsman with such documents or other information as the Ombudsman considers are relevant to considering eligibility.

12. The Ombudsman may decide not to accept a complaint or to continue any investigation where it is considered that no worthwhile outcome can be achieved or the complaint raises no substantial issue. The Ombudsman is also free not to accept for investigation more than one complaint from a complainant at any one time unless the matters raised are serious or urgent.

Access to Documents for the Investigation

13. The Director General of the Prison Service and the Director General of the NPS will ensure that the Ombudsman has unfettered access to the relevant service's documents. This will include classified material and information entrusted to that service by other organisations, provided this is solely for the purpose of investigations within the Ombudsman's terms of reference and subject to the safeguards referred to in paragraph 17 below for the withholding of information from the complainant and public in some circumstances.

Local Settlement

14. It will be open to the Ombudsman in the course of investigation of complaint to seek to resolve the matter by local settlement.

Visits and Interviews

15. In conducting an investigation the Ombudsman and staff will be entitled to visit Prison Service or NPS establishments, after making arrangements in advance for the purpose of interviewing the complainant, employees and other individuals, and for pursuing other relevant inquiries in connection with investigations within the Ombudsman's Terms of Reference and subject to the safeguards in paragraph 17 below.

Disclosure of Sensitive Information

16. In accordance with the practice applying throughout government departments, the Ombudsman will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so. Such circumstances will arise when disclosure is:
 - against the interests of national security;
 - likely to prejudice security measures designed to prevent the escape of particular prisoners or classes of prisoners;
 - likely to put at risk a third party source of information;
 - likely to be detrimental on medical or psychiatric grounds to the mental or physical health of a prisoner or anyone described in paragraph 2 of these terms of reference;
 - likely to prejudice the administration of justice including legal proceedings; or
 - of papers capable of attracting legal professional privilege.
17. Prison Service and NPS staff providing information should identify any information which they consider needs to be withheld on any of the above named grounds with a further check undertaken by the relevant service on receipt of the draft report from the Ombudsman.

Draft Investigation Reports

18. Before issuing a final report on an investigation, the Ombudsman will send a draft to the Director General of the Prison Service or to the Director General of the NPS depending on which service the complaint has been made against, to allow that service to draw attention to points of factual inaccuracy, to confidential or sensitive material which it considers ought not to be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations.

Recommendations by the Ombudsman

19. Following an investigation all recommendations will be made either to the Home Secretary, the Director General of the Prison Service or to the Director General of the NPS or to the Chair of the Area Board as appropriate to their roles, duties and powers.

Final Reports and Responses to Complaints

20. The Ombudsman will reply to all those whose complaints have been investigated, sending copies to the relevant service, and making any recommendations at the same time. The Ombudsman will also inform complainants of the response to any recommendations made.
21. The Ombudsman has a target date to give a substantive reply to the complainant within 12 weeks from accepting the complaint as eligible. Progress reports will be given if this is not possible.

Prison Service and NPS Response to Recommendations

22. The Prison Service and NPS have a target of four weeks to reply to recommendations from the Ombudsman. The Ombudsman should be informed of the reasons for delay when it occurs.

Annual Report

23. The Ombudsman will submit an annual report to the Home Secretary, which the Home Secretary will lay before Parliament. The report will include:
 - a summary of the number of complaints received and answered, the principal subjects and the office's success in meeting time targets;
 - examples of replies given in anonymous form and examples of recommendations made and of responses;
 - any issues of more general significance arising from individual complaints on which the Ombudsman has approached the Prison Service or the NPS; and
 - a summary of the costs of the office.

Terms of Reference – Complaints

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1. The Ombudsman will investigate the circumstances of the deaths of the following categories of person:
 - Prisoners (including persons held in young offender institutions). This includes persons temporarily absent from the establishment but still in custody (for example, under escort, at court or in hospital). It excludes persons released from custody, whether temporarily or permanently. However, the Ombudsman will have discretion to investigate, to the extent appropriate, cases that raise issues about the care provided by the prison.
 - Residents of National Probation Service approved premises (including voluntary residents).
 - Residents of immigration detention accommodation and persons under Immigration Service managed escort.
2. The Ombudsman will act on notification of a death from the relevant Service. The Ombudsman will decide on the extent of investigation required depending on the circumstances of the death. For the purposes of the investigation, the Ombudsman's remit will include all relevant matters for which the Prison Service, the National Probation Service (including area boards) and the Immigration Service are responsible, or would be responsible if not contracted for elsewhere by the Home Secretary or area boards. It will therefore include services commissioned by the Home Secretary from outside the public sector.

3. The aims of the Ombudsman's investigation will be to:
 - establish the circumstances and events surrounding the death, especially as regards management of the individual by the relevant Service or Services, but including relevant outside factors;
 - examine whether any change in operational methods, policy, practice or management arrangements would help prevent a recurrence;
 - in conjunction with the NHS where appropriate, examine relevant health issues and assess clinical care;
 - provide explanations and insight for the bereaved relatives;
 - assist the Coroner's inquest in achieving fulfilment of the investigative obligation arising under article 2 of the European Convention on Human Rights, by ensuring as far as possible that the full facts are brought to light and any relevant failing is exposed, any commendable action or practice is identified, and any lessons from the death are learned.
4. Within that framework, the Ombudsman will set terms of reference for each investigation, which may vary according to the circumstances of the case, and may include other deaths of the categories of person specified in paragraph 1 where a common factor is suggested.

Clinical Issues

5. The Ombudsman will be responsible for investigating clinical issues relevant to the death where the healthcare services were commissioned by the Prison Service (until March 2006), by a contractually managed prison or by IND. The Ombudsman will obtain clinical advice as necessary, and will make efforts to involve the local Primary Care Trust (in Wales, the Local Health Board) in the investigation. Where the healthcare services were commissioned by the NHS, the NHS will have the lead responsibility for investigating clinical issues under their existing procedures. The Ombudsman will ensure as far as possible that the Ombudsman's investigation dovetails with that of the NHS.

Other Investigations

6. Investigation by the police will take precedence over the Ombudsman's investigation. If at any time subsequently the Ombudsman forms the view that a criminal investigation should be undertaken, the Ombudsman will alert the police. If at any time the Ombudsman forms the view that a disciplinary investigation should be undertaken by the relevant Service, the Ombudsman will alert the relevant Service. If at any time findings emerge from the Ombudsman's investigation which the Ombudsman considers require immediate action by the relevant Service, the Ombudsman will alert the relevant Service to those findings.
7. The Ombudsman and the Inspectorates of Prisons and Probation will work together to ensure that relevant knowledge and expertise is shared, especially in relation to conditions for prisoners and detainees generally and judgements about professional probation issues.

Disclosure of Information

8. Information obtained will be disclosed to the extent necessary to fulfil the aims of the investigation and report, including any follow-up of recommendations, unless the Ombudsman considers that it would be unlawful, or that on balance it would be against the public interest to disclose particular information (for example, in exceptional circumstances of the kind listed in the relevant paragraph of the terms of reference for complaints). For that purpose, the Ombudsman will be able to share information with specialist advisors and with other investigating bodies, such as the NHS and social services. Before the inquest, the Ombudsman will seek the Coroner's advice regarding disclosure. The Ombudsman will liaise with the police regarding any ongoing criminal investigation.

Reports of Investigations

9. The Ombudsman will produce a written report of each investigation which, following consultation with the Coroner where appropriate, the Ombudsman will send to the relevant Service, the Coroner, the family of the deceased and any other persons identified by the Coroner as properly interested persons. The report may include recommendations to the relevant Service and the responses to those recommendations.
10. The Ombudsman will send a draft of the report in advance to the relevant Service, to allow the Service to respond to recommendations and draw attention to any factual inaccuracies or omissions or material that they consider should not be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations. The Ombudsman will have discretion to send a draft of the report, in whole or part, in advance to any of the other parties referred to in paragraph 9.

Review of Reports

11. The Ombudsman will be able to review the report of an investigation, make further enquiries, and issue a further report and recommendations if the Ombudsman considers it necessary to do so in the light of subsequent information or representations, in particular following the inquest. The Ombudsman will send a proposed published report to the parties referred to in paragraph 9, the relevant Inspectorate and the Home Secretary (or appropriate representative). If the proposed published report is to be issued before the inquest, the Ombudsman will seek the consent of the Coroner to do so. The Ombudsman will liaise with the police regarding any ongoing criminal investigation.

Publication of Reports

12. Taking into account any views of the recipients of the proposed published report regarding publication, and the legal position on data protection and privacy laws, the Ombudsman will publish the report on the Ombudsman's website.

Follow-up of Recommendations

13. The relevant Service will provide the Ombudsman with a response indicating the steps to be taken by the Service within set timeframes to deal with the Ombudsman's recommendations. Where that response has not been included in the Ombudsman's report, the Ombudsman may, after consulting the Service as to its suitability, append it to the report at any stage.

Annual, Other and Special Reports

14. The Ombudsman may present selected summaries from the year's reports in the Ombudsman's Annual Report to the Home Secretary, which the Home Secretary will lay before Parliament. The Ombudsman may also publish material from published reports in other reports.
15. If the Ombudsman considers that the public interest so requires, the Ombudsman may make a special report to the Home Secretary, which the Home Secretary will lay before Parliament.

Members of the PPO Office 2003 – 2004

Ombudsman

Stephen Shaw

Acting Ombudsman

David Barnes

Senior Personal Secretary

Jennifer Buck

Assistant Ombudsmen

Russ Crooks

Ali McMurray

Olivia Morrison-Lyons

Barbara Stow

Nick Woodhead

Secretary to the Assistants

Olajumoke Amure (to December 2003)

Christine Brackley

Head of Probation and Diversity

Marian Morris

Investigators

Christina Arsalides

Tamara Bild

Pervinder Birk

David Cameron

Karen Chin

Vivienne Clarke

Althea Clarke-Ramsey

Helen Douthwaite

Carol Dowling

Lisa Flanagan

Karen Foster (to December 2003)

Kevin Gilzean

Helena Hanson

Ann Hosking (to December 2003)

Andy King

Anne Lund

Kirsty Masterton

Laura McCaughan

Beverly McKenzie-Gayle

Ifeanyi Ochei

Sarah Range (to March 2004)

Dean Reeves (to January 2004)

Anna Siraut

Kevin Stroud

Anne Tanner

Sarah Taylor (to November 2003)

Steve Toyne

Information Manager

John Maggi

Office Manager

Geoff Hubbard

Office Assistant

Sandra Bent

Assessment and Implementation Team

Claire Quigley (Assessment Manager)

Naveen Bhalla

Jeanette Brook

Elizabeth Buatsi

Kathryn Greenwood

Jo Howell

Louise Ragonese (to February 2004)

Jason Smith

Tracy Wright

Fatal Incidents Investigation Team (at 31 May 2004)

Afrim Haliti

Lisa Lambert

Wayne Morley

Gordon Morrison

Anita Mulinder

Lucy Phelan

Ian Truffet