

# Prisons Ombudsman

## Independent Investigation of Prisoners' Complaints

### Annual Report 2000-2001

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### Prisons Ombudsman Annual Report 2000-2001

**Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty**

**Cm 5170      July 2001**

### Statement of Purpose

**To provide prisoners with an independent and effective avenue of complaint which is fair and even-handed, has the confidence of prisoners and the Prison Service, and contributes towards a just prison system.**

### Supporting aims

**To treat all complainants in an unbiased manner without regard to the nature of their offence, ethnic origin, religion, sex, sexual orientation, age or any other irrelevant consideration.**

**To help the Prison Service improve its handling of request/complaints and reduce the volume of formal complaints by encouraging resolution of grievances at the lowest level possible.**

**To produce timely, objective and accurate conclusions based on thorough investigation of all the relevant facts.**

**To act as a spur to the Prison Service to act properly, fairly and justly by drawing attention to failings and deficiencies in its treatment of prisoners and making recommendations about how to put matters right or improve the way prisoners are treated.**

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## **Overview**

Since the first Parliamentary Commissioner for Administration was appointed little more than 30 years ago, the concept of an Ombudsman to investigate complaints on behalf of citizens has become a key feature of public administration. My own office – investigating complaints on behalf of citizens in prison – is less than 10 years old, but it too has become a significant structure within the penal system.

One index of that fact is revealed by the statistics in this Annual Report. The number of complaints we have received from prisoners has grown significantly. Indeed, year-on-year increases in workload seem to constitute an iron law of Ombudsmen's offices.

My own workload has increased in total volume, in the proportion of that higher number of cases which meet our eligibility criteria, and in complexity. Coinciding with the loss of some of my most experienced investigators, the consequences have been delay for our prisoner-complainants and a growing backlog. I will not pretend that the service we have offered prisoners this year has always met the standards to which I aspire or which prisoners have the right to expect.

## **Productivity**

In mitigation, I should say that our overall performance against time targets is not hugely down on last year. Indeed, all my caseworkers have significantly increased their personal productivity – for which they deserve the highest credit. We have also streamlined our working methods and developed new ways of concluding cases. Very many more are now concluded by letter or local resolution instead of formal report. However, it is scant comfort to the prisoner to be told that, despite these productivity and quality gains, his or her complaint is at the back of a long queue.

The growth in my caseload seems to be continuing. But one reason for the increased workload during 2000-2001 was the success of the Prison Service in clearing its backlog of delayed cases. I would like to pay tribute to the Prison Service for its achievement in this regard. It was an unhappy coincidence that the consequent bulge in Ombudsman's cases should occur when my staff turnover was so high. I have discovered that, in public service as in other walks of life, it takes just a few weeks for someone to leave but many months to recruit and train their successor.

Towards the end of the period reviewed in this Report, I was able to make new appointments to my staff. Significantly increased resources have been made available to me in 2001-2002 but, given the continuing rise in complaints, it will be some time before we can hope to eliminate the backlog.

On the other hand, a reduction of delay is one of the principal benefits of a new complaints system which the Prison Service has been piloting. From what I have seen, the new arrangements seem to be working well. Stripping out Headquarters has removed an unnecessary tier. But it has also placed responsibility where it should be: in the hands of Governors and their staff. The quality of responses prisoners have received seems to have improved markedly.

However, the new Prison Service system may imply a greatly increased number of complaints to my office (this quicker access to independent review being one of its other merits). As the system is rolled out, I may need both to increase my complaints-handling capacity and to develop accelerated ways of working.

## Probation

The challenges presented by the forthcoming extension of my remit to the National Probation Service are similar. Although the workload remains uncertain, we have used the past 12 months to plan and prepare for this major innovation in joined-up criminal justice.

It was unfortunate that the legislative timetable did not permit what will become the office of Prisons and Probation Ombudsman to be put on a statutory basis alongside the National Probation Service. I do, however, welcome the renewed Ministerial commitment to such legislation in the future. Although I do not believe it makes a jot of practical difference, the perception that I am not fully independent must undermine prisoners' confidence in the impartiality of my decisions.

Much the same point was made by the Lord Chief Justice, Lord Woolf, in a speech earlier this year. Noting that I am not permitted to be a full member of the British and Irish Ombudsmen's Association, Lord Woolf suggested I should report to, and be answerable to, the Parliamentary Commissioner for Administration. I agree with Lord Woolf about the problem but I am less persuaded by his solution. However, Lord Woolf's speech has caused me to wonder why the work of my office is exclusively attributed to Aim 4 of the Home Office ("Effective execution of the sentences of the courts ..."). Aim 2 ("Delivery of justice ...") seems no less relevant.

Justice in prison can often concern matters which in the world at large we would treat as unforgivably petty. A piece of property goes missing or is damaged. An envelope is opened in error. Somebody says a word out of turn. But what is trivial to the rest of us takes on more significance in prison. In a situation where prisoners exercise so little autonomy over their lives, my investigations into these affairs also take on a much greater importance. And some of my investigations go to the heart of human rights in prisons. I would like to draw particular attention to three cases. Mr A (10001/00), where I found evidence that a prisoner making a genuine complaint was then subject to a range of administrative measures which looked very much like reprisals.

Mr Y (10233/01), quite the most alarming set of adjudications I have ever reviewed.

Mr Z (10294/00), which I felt was an extraordinary way of handling a legitimate observation of possible discrimination. It is greatly to the credit of the Director General, Martin Narey, that he responded to all three cases with alacrity.

This was entirely characteristic of the attention which the Director General pays to my recommendations more generally and to the excellent relations which my office enjoys with the Prison Service at all levels. There are regular formal meetings and a host of informal contacts. The support of staff in establishments is of even greater importance. Quite simply, the work of my office would come to a halt were it not for the willingness of prison staff to seek out and share the information we request.

## Independence

I encourage an outward-looking attitude on the part of all my colleagues. We cherish our independence of the Prison Service. But independence is not to be mistaken for isolation. I have personally endeavoured to visit as many establishments as possible – especially as a guest of the Board of Visitors – as well as accepting many invitations to speak or write about my work.

I would like to conclude these remarks by thanking all my colleagues for the contributions they have made severally and jointly over the past year. I have been extremely fortunate to work with such a committed and talented band. Much of the last 12 months has involved struggling with insufficient resources. The challenge of the coming year is how best to manage expansion – of remit, of workload, and of staff complement. I am convinced of the contribution the Prisons Ombudsman's office now makes to the Prison Service's admirable aims, objectives and principles. I look forward to sharing these benefits with the National Probation Service as well.

**Stephen Shaw**

## The Year in Summary

**During 2000-2001, I received a total of 2,176 complaints – a 12 per cent increase on a year previously. Of far greater significance to my workload, no fewer than 857 of those cases were identified as meeting my eligibility criteria, an increase of no less than 53 per cent. As I enjoyed no increase in resources – and indeed, suffered considerable staff turnover – this huge increase in the number of eligible complaints caused delays and a backlog to build up. However, thanks to the efforts of my colleagues, we also completed a record number of investigations.**

The much higher proportion of complaints which meet my eligibility criteria appears to be a permanent change. So far as I can judge, it results from the success of the Prison Service in clearing its backlog of cases and reducing delays. In the past, many prisoners lost patience only to find that I would not intervene before the Prison Service had deliberated. The Prison Service's achievement in speeding up the process means that far fewer prisoners now jump the gun.

As in past years, the high security estate generated most complaints. Full Sutton topped the list with 119 followed by Long Lartin with 101. Outside the high security estate, no prison generated more than 50 complaints, with only Dartmoor and Swaleside coming close.

There is, of course, no direct relationship between the quality of a prison's regime and the number of complaints I receive. Indeed, the relationship may sometimes be an inverse one – well run prisons encouraging and empowering prisoners to make their views known.

## Types of complaint

As in past years, reviewing adjudications represents the largest single component of my workload. Twenty per cent of complaints received concern adjudications. But they constitute 40 per cent of complaints investigated, because they are more likely than other complaints to meet my eligibility criteria. However, this proportion has fallen in recent years. As the review of adjudications rarely involves a lengthy investigation – although analysis of the issues may be very complex – the growing share of other types of complaint has further contributed to the demands on my office.

The next largest category of complaints concerns the alleged loss of, or damage to, prisoners' property (22 per cent of completed investigations). Other significant subjects are security categorisation, transfer and allocation decisions, and communications.

There are differences in the eligibility rate of different types of complaint. It discomfited me that so many (87 per cent) of the complaints about general prison conditions do not get past the first hurdle.

Another regret is that so few complaints concern access to regimes. The benefits of programmes and other activities are now well attested. These advantages are sadly not yet open to all prisoners, but complaints on this score are rare indeed. Potentially, I believe my office could play an important role in identifying gaps in provision.

## Ineligible complaints

It is frustrating for me, and must be infuriating for prisoners, that a majority of those who write are told that I cannot investigate their problem because it falls outside my terms of reference. The principal cause – as in past years – is that prisoners must first exhaust the Prison Service's request/complaints system before I can become involved.

It is right that an Ombudsman should only be engaged at the apex of a complaints system. But the volume of ineligible complaints represents so much wasted effort both on my office's part and by the prisoner concerned. One of the great merits of the Prison Service's new complaints system, now being piloted at Feltham, Frankland, The Mount, New Hall and Wandsworth, is that the proportion of ineligible complaints to me is markedly reduced.

Because so many of the complaints I receive do not meet my eligibility criteria, there is a danger that serious issues may be raised but not investigated. In the early part of the year, I became concerned over the number of complaints I had received from HMP Birmingham which contained allegations of staff malpractice including assaults. I put together a dossier of these complaints which I presented to the Director General who commissioned his own inquiry at the prison. I cannot say what the truth of these allegations was, although I am aware of Mr Narey's reported comments that he would not be confident that there had not been physical abuse of prisoners.

In the subsequent, highly critical, inspection report on HMP Birmingham, HM Chief Inspector of Prisons found among a sample of prisoners some 11 per cent who claimed to have been assaulted. The Chief Inspector also said he concurred with my view that the internal complaints system was not working properly and recommended a thorough investigation of the request/complaints system by local management.

The Prison Service has since told me that the new Governor has taken action to ensure that requests and complaints are dealt with in a timely and appropriate manner. I am pleased to learn that senior management now check the quality of responses and that all allegations are thoroughly investigated and brought to a proper conclusion.

## Investigations

A total of 522 investigations were completed during the year, a rise of 6 per cent and the highest number in the office's history. Given the workload and staffing pressures, to which I have referred, this is a tribute to the hard work and dedication of my colleagues.

A further 72 eligible cases were withdrawn, either at the request of the complainant or because I assessed that no worthwhile outcome could be achieved.

For the past three years, the proportion of complaints which I have upheld has fallen. Last year, including local resolution cases, I found for the prisoner in 31 per cent of cases I investigated, compared to 34 per cent in 1999-2000 and 1998-1999 and no less than 44 per cent in 1997-1998.

However, I am also able to make recommendations to the Director General or the Home Secretary where I do not find in the prisoner's favour. I did so in a further 57 cases, meaning that in total I either upheld the complaint or made a recommendation (sometimes multiple recommendations) in over two in every five cases I investigated.

## Time targets

My objective is to complete investigations within eight weeks of accepting a complaint and to issue my final report within 12 weeks. I regret to say that the growth in the number of cases has meant a deterioration in our performance against this 12 week target. Sixty-three per cent of cases were completed on time compared to 73 per cent a year earlier.

## Recommendations

During the year, I made a total of 251 recommendations to the Director General. In the same period, he accepted a total of 208 recommendations (local resolution cases are not counted for these purposes). At 31 March 2001, the Director General was still considering other recommendations I had made.

In five cases, the Director General said he was unwilling to accept my recommendations (three of those concerned cases completed during 1999-2000). There was no common thread to these cases.

One case (10279/99) involved a location-based incentives scheme which the Director General felt was necessary for the stability of the jail in question. It led to a long correspondence but I was unable to persuade the Director General to change his mind. (My view of the matter was subsequently endorsed in an inspection report from HM Chief Inspector of Prisons.)

Another case (11445/99) concerned an adjudication. I did not challenge the Director General's decision having seen the legal advice which the Prison Service received. The third case (10791/00) concerned a disciplinary punishment. Although I was surprised and disappointed that the Director General did not accept my view, I decided not to pursue this rejection at length given that the effect of my recommendation on the prisoner concerned was nugatory.

The fourth case (11892/99, see page 52) concerned a prisoner who protested his innocence and was thereby denied enhanced status under the Incentives and Earned Privileges scheme. I have continued to pursue this matter and a number of related cases are currently suspended.

A final case (10837/00) concerned damaged property and was still the subject of discussions between myself and the Director General at the end of the year.

In one case (11767/99) the Secretary of State rejected my recommendation. This was that he should exercise his discretion and allow a period spent unlawfully at large to count towards sentence. The circumstances were exceptional: the Prison Service had released the prisoner in error. However, the Secretary of State took the view the prisoner had contributed to the mistake and should not be rewarded for absconding previously.

## Listening to young prisoners

The office of Prisons Ombudsman exists for all prisoners. But remand prisoners, short-sentence prisoners, women prisoners and young prisoners have consistently been under-represented in my caseload.

The under-representation of young prisoners is well illustrated by a single statistic. For every one eligible complaint from Feltham, since the office was set up in 1994, there have been over 40 from Whitemoor. Nor is Feltham unusual amongst Young Offender Institutions. Hatfield YOI has had absolutely no dealings with my office at any time.

To find out why young prisoners make so little use of complaints procedures, I commissioned a survey of all YOIs.<sup>1</sup> The survey reveals that, while most YOIs have few formal complaints, there are significant variations in the use of request/complaints procedures between establishments. There are differences too between establishments in terms of the proportion of complaints which go to appeal and to the Ombudsman.

With the assistance of the Youth Justice Board, I am now looking to develop more youth-friendly procedures and promotional material. I believe Boards of Visitors can play a part as well. My reading of HM Chief Inspector's reports on YOIs, and likewise the Annual Reports of Boards of Visitors, has not shown a great emphasis on request/complaints. I strongly support the monitoring role of Boards of Visitors and believe all BoV Annual Reports should include a section on request/complaints.

## Evidence to the Commission for Racial Equality

The racist murder of one prisoner by another at Feltham – and the subsequent Prison Service inquiry and police investigation – together with the Service's further inquiry at Brixton, have ensured an unprecedented focus on race issues in the prison system. I was therefore pleased to have the opportunity of contributing to the Commission for Racial Equality's Formal Investigation into Racism in the Prison Service.

In that contribution, I paid tribute to the commitment which the Prison Service had shown to race equality, a commitment given a further boost through the admirable RESPOND programme. I also acknowledged the weaknesses in my own office – in particular, our inflexible computer system which means that a number of instances where race has been a factor in a complaint have been statistically 'lost'. Self-evidently, this is not good practice. The planned replacement of our IT gives me the opportunity to rectify this situation.

The core of my evidence to the CRE consisted of complaints which I and my predecessor had received in which racial bias had been alleged. I also reported on complaints which I had investigated alleging that Prison Service investigations into racist incidents had been flawed.

## New terms of reference

The extension of remit to the National Probation Service has necessitated a review of the Terms of Reference under which my office operates.

I have also been concerned about the anomalous situation which occurs in relation to juveniles and Immigration Act detainees. As regards the former, access to my office is entirely dependent on whether the custodial part of a Detention and Training Order is served in a YOI (eligible), secure training centre or local authority secure accommodation (both ineligible). Three boys sentenced for the same period for the same offence could each end up in a different part of the system with different rights and safeguards. There is nothing very joined-up about this.

As regards Immigration Act detainees, they enjoy a right of access to me if they are held in Prison Service accommodation (including the so-called Holding Centre at Haslar) but not if they are in designated Immigration Detention Centres. However, HM Inspectorate of Prisons covers both types of institution.

In respect of both juveniles and detainees, I made proposals to the former Secretary of State that they be brought within remit. He told me he was minded to accept these plans, although implementation would not be before the impact on my office of the streamlined Prison Service procedures and the extension to probation could be assessed. I have also proposed that my responsibilities be expanded to encompass all those, save staff, who may have a complaint against the Prison Service – the mother unable to get through on a booked visits line no less than her son.

## Letting others know

To improve understanding of my work, and disseminate details of complaints I have investigated, I have initiated a newsletter – the Prisons Ombudsman's Case Digest. Copies are distributed widely and have enjoyed a favourable response.

I am also grateful to the Director General for arranging circulation to all Governors of a paper drawing together lessons from the adjudications I have reviewed.

As part of this effort to increase awareness, I have written for a wide variety of prison and criminal justice journals. My colleagues and I have also undertaken a large number of speaking engagements and prison visits. Although they have not progressed as quickly as I would like, members of my office have arranged 'surgeries' for prisoners at a number of gaols.

## Business change

A rapidly changing work environment – both in terms of the volume of complaints and the extension of remit to probation – has necessitated equally rapid change in my office's procedures and outputs.

Domestically, I have re-organised the office such that a single Assessment and Implementation Team is responsible for all aspects of our work either side of the investigation itself. For the time

being, I have also abandoned the patch system for investigators – where they had responsibility for prisons in a designated area – and replaced it with a central 'cab rank'.

Regrettably, the installation of a new computerised case-tracking system, which I regard as essential, has been delayed for reasons outside my control. However, work has progressed well towards new corporate and business planning mechanisms and a new communications strategy which will come to fruition during 2001-2002.

The accelerated complaints system which the Prison Service has been piloting has also necessitated changes in my office's procedures. I believe in time it will act as a catalyst for a more devolved, less formalised approach to resolving many complaints.

There has, in any case, been a radical change in the way cases are completed. The long, formal report continues to have its place – especially if the issues are complex or when recommendations are being made to the Prison Service. But it is no less common now for cases to be closed by letter. Nor is this an inferior outcome so far as the prisoner is concerned. A letter is often easier to understand – and can be much more personal – than a report.

I am also delighted to record the growing success of the third item in the product range: completion by local resolution. By this I mean an agreement between the parties at the instigation of my office.

## What prisoners say

Delays in dealing with complaints have, quite rightly, been a source of anxiety and criticism on the part of some prisoners. No fewer than 442 cases were open and eligible at the end of the year.

I take very seriously the views of those prisoners who have written to me personally about delays in completing their cases. However, I have been encouraged by the results from a survey of prisoners organised on my behalf by the Research, Development and Statistics Directorate (RDS) of the Home Office.

RDS analysed 379 questionnaires covering the first nine months of 2000-2001. Two-thirds of those sampled (including those whose complaints were eligible and ineligible, those I upheld and those I rejected) said they would use the Prisons Ombudsman's office again. Of those whose complaints I investigated, almost four out of five said they found my report easy to understand. Sixty-five per cent of prisoners with ineligible complaints said they were satisfied with how quickly their complaint was dealt with (the question was not asked of those with eligible complaints).

At the same time, the questionnaires did reveal areas of greater weakness. Among prisoners with eligible complaints, there was criticism of the quality of my investigations. Indeed, around half of those whose complaints I did not uphold said they did not fully understand why. And a third of those whose complaints were ineligible said they did not understand the reasons why their complaint was not accepted for investigation.

The questionnaire replies also reveal gaps in the way prisoners find out about the Prisons Ombudsman. When prisoners with eligible complaints were asked how they learned about my office, 22 per cent cited induction, 19 per cent cited my publicity material, and 10 per cent respectively cited the Prisoners' Information Book and the Board of Visitors. However, word of mouth (that is, learning from other prisoners) seems to be the most frequent method. There were similar results from the prisoners whose complaints were ineligible, although the proportion mentioning my leaflet and poster rose to 28 per cent. A major revamp of all our publicity material is planned for 2001-2002 to coincide with the extension of remit to probation.

One final set of findings is worthy of note. There continues to be encouraging evidence that my office is used by prisoners from all ethnic groups. The diagram shows the proportions of black and Asian prisoners represented in my caseload. These proportions are broadly equal to or greater than their representation in the prison population as a whole.

(<sup>1</sup> -Prisons Ombudsman (2001), Listening to Young Prisoners: A Review of Complaints Procedures in Young Offender Institutions.)

Eligible		Ineligible	
White	67%	White	74%
Black - African	6%	Black - African	2%
Black - Caribbean	6%	Black - Caribbean	7%
Black - Other	6%	Black - Other	5%
Asian - Indian	6%	Asian - Indian	2%
Asian - Pakistani	2%	Asian - Pakistani	2%
Asian - Bangladeshi	0%	Asian - Bangladeshi	1%
Asian - Other	5%	Asian - Other	2%
Other	0%	Other	1%
No reply	2%	No reply	4%

## The Right to Complain

**Complaints to me represent a tiny fraction of the problems resolved in establishments, let alone of the daily interaction between prisoners and staff. A regime which routinely treats prisoners and their complaints with respect has far more impact on prisoners' wellbeing than my recommendations ever can. But as the founding fathers of my office anticipated, the existence of an Ombudsman, and the possibility of having to answer awkward questions from my investigators, contributes to a climate of accountability.**

**Many prisoners still believe that some staff resent prisoners complaining and will 'get their own back' if prisoners put in request/complaints. That belief undermines the system. I take a very serious view of any actions by prison staff that give it credibility. I am pleased to say the Director General is of the same opinion.**

**I consider the complaint set out overleaf one of the most important I have investigated.**

**Mr A (10001/00) told me he had been victimised as a result of making a request/ complaint. The request/complaint was about the handling of his legal correspondence and, as it happened, his concerns were entirely justified, but it is what happened next that caused me such anxiety. This is what I found:**

**Mr A was an enhanced prisoner, with no positive drug tests and no disciplinary offences against him. He made a complaint or, as he saw it, a request for clarification. The complaint was justified. Indeed a governor acknowledged in the written reply that "the letter of the rules" was not observed.**

**A governor and an officer also interviewed Mr A about his complaint. Mr A said they called him a "whinger" and told him in no uncertain terms not to "threaten" his interviewers with the Prisons Ombudsman. Next day, Mr A was called for a drugs test based on 'reasonable suspicion'. The test was negative.**

The same day, Mr A's cell was searched. Contrary to the requirement in the Security Manual, the prison could produce no record for the search. Mr A was charged with unauthorised possession of a portable easel, a pair of curtains, a thermos flask and a piece of carpet. Mr A said they had been given to him 18 months before, by a prisoner who was being transferred, that the flask was broken, and that staff had never worried about these items in previous searches.

Mr A was also given a warning under the IEP scheme in which he was told not to make "unwarranted" complaints.

Although Mr A felt strongly about his complaint, and was not satisfied with the answer, he did not appeal to Prison Service Headquarters. He raised the issue only some months later during a prisoner consultation exercise about request/complaints. He said he had not pursued the matter precisely because it was made clear to him it was not in his interests to do so.

The explanation given for the drug test was that Mr A had been uncharacteristically "verbally aggressive" in the interview about his complaint. Perhaps the cell search was conducted for similar reasons. With no record, I could not find out. A note by the governor who conducted the interview said Mr A made "threats" of legal action.

The note also said it was not apparent at the time that Mr A "felt so strongly" about what was said.

It was hard to reconcile the claim that there were no signs Mr A felt strongly about his complaint with the statement that he was so verbally aggressive there was reason to believe he was under the influence of drugs. I was not satisfied that there were grounds for reasonable suspicion justifying the test and the search. I accepted Mr A's evidence that the items taken from him had not been challenged in previous searches. I could not avoid the conclusion that the drug test, the search, the removal of the 'unauthorised articles' and the charge came perilously close to intimidation, in effect if not in intent.

Action by staff that discredits the request/complaints procedure not only denies prisoners their entitlement but does great harm to the Prison Service. In contrast, when a complaint has been dealt with thoroughly and fairly by a prison I celebrate it, even though the complainant may not be satisfied.

Mr B (10697/00) complained that an officer had been verbally abusive to him on several occasions. He was not satisfied with the Governor's response and wanted a personal apology from the officer. I described the internal investigation by a Principal Officer as a model. It was thorough and wise. It concluded that the officer about whom Mr B complained was in the habit of using offensive language, which the officer defended as acceptable to prisoners as "run of the mill banter". In a letter to Mr B, the Governor told him he accepted that inappropriate remarks were made. Although some might construe it as banter, the Governor said he did not consider such language acceptable and apologised. I applaud the Governor for making clear the standards he expects of staff and for taking personal responsibility.

## Complaints about racism

Whenever a prisoner complains, he or she has a right to expect a proper examination of what went on. This is all the more important when a prisoner complains he or she has been subject to racist abuse or discrimination.

I investigated three complaints from prisoners who believed that their concerns about racism had not been investigated properly by the Prison Service. In each case there had been an investigation but I found deficiencies in the way it had been conducted. Those deficiencies led the prisoners to believe their allegations were being swept under the carpet.

**Mr C (11077/00) complained that a particular officer subjected him to racist verbal abuse and that other officers were aware of it but unwilling to challenge him. The prison conducted an investigation. Mr C complained to me that the investigation was biased in three ways. In the selection of witnesses. In that he had not been allowed to check the note of his interview, from which he claimed that reference to a key witness had been omitted. And in that this witness's name had been disclosed to other officers who had no connection with the investigation. I found a number of deficiencies in the investigation and asked the Governor to re-open it.**

I was also concerned in this case that the prison was reluctant to record the complaint as a 'racial incident'. A governor instructed that it should not be so recorded because it had not been established that an incident had occurred. Prison Service guidance rightly defines a 'racial incident' as one where any person dealing with, or witnessing, the incident perceives a racial element. There should be no equivocation on this point. That is not to say that all complaints thus recorded should be regarded as substantiated. But anything less risks under-playing a problem that will be tackled only through honest recognition.

**Mr D (10713/00) and Mr E (10829/00) both complained about an incident in a discussion group in which a member of staff spoke about black and Asian people in a way which indicated racial prejudice and which they found insulting and distressing. The prison investigated and replied that there was no evidence of racial discrimination.**

Like Mr C, Mr D and Mr E complained to me about how their complaints were investigated. I concluded that the investigation was not as thorough as it should have been: the interview with the officer in question was insufficiently searching and more witnesses should have been approached. I also considered that the complainants should have been given a more substantial explanation of the prison's conclusion.

"I am very, very happy by your findings. You confirmed something that I knew to be true. That a proper internal investigation was not carried out." (Mr D)

The problem of racism will be tackled only through honest recognition.

## The Disciplinary System

**I understand that around 110,000 adjudications take place each year – most of them (104,400 in 1999) resulting in findings of guilt. However, they are not evenly distributed across the prison estate – young prisoners and women prisoners both being significantly more likely to be charged under the disciplinary system than adult men. Despite this, young prisoners and women are under-represented in my caseload as appellants against adjudications. In one Young Offender Institution I visited this year, there had been 1,530 adjudications resulting in just 23 appeals. In my review of complaints procedures in YOIs, I have recommended that the Prison Service ensures all young prisoners are fully aware of the appeals system following adjudications.<sup>1</sup>**

**I am similarly bemused by the absence of women appellants. Perhaps the quality of justice dispensed at adjudications is higher in women's prisons. Perhaps staff in women's prisons take more trouble to explain adverse decisions. Or it may be that women prisoners**

**are not aware of the appeals process. Or they simply accept adverse findings and punishments at adjudications as part of their lot.**

Adjudicators exercise substantial powers: they can extend the effective length of a prison sentence by the equivalent of nearly three months and they can order up to two weeks cellular confinement. With such powers comes a heavy responsibility: to inquire fully into all the circumstances giving rise to an alleged offence and to assess if guilt has been proved beyond reasonable doubt. I have been pleased to note more governing governors responding to my plea that they should all conduct at least some adjudications. I hope the time may not be long away when the requirement that adjudicators keep a contemporaneous hand-written record is dispensed with, and tape-recording introduced as standard. I regret to say that many of the records of hearing which I review are extremely skimpy.

I set out below a range of adjudications which I have reviewed this year.

## Legal advice

Prisoners who request legal advice must be given time to obtain it.

**Mr F (10225/00) complained about an adjudication where he was found guilty of disobeying an order and received a punishment of 14 added days. He said he was not allowed to consult his solicitors as he had requested at the start of the hearing. The record was unclear as to what had been said.**

The adjudicator said he considered the 'Tarrant' principles when examining the question of legal representation. But different considerations apply to requests for legal advice. Although Mr F's evidence was substantially similar to that of the reporting officer, I had to consider whether the failure to adjourn to enable Mr F to seek legal advice so tainted the evidence as to constitute a fatal flaw. Obviously I cannot know if the outcome of the adjudication would have been different if the adjudicator had adjourned. But that was self-evidently a possibility. I upheld Mr F's complaint and recommended quashing the finding of guilt and remitting the punishment.

## Punishments

In this report a year ago, I criticised the use of the term 'award' to describe disciplinary punishments. The Director General has responded positively to my views. In a letter of 30 June 2000, he said he shared my unhappiness with the usage:

*"The term 'award' is used in the 1991 Act and is consequently replicated in the Rules. That much will have to remain unchanged until the Act is one day replaced. But in day to day usage there is no reason why we need to stick with this term. I therefore intend to move the Service towards using the term 'imposition of a punishment of ...' We will take the opportunity ... to formalise this policy and to emphasise to staff the new usage. I have no doubt that ... the term 'award' will have some life left in it, but in time it will disappear."*

Sometimes the punishment imposed seems modest in terms of the harm that could result.

**Mr G (10086/01) complained about the severity of a punishment of 42 added days. I discovered the punishment had been imposed because a litre container of cyanide had been found in the boot of his car. Mr G had been in an open prison, working part-time in the community. I viewed this as a particularly serious incident with potentially fatal consequences and did not uphold the complaint.**

And sometimes the punishment seems excessive.

**Mr H (11547/00) received 42 added days for disobeying a local rule banning the use of a mobile phone in his open prison. The phone had been found in a dormitory and Mr H had admitted he had used it in breach of the rule. He had no previous adjudications and nothing adverse was recorded against him. Clearly Mr H had breached the trust shown in him, and I am not naive about the uses to which mobile phones may be put. But punishments must be proportionate to the harm caused. In this case, Mr H could not have been punished more severely if he had absconded. Following my normal practice, I recommended reducing the punishment only to the establishment's current 'tariff'. However, I was anxious that it might still be out of line with the approach elsewhere.**

## The Human Rights Act

I welcome Prison Service Instruction (PSI) 61/2000, issued on 2 October 2000, which contains guidance on the implications of the Human Rights Act for the conduct of adjudications and the imposition of punishments, particularly added days. The PSI states that it is important that governors do not impose punishments which are disproportionate to what is necessary, taking account of all the circumstances of the case, to achieve their aim – namely to act as a deterrent to that prisoner and others to ensure good order and discipline in the prison.

The PSI provides examples of where added days may be appropriate. As for the level of punishments, the PSI states:

*"Where additional days are imposed, the number of additional days imposed must be proportionate to the aim of securing good order and discipline.*

*Adjudicators should be particularly careful before imposing a large number of additional days. Overall, it should be extremely rare for punishments of more than 28 days to be made."*

In line with the guidance in this PSI, it will also be extremely rare for me to uphold punishments of more than 28 days.

I am looking closely at the level of all punishments to ensure they are consistent with the PSI's guidance.

## Compensation for cellular confinement

When an adjudication is quashed, the punishment is remitted. Added days are removed and lost earnings are restored. However, when the punishment is one of cellular confinement, it has almost invariably been served by the time the adjudication is reviewed. I have carefully considered when it might be right to recommend financial compensation for periods spent in cellular confinement for disciplinary findings that are later quashed.

In my view, compensation should not be offered as a right, given the legitimate purpose of the adjudication system. There is, however, one aspect of cellular confinement which results in a clear financial penalty. That is to say, the earnings from prison work, which a prisoner on cellular confinement necessarily forgoes. It seems to me that an analogy can be drawn between these lost earnings and those ordered to be lost as a direct result of a disciplinary punishment. In the latter instance, if an adjudication is subsequently quashed the earnings are restored. I believe a like procedure should apply to punishments of cellular confinement, and this has now been agreed by the Director General.

I judge every case on its merits.

**Mr I (11535/99) had been found guilty of assaulting another prisoner and given a punishment of four days cellular confinement. However, the adjudicator had applied the wrong burden of proof ('balance of probabilities' not 'beyond reasonable doubt') and, quite properly, the finding of guilt was quashed by Prison Service Headquarters, and the punishment remitted. Mr I argued that remitting the penalty had no practical effect, as he had already served the cellular confinement. He said the adjudicator's failure to apply the appropriate standard of proof amounted to maladministration.**

I had some sympathy with Mr I's argument that, if no redress is offered for punishments served before an appeal, the right to review is a hollow one. However, I do not believe I could reasonably expect the Prison Service to delay invoking sanctions until after the appeal process is exhausted. I think that is unrealistic. The disciplinary system is a legitimate part of the machinery of maintaining order in prisons and the imposition of immediate sanctions is a necessary concomitant.

In Mr I's case, there was significant evidence before the adjudicator of Mr I's involvement in the incident which gave rise to the charge. I did not consider that justice would be served by granting him general compensation from the public purse. However, I recommended that he be paid compensation equivalent to any lost wages (less any unemployed pay) he endured as a result of his time in cellular confinement.

Sadly, this did Mr I little good himself. The Prison Service examined his pay records and discovered he had in fact suffered no loss of income. It seems that the decision to place Mr I in cellular confinement did not reach those responsible for the payment of wages and he continued to receive his normal income.

## Getting the charge right

Some procedural flaws render the whole proceedings nonsensical. I can hardly be expected to uphold findings of guilt when the details of the charge are illogical or impossible.

Here are two examples.

**Mr J (10202/00) was a witness at an adjudication on another prisoner. During the adjudication, Mr J admitted assaulting a third prisoner. He was then charged as follows: "By your own admission you did assault prisoner A." I was concerned by a number of features of Mr J's own adjudication – including the failure of the medical officer fully to complete the section of the documentation relating to a prisoner's fitness for adjudication and punishment. But the key problem was that the time and date of the offence was said to be when Mr J admitted the assault, not when the alleged assault actually occurred. These details could have been changed but were not. I recommended quashing the adjudication on the self-evident grounds that it is not an offence to admit having committed an offence in the past.**

**Mr K (10120/01) was charged with two offences of administering a controlled drug to himself. However, I discovered that the details on the records of hearing showed Mr K was accused of administering the drugs after the urine sample had been collected. (The prison was unable to supply me with copies of the notices issued to Mr K, but I must assume that the details were the same as those on the records of hearing.) The Prison Discipline Manual makes clear that, in drugs charges, entering the correct dates in the particulars of the charge is "essential". I had little doubt that the wrong dates had been recorded because of a clerical error. However, I thought this was much more than a mere technical**

**flaw. It was logically impossible for Mr K to have been guilty of what he was charged with, and I recommended both findings of guilt be quashed.**

When is an order lawful?

**Mr L (10356/00) was charged with disobeying a lawful order, namely that he refused an order to stand at the back of his cell. Mr L was in the segregation unit and the unit rules required those assessed on entry as 'Level One' or 'Level Two' to stand at the back of their cells on unlock because of the perceived threat to staff.**

I did not uphold Mr L's complaint and was satisfied that the segregation unit rule in question was both reasonable and lawful, even when applied to every prisoner in the unit. However, it was a rule which I would not want to see over-used and which might sometimes damage relationships between staff and prisoners. I am pleased that the prison in question no longer applies a blanket rule for every segregation unit prisoner to stand at the back of the cell on unlock and that an individual judgement is now made.

In any adjudication arising from this or similar rules, I consider it would be good practice for the adjudicator to establish three things to demonstrate that the order was lawful. First, that the prisoner has been assessed as Level One or Level Two (these terms may not apply elsewhere, but like considerations will apply). Second, that the prisoner is aware of this assessment. Third, that the assessment and the resulting requirement to stand at the back of the cell is reasonable. Unless these three stages are completed, any adjudication for disobeying a lawful order relating to so-called back-wall unlock will be vulnerable on appeal.

## Drugs offences

Many of the adjudications I review concern charges involving the administration of drugs. Prisons must follow foolproof procedures if such adjudications are to survive review by the courts.

**Mr M (12204/00) claimed that a requirement to provide a sample for MDT purposes breached his right not to incriminate himself under Article 6 of the European Convention on Human Rights. I obtained legal advice which convinced me there was no breach of Article 6 in the requirement to provide a urine sample for drug testing.**

**Following a break-in to the MDT suite, and the destruction of his urine sample among others, Mr N (10171/00) was required to provide a further sample under reasonable suspicion. Mr N strongly resented the implications. I sympathised with Mr N but, as he had suffered no adverse consequences, and as the Prison Service appeared to have acted within its powers, I did not uphold his complaint. However, I recommended that MDT procedures be revised to allow for repeat testing without attributing suspicion when a test is frustrated by accident or other unforeseen events.**

**The issue in Mr O's case (10114 & 10115/00) was whether he was given sufficient time to arrange an independent analysis of his urine sample (the screening test having shown the presence of two drugs – hence there were two charges). The adjudicator clearly felt that Mr O was engaging in delaying tactics. In contrast, I did not feel that a not guilty plea and a single adjournment constituted such tactics. There was evidence that Mr O was trying to arrange an independent test, although there was an issue about payment. The failure to adjourn further to allow Mr O an opportunity to show he was willing to pay for an independent analysis was not in line with official guidelines, nor was it fair, and I recommended both adjudications be quashed.**

**The case of Mr P [10491/01] concerned the rights of Muslim prisoners. Mr P was taken to the MDT suite one afternoon during Ramadan. He made it clear that he would be unable to provide a sample as he had not had a drink since 5.00 am, and was unable to accept water from staff. Despite Prison Service guidance that during the month of Ramadan Muslim prisoners should be tested first in the day, Mr P was found guilty of refusing an order to provide a urine sample. I referred the case to the Drug Strategy Unit in Prison Service Headquarters who concluded that the adjudication should be quashed in light of the disregard for the guidance. I asked the Area Manager to take a second look at Mr P's appeal and the adjudication was overturned.**

"I believe I was not dealt with fairly and the punishment is unjust. I have not been nicked in two and a half years, and this was not a direct abuse on my side." (Mr P)

Not all drugs should be treated the same. In two cases, I recommended reducing punishments when I discovered a blanket approach to all opiates, no matter what the source.

**Mr Q (10084/00) was given a punishment of 28 added days and 7 days cellular confinement after testing positive for opiates. He had no previous adjudications and said he had taken a couple of codeine tablets from a fellow prisoner to cure a headache. He pleaded guilty after obtaining the results of an independent analysis. This showed that his sample contained a small, but significant, quantity of morphine – indicating that he had taken a preparation that contained either morphine or codeine (codeine converts to morphine in the body).**

"This was my first adjudication in 32 months and I feel I have been badly dealt with. The governor gave me 28 days added to my sentence and 7 days cellular confinement for drug abuse (opiates) when in fact it was clear to see that there was no form of drugs involved at all." (Mr Q)

I thought the punishment was insupportable. A punishment equivalent to a two month sentence in the outside courts for using a painkiller freely available in any chemist's simply could not be justified. While I understand and support the efforts of prisons to eliminate drug taking, the Mandatory Drug Testing programme was not designed to catch prisoners who take another's medication when they have toothache or a headache. I recommended halving the added days.

**In a similar case at another prison, Mr R (10910/00) admitted to taking the common painkiller co-codamol. But here too I discovered the prison's policy was to treat all positive MDT results for opiates in the same way. No distinction was made between results caused by illegal drugs such as heroin and those caused by substances present in non-prescription medicines. Again I recommended the number of added days be halved.**

There was an important postscript. I recently investigated a similar case where a prisoner's sample was found to contain codeine. I asked the Prison Service to reconsider the adjudication. The Area Manager subsequently quashed the adjudication on the ground that codeine, in its medicinal form, is not a controlled drug. The implications of this decision are likely to be wide ranging. I have written to the Director General to ask what action he will take where other prisoners have been found guilty of administering a controlled drug as a result of taking a painkilling preparation freely available outside prison.

Special care must be taken when adjudicators are faced with items alleged to be associated with drug taking.

**Mr S (10827/00) was found guilty at adjudication of possessing an unauthorised article, namely "a quantity of foil associated with drug abuse". I found flaws in the searching process and was disappointed by the general conduct of the adjudication. My major worry was that no test had been carried out on the discoloured foil to show that it had been used**

**in relation to drugs. I understand that a simple test is carried out in most establishments which allows for the identification of the drug concerned. In the absence of such a test, I did not see that the adjudicator was justified in finding the charge proved beyond reasonable doubt.**

## Orders to 'squat'

Strip searches are an undignified and unpleasant but necessary feature of prison life. There are special indignities in being asked to bend over or squat in front of a prison officer. Prisoners must not be required to squat during strip searching as a matter of routine. They may only be required to do so if there are grounds for suspicion that they have concealed something in the anal or genital areas.

**In the case of Mr T (11150/00), I recommended quashing an adjudication for refusing a lawful order. For an order to squat to be lawful, there has to be reasonable suspicion. It was not sufficient for the reporting officer simply to assert that the order was lawful without specifying why. Nor did Mr T's guilty plea establish that the order was lawful. An adjudicator is required to inquire into the lawfulness of the order to establish that all the preconditions of guilt are present.**

**I was even more anxious about the case of Mr U (10793/00), who also complained about an adjudication for refusing an order to squat. The evidence of the reporting officer was that he had asked Mr U to squat, "because he was acting suspiciously in that he was nervous and fidgety". I felt this description, which the adjudicator failed to ask the officer to enlarge upon, fell far short of demonstrating reasonable suspicion that Mr U had secreted an item or items in the anal or genital areas. I shall continue to exercise great vigilance to ensure that orders to squat are not given as a matter of course.**

## Multiple Charges

Adjudicators face particular problems where there are multiple charges or multiple defendants.

**Mr V (10587/00) complained about an adjudication where he was found guilty of fighting. His adjudication took place simultaneously with that involving the other prisoner. Both the hearings began at the same time and both records referred to each other. But neither record said whether Mr V and the other prisoner were present to hear all that was said. The crucial evidence against Mr V was a written statement submitted by the other prisoner. But there was no indication that this statement was read out or that Mr V had the opportunity of questioning it. I considered the adjudication to be fatally flawed and it was quashed on my recommendation.**

## Video Evidence

I frequently review video recordings of incidents leading to adjudications. Video evidence is often submitted in respect of charges relating to unauthorised articles being passed on visits, but there are other occasions when video recordings could be crucial.

**Mr W (11437/00) was charged with threatening, abusive or insulting words or behaviour, namely that he picked up a chair in the visits room and brandished it at staff. His defence was that he was defending himself against possible attack by officers. However, the adjudicator chose not to view the video surveillance of the visits room, relying instead on**

**the varying accounts of the staff and prisoners involved. I could not understand this preference for memory and anecdote over physical evidence. Even had the outcome of the adjudication been the same, playing the video might have demonstrated to Mr W why officers thought his behaviour was threatening. Sadly, I could not follow my own advice as the video had been taped over by the time I reviewed the adjudication.**

## Remission of Added Days

Prisoners given punishments of added days may subsequently apply for them to be remitted. Remission of added days should be used to reward prisoners with a constructive approach towards their imprisonment and to acknowledge a genuine change of attitude. Remission is not an automatic entitlement, but at the discretion of the Governor. If prisoners are to be treated fairly and equitably, the process must be rigorous.

**Mr X (10795/99) was not given an opportunity to make oral representations or answer the report drawn up about him. The report itself had not been completed in line with the guidance and I was sceptical about one particular reference to poor behaviour on Mr X's part. Had the process been carried out properly, Mr X might still not have received remission of his added days. But given the way his application had been dealt with, I recommended he receive an apology.**

## Racial Bias

Two cases involving black prisoners have caused me particular concern.

**Mr Y (10233/01) complained about the outcome of three adjudications. The first charge related to his allegedly "lewd" conduct with his female visitor and he received seven added days. The second was a charge of insulting words or behaviour when refusing an order to desist from these lewd actions. The punishment was 14 added days. The third charge was brought under paragraph 19: being disrespectful to an officer. The details here were that Mr Y called an officer "a racist". For this, the adjudicator imposed 21 added days.**

**I discovered, amongst other things, that the local rule Mr Y was alleged to have breached did not debar the behaviour of which he was accused. That contrary to what the adjudicator believed, Mr Y's previous behaviour in prison had been pretty good. That the timing of the three charges did not make sense. And that although the adjudicator had written the word "sol" on all three records of hearing, it was not clear if this referred to advice or assistance and, in any case, no other reference to the request appeared.**

**I concluded that the decision to bring three charges was excessive, not to say oppressive. And a total punishment of 42 added days for an unfortunate but relatively minor occurrence in the visits room was completely unacceptable. But I was particularly concerned that an accusation that a member of staff is racist, or acting in a racist manner, should ever give rise to a disciplinary charge without a proper investigation taking place.**

**This issue was considered by my predecessor, Sir Peter Woodhead, in an earlier inquiry (10924/98) and is summarised on pages 19-20 of his Annual Report for 1998-99. It has been given added urgency by the report of the Stephen Lawrence Inquiry. Sir William Macpherson's definition of a racist incident is "any incident which is perceived to be racist by the victim or any other person". The idea that such a perception should lead, without any inquiry, to a disciplinary charge is simply grotesque.**

If anything, the second case was even worse.

**Mr Z (10294/00) was correctly adjudicated upon for an offence against prison discipline and accepted his punishment. However, when he returned to his wing he was told he could no longer work as a cleaner because of the guilty finding. He was told by an officer this was "wing policy". Mr Z pointed out that two of his white friends on the wing had also been found guilty at adjudications but had not lost their jobs as cleaners. He told the officer he felt he was being discriminated against.**

**A commonsense view of this exchange would be that Mr Z was – with reason – alleging that he had been treated in an unfair and discriminatory manner. Indeed, both the Request/Complaints Manual and the Race Relations Manual require an investigation when an allegation of this kind is made. Instead, Mr Z found himself on a further charge for calling staff racist for sacking him.**

**At the adjudication, Mr Z asked the reporting officer if he felt that sacking him, and not the two white cleaners, looked racist. The officer replied, "Colour has no relationship in this question." After inquiring into whether there were any witnesses, the adjudicator found the charge proved. He said to Mr Z, "There was no colour prejudice in this decision. This is the wrong thing to say and an officer would be in serious trouble if he stated this to you."**

**I found this whole train of events quite bewildering. The Prison Service has a boldly worded statement of its policy on race relations making clear its absolute commitment to racial equality. However, in order to meet this commitment, the Prison Service must create an atmosphere in which those who believe they are victims of discrimination feel able to speak up without fear of reprisals. To resort immediately to the disciplinary system to deal with allegations of racism or prejudice is both wrong in principle and likely in practice to undermine the Prison Service's policies in this area. I upheld Mr Z's complaint in the strongest terms.**

"I was sacked from my job but two white inmates did not get sacked after their adjudications and I said I thought it looked racist. And I still believe that. The charge said I used threatening, insulting or abusive behaviour or language and I did not. I merely spoke my opinion. Please can you help because this is not justice. Surely I should be able to say if I believe something is racist without losing seven days and two days canteen." (Mr Z)

## Property matters

**Property matters a great deal in prison. Where so much is drab and uniform, clothing, a stereo, tapes, hobby materials and sentimental items all provide ways prisoners can hold on to their individuality. At the same time, lack of money, spending limits, restrictions on what can be sent in to prison, all mean that lost items are not easily replaced. Material possessions assume an importance not always understood by those who do not know prison.**

**Material possessions can also be currency in prison. There are good reasons why prisoners are not allowed to give or lend property to others without permission. But prisoners' "in possession" property does change hands unofficially, through theft, through "taxing" or through friendship. Consequently, property records do not always match reality even when staff maintain them with care.**

**Property complaints have consistently featured in my office's postbag, but my investigators have observed some notable improvements over the years. There are reception officers who impress by their meticulous record keeping and clearly take pride in this very important role. Respect for prisoners' property is an essential part of running a decent Prison Service and I salute those officers who manage it well.**

**Complaints about property and cash accounted for 18 per cent of investigations during 2000-2001. In just under half, I recommended a remedy of some sort for the complainant. In another 14 per cent I made a recommendation even though I did not uphold the complaint. I am glad to say that approaching half the remedies were secured by local resolution.**

## Cell clearance

The chief 'hotspot' for complaints about property is the cell clearance. Usually this occurs when a prisoner has been removed from his cell and taken to the segregation unit, although there can be other reasons – for example, if a prisoner is taken ill. The prisoner is moved without his or her possessions and it becomes the Prison Service's responsibility to keep them safe and secure. If the prisoner is not expected to return to the cell soon, prison staff will pack the property, and it is stored until it can be issued to the prisoner again or delivered to the prisoner's next location.

Few of us would enjoy being suddenly removed from our homes and having strangers go through our possessions and bag them for storage or transit, especially if we have had no chance to put our things in order first. Few of us would enjoy being in the position of the officers who have to do this. The staff have to pack all the property with care and must make a painstaking inventory, to establish whether authorised property is missing and identify any property which is not authorised. This is time-consuming and may be unpleasant, but it is necessary. For, as the following cases illustrate, sometimes things can go wrong.

**Mr A (10229/00) claimed that two pairs of tracksuit bottoms, a sheet and a thermos flask went missing after he was removed from his cell and taken to the segregation unit before being transferred to another prison. Mr A said he had left the missing sheet and trousers in a laundry bag at the end of his bed. He asked for £71 compensation.**

The cell was cleared the day after Mr A was moved. But, the day before, there was an unexplained period of an hour when, according to the central locking records, the cell was unlocked. There was no recorded explanation or note of who had access to the cell during the period. Officers suggested that the cell might have been opened for staff to collect essential items for Mr A to use in the segregation unit. I accepted that might be the reason, but I would have expected to see written confirmation. I could not be satisfied that the cell had been kept secure and supervised. Mr A agreed that, in view of the age of the articles, compensation of £50 was reasonable. The Prison Service agreed to pay. It also accepted my recommendation that the Governor introduce a new procedure so that, in future, when a prisoner is removed from a cell, a record will be made every time the cell is opened, until it has been cleared.

**When Mr B (10696/00) was removed from his cell the prison threw away some plastic food containers. In reply to his appeal, Mr B was told it was because they were old and constituted a risk to health and safety (though I observed that the comments on the appeal from the prison said only that they might have done so). Mr B's canteen records showed that he had bought containers of this type only recently and there was no record made at the time of the clearance justifying the disposal. The Governor agreed to reimburse Mr B the cost of the containers.**

"My complaint might seem trivial. But it is my money that gets thrown away." (Mr B)

Mr B commented to my investigator that trouble and expense could be spared if prisoners were always allowed to pack their own property. That is not always possible but, where it is, it is clearly preferable that prisoners should have charge of their own things.

A frequent defect I find in replies to request/complaints is when those who reply assume that what ought to have happened did happen, rather than finding out what really took place. I urge those who deal with complaints to listen carefully to what complainants say happened.

**Mr C (11108/00) was said to have packed his own property when he was taken to the segregation unit. However, as a result of my enquiries a cell clearance certificate was found in the segregation unit. I also discovered that his cell had been broken into after Mr C was removed. I do not think anyone intended to give misleading information, but the staff who replied to the complaint and commented on the appeal jumped to conclusions. Finding that there was no cell clearance certificate where it should have been, they assumed that the cell was not cleared by staff and that Mr C cleared it himself. At my recommendation, the prison agreed to pay £87.50 compensation.**

I am also unimpressed by stock denials of responsibility if the facts suggest otherwise. Mr D's complaint overleaf was a case in point.

**Mr D (11768/00) could not have packed his own things when he was moved for urgent medical treatment after cutting his arms two days after arriving at a new prison. When he came back, his erstwhile cellmate had gone to another wing, taking with him, according to Mr D, a watch, a gameboy and three games belonging to Mr D. The replies to his complaints were not helpful:**

*"All property held in possession is...at your own risk – you have signed a disclaimer to this effect...The fact that you believe another prisoner has stolen your property only serves to justify the rule ... I am not prepared to have an entire wing searched on your say so. All living accommodation is searched once per quarter...if indeed [X] is found to have unauthorised items in his possession he will be placed on report and the said items destroyed."*

Then in reply to the appeal:

*"There is no evidence that staff...advised you that your property would be safe in your cell overnight...The Prison Service does not accept responsibility for the loss or damage of items which have been recorded as in possession property, therefore your claim for compensation has been denied."*

I am afraid these answers missed the point and the assertion that unauthorised items found in another prisoner's possession would simply be destroyed appalled me. Prison Service guidance is quite explicit that, when unauthorised items are found, the first step is to try to restore them to the rightful owner. There are further procedures to be followed if that is not possible.

There were no records of what happened to Mr D's property after he was taken to healthcare. No one could say whether his property was secured or even confirm whether he was still sharing a cell at the time.

There was another twist. The reply to the appeal pointed out that, at another prison two months later, Mr D had agreed an amendment to his property card to sign off the missing items as 'lost by prisoner'. This was said fatally to undermine his complaint.

**What Mr D told me was that, at the first prison he moved to after the incident, he was asked to sign the missing items off as 'lost by prisoner' or 'destroyed' and refused to do so, explaining that he believed they had been stolen. The empty boxes were recorded on his card and he was encouraged to put in a claim. At his next prison he was again asked to sign the items off as lost. He says he again resisted this. When asked about his signature on the card showing the items' change in status, he said he did not understand what he was signing.**

**I found this vulnerable young man's account entirely credible and I asked the Prison Service to pay compensation for his missing possessions.**

"I want to appeal because I was told to leave my property in my cell. I am very upset to hear they will take no responsibility for my gameboy.  
When I got to reception I went through the normal routine of signing forms. No one told me what the forms were for.  
They say that I signed a disclaimer form. I did not know what that meant." (Mr D)

## Compensation

There were a number of cases in which the Prison Service accepted liability and I was called on because the prisoner was not satisfied with the compensation offered. I was sometimes able to resolve the impasse.

**Mr E (10483/00) claimed compensation for CDs, a bedspread and a duvet cover. The prison admitted liability. Staff had let another prisoner into Mr E's cell ostensibly to retrieve some CDs. The prison offered £48 compensation for 15 CDs. I could not see any logical basis for the sum. As a result of my enquiries, the Prison Service agreed to pay a total of £156 for 13 CDs, which was the number which could be substantiated from the property record, and additional compensation for the bed linen.**

**Mr F (11788/00) was required to pack his clothes for transfer when they were wet. He was not allowed to unpack them for eight days. He asked for £160. The Prison Service offered £60. I thought £80 would be fair and Mr F and the prison agreed.**

**Ms G (11068/00) was not allowed to wear her wedding ring in prison. It contained stones, reflecting the custom in her culture, and did not come within the prison's rules for wedding rings. It was stored by the Prison Service but lost. They did not check the value when offering compensation of £100. I made enquiries about what it would cost to replace the ring with a similar one and the Prison Service agreed to pay £165.**

**Mr H (10288/01) also had a ring lost by the Prison Service. The prison offered £50. His family solicitor said the ring was an heirloom worth £800. The Prison Service raised its offer to £75. Mr H told my investigator he wanted an apology as much as money, which could not make up for the sentimental value of the ring. A governor agreed to speak to Mr H personally about the circumstances of the loss and the prison offered £100. Mr H accepted this and said he would instruct his solicitors to drop the case.**

Of course, money is not an adequate substitute when items of sentimental value or religious significance are concerned.

**Mr I (10337/00) complained about the loss of a religious talisman. It had been taken from his cell during a search because it was not listed on his property card so was believed to be unauthorised. The talisman was then destroyed even though Mr I had lodged an appeal that had not yet received a reply. He maintained that the reason the talisman was not on**

**his property card was because he was wearing it when he arrived at the prison. My investigator was able to see a copy of an old property card for Mr I which included the talisman, so I was satisfied it belonged to him. I upheld his complaint but there was no satisfactory solution. The talisman was unique and formed part of Mr I's religious upbringing. The modest sum I was able to suggest in compensation for the material loss was a very imperfect proxy.**

The prison was clearly at fault in this case: in particular for disposing of the talisman, which certainly should not have been destroyed while enquiries were still going on. There is a message for prisoners too. It is in prisoners' interests to make sure that all their possessions are properly recorded, when they arrive at a prison – and if they acquire extra things while there. This reduces the risk that things will go awry.

**In another case, Mr J (11088/00) complained about the alleged loss of family photographs. Prisoners were not required to have photographs recorded on their in-possession property card at his prison, but it was in their interest to do so. They could then more readily be tracked in a cell clearance. I recommended that the Governor of the prison issue a notice to prisoners to make it known that photographs could be recorded on in-possession property cards.**

## Cell searches

**Mr K (10924/00) complained that an eight foot length of brass unsoldered link chain was removed in a cell search. At first glance this might seem a not unreasonable precaution. Who knows to what purpose an eight foot brass chain might be put? At second glance, however, the prison agreed this was quite unnecessary. As Mr K explained in his complaint, the chain was a very flimsy material which he used to make jewellery boxes. He had bought unsoldered chain at the prison's instruction and it had passed unremarked in many previous searches. The prison finally agreed to return the chain, but it was very unfortunate that this took eight months and came only after my intervention. If someone had thought properly about what Mr K said when he first complained, a good deal of time and trouble could have been saved for Mr K, for the Prison Service and for my office.**

"How can something that I have had in my possession for four years, with no health or safety risk, suddenly become so after wing staff took it from me because it was not individually noted on my property sheet?

Had it been, this would not have been made into the drama it has become." (Mr K)

## Reasonable care

**At the end of an association period, Mr L (11693/00), a young prisoner, left his fleece jacket on the landing. An officer confirmed a fleece had been found and put in the office but no one seemed to know what had happened to it after that. The prison and Headquarters denied liability on the grounds that Mr L was responsible for his own property. But the fleece had clearly been taken into Prison Service care. Indeed, when his claim was refused, Mr L said he would have been better off if it had been left on the landing overnight so at least he would have had a chance of getting it in the morning. I explained to the prison why I thought the claim had not been treated fairly. Mr L accepted an offer of £50. The complaint was resolved just in time for his release.**

"I know I should not have left it on the landing but on the other hand it should not have gone missing from the SO's office." (Mr L)

It is in prisoners' interests to make sure that all their possessions are properly recorded, when they arrive at a prison – and if they acquire extra things while there.

I urge those who deal with complaints to listen carefully to what complainants say.

## Incentives and Earned Privileges

**All of us respond to incentives. All of us believe there should be a connection between our efforts and our rewards. In simple terms, that is the sole purpose of the Incentives and Earned Privileges scheme. Although I am aware of significant differences between prisons in terms of the proportion of prisoners on the three levels of basic, standard and enhanced, the IEP scheme seems to be regarded as generally fair by prisoners and certainly enjoys the strong support of many staff.**

**In the past year, however, I have dealt with a number of complaints about how the IEP scheme is applied in practice. I have looked carefully at how the scheme may affect those prisoners who continue to protest their innocence. I have also identified some dangers if the IEP scheme is applied mechanistically or to supplement punishments or decisions to segregate.**

## Prisoners who assert their innocence

**Many people in prison who deny or minimise their offences are guilty. History shows that some are not. Is it legitimate for a prison to use the Incentives and Earned Privileges scheme to try to induce prisoners to engage in programmes to address their offending behaviour?**

**Mr M (11892/99) believed that the IEP scheme at his high security prison discriminated unfairly against prisoners who asserted their innocence. Among other things, it required him to address his offending behaviour if he wanted to be considered for enhanced status. Mr M was downgraded to standard for "denial of any involvement in your offence and refusal to take part in offending behaviour work". Mr M claims to have been wrongly convicted of a sexual offence and says he has no offending behaviour to address.**

**I understand the dilemma. The Prison Service cannot substitute its view for the verdict of the courts. It is enjoined to reduce the risk of prisoners re-offending. There is evidence that some kinds of offending behaviour programmes, including the sex offender treatment programme, can significantly reduce risk and prevent future victims. Knowing this, the Prison Service has good reason to be zealous in encouraging engagement. Mr M's prison considers that prisoners who will not co-operate with offending behaviour work should not enjoy the rewards of the highest level of privileges.**

**I can see that achieving the enhanced level may be some incentive to prisoners to take a first step, if at first reluctantly, which may lead to reducing the risk to the public. But 'going through the motions' of offending behaviour work will not help and may be detrimental. In any case, a prisoner who denies guilt in relation to a sexual offence will not be admitted to the sex offender treatment programme.**

**Prisoners at Mr M's prison are debarred from enhanced status if they fail to comply fully with their sentence plans and do not address their offending behaviour. By definition,**

**those who continue to assert their innocence are held not to be addressing their offending behaviour. From my investigation, I concluded that the prison was in effect operating a blanket exclusion from enhanced status of prisoners who denied their offence.**

**I considered such an outcome to be unacceptable. First, while a prisoner may deny the current conviction, he or she may be willing to engage in courses directed at reducing his or her risk factors relating to previous offences or lifestyle. Second, I could not see that it was fair or desirable to debar a group of prisoners indefinitely from the benefits of enhanced status. Nor was such an approach consistent with the other goals of the IEP scheme. Third, I noted that other high security prisons did not operate a blanket ban.**

**I believe that a different approach is needed. Just as the Parole Board is expected to take a balanced view of the risk presented by prisoners who deny their offence, so should the Prison Service. It is in the interests neither of good institutional behaviour, nor of reduced risk to the public, if those who deny their offence are prevented from enjoying the benefits of enhanced status no matter what else they do or how long they remain in prison.**

**I upheld Mr M's complaint. I recommended that the Prison Service review its instructions on the IEP scheme to ensure a more balanced assessment such that prisoners who \_deny their offence are offered opportunities of achieving enhanced status. I also recommended a review of the operation of the IEP scheme in the Directorate of High Security Prisons to establish, in the spirit of my first recommendation, a consistent approach to those who continue to assert their innocence.**

My recommendations affect a number of other prisoners besides Mr M. The Director General has not accepted them and at the end of the year we were still in correspondence about the case. I understand that Mr M has now started judicial review proceedings.

## Compacts

The Prison Service should not get into unnecessary stand-offs with prisoners.

**Mr N (10599/00) was downgraded to basic regime after altercations with the night staff. I was satisfied that the decision was made fairly. Mr N's behaviour had been monitored in accordance with the local scheme and his score had fallen below the level required for standard regime. After that, however, Mr N's behaviour and IEP score improved, but he remained on basic for over a year because he was unwilling to sign a compact undertaking to address his night time behaviour.**

This seemed utterly wrong. I did not see that anything would have been lost by simply telling Mr N what improvement was required and monitoring his behaviour for compliance. Indeed Prison Service Order 4000, issued in January 2000, states as a mandatory provision:

"Prisoners' unwillingness to sign compacts must not affect their eligibility to move privilege levels: eligibility to progress to the higher privilege levels will be determined by compliance with the terms of the compact whether or not this has been formally signed."

I entirely agree.

## IEP and segregation

When prisoners are segregated it does not follow that their IEP level should be reduced to basic.

**Mr O (10086/00) was transferred from one high security prison to another with several other prisoners, all of whom were thought to be involved in activities which were destabilising the wing. There was a large volume of security information and worrying incidents had occurred. The intelligence reports were carefully considered and there was sufficient substantiated information that it would have been reckless for any Governor to ignore. The proper procedures were followed for the transfer and for Mr O's segregation at his new prison. However, Mr O was also downgraded to basic. The reasons given were allegations that he was bullying and causing disruption. He was told that the behaviour which required his segregation was also judged to be inconsistent with enhanced or standard level.**

I was not satisfied with that reasoning. There was no proof of any wrongdoing by Mr O. There was only one direct allegation against him and that fell short of proof. All the rest was inference. According to his file his overt behaviour was generally good. His segregation and transfer was because there was a risk that he posed a threat to good order. It was not for punishment. I upheld Mr O's complaint that he should not have been downgraded to basic.

It may not be practicable in the segregation unit to make available all the benefits of the higher regime levels but that is no reason why the 'portable' benefits of standard and enhanced levels should not be provided. Mr O was particularly concerned about visits. He had been moved to a prison that meant a 600 mile round trip for his wife and children. On basic regime they were restricted to a half hour visit and the Governor said he was unwilling to make an exception because the IEP scheme had to be impartial and fair.

## Segregation

**Prisoners placed in segregation have minimal association and exercise, they cannot go to work or education, they cannot wear their own clothing, and have restricted facilities to occupy themselves in the long hours in solitary confinement.**

**Their regime is similar to that followed by prisoners subject to cellular confinement imposed for short periods as a punishment for a disciplinary offence. That is why many prisoners and staff continue to call the segregation unit 'the block' – short for 'punishment block'. But prisoners segregated under Rule 45 have not been found guilty of a breach of discipline. Sometimes segregation follows an outburst on the wing, but often it follows from security intelligence that is not disclosed to the prisoner because disclosure would put the source of the information at risk. It is intrinsic to such a system – necessary though it may be – that injustices occur.**

There were three cases in which I considered that the prison was justified in segregating prisoners on the basis of suspicion, but where I made a recommendation about the process. I doubt that was much consolation to the prisoners concerned, but I attach great importance to meticulous adherence to procedures in use of the power to segregate.

## Giving reasons

**Ms P (10174/00) was placed in the segregation unit on suspicion of being a "main player in the drugs scene". She protested that she was an enhanced prisoner working hard towards her life sentence plan and that the information implicating her was false and malicious. I saw the intelligence reports and was satisfied that they justified the Governor's action. However, the prison was unable to provide me with the written reasons given to Ms P for her segregation. Prison Service Order 1701 states clearly that a copy of the reasons**

**should be held on the prisoner's main file once the prisoner ceases to be segregated. I recommended that the Governor carry out a review of procedures.**

**Mr Q's case (10547/00) was very similar. Mr Q was segregated on the basis of allegations that he was involved in drug dealing, violence and intimidation. I saw seven intelligence reports and the information was supported by the police. However, the prison was unable to show me a record of any written reasons for segregation given to Mr Q. I recommended that staff be reminded of the importance of retaining copies of the statement of reasons.**

Mr Q wrote to my investigator in reply to the draft of my report. He strongly disputed the allegations against him and said he thought it unfair that he seemed to be guilty until proved innocent.

"It's no longer a case of not guilty until proven guilty. It's now guilty until you can prove you are innocent.

I would simply ask that I be treated fairly, and given the opportunity to prove that I do not deal in drugs.

Being segregated is not the best way to start a life sentence." (Mr Q)

**Mr R (10245/00) was pursuing a small claim in the County Court. So that he could attend the hearing he was returned for a week to a prison from which he had previously been transferred, and found himself segregated. He was given a statement of reasons for his segregation which said it was because he was "a lodger for a court case".**

That was not a proper reason nor the real reason. Mr R had been transferred out of the prison because of concern that he and a teacher were engaged in an inappropriate relationship. The investigation of the alleged relationship had not yet begun and I was satisfied that it was not unreasonable for the prison to want to prevent contact between the two of them. But it is neither right nor sensible to fob prisoners off with false reasons. In my view, there should be a presumption of disclosure of reasons unless the prison can give – and record for scrutiny – a justification why the real reason should be withheld. In such circumstances, the prison should say honestly that it is not prepared to disclose its reasons.

Walking the green line

**The issue of justification was at the heart of one of the most satisfying investigations this year.**

**Mr S (11399/00) complained about the practice in a local prison of requiring prisoners to follow a one-way green line when moving about the segregation unit. He also wrote to the prisoners' newspaper, Inside Time.**

**In reply to his complaints he was told that the practice was for safety reasons, particularly when prisoners were moving about the unit with meal trays. Mr S did not find this convincing. He pointed out that on normal location large numbers of prisoners move about with meal trays without any need for a system like this. Moreover, in the segregation unit prisoners were generally only allowed out of their cells one at a time. Mr S and other prisoners who wrote to me about the green line said they found the practice humiliating and provocative and that, far from promoting a safe environment for staff and prisoners, it was a source of tension and confrontation.**

**My office was able to explain the prisoners' point of view to the Governor. He decided that the practice of 'walking the green line' should cease and issued instructions to that effect. In his letter to one of my Assistant Ombudsmen the Governor said, "I am grateful for your sympathetic handling of this matter which has prompted the final removal of the vestiges of an outdated and inappropriate practice." In a letter to Inside Time to tell readers the upshot of his complaint, Mr S commended the "power of the pen", which, rather to his surprise I think, had produced a result. I am pleased that my office was able to contribute to ending this demeaning practice.**

**I find prisoners generally sceptical of the willingness of the Prison Service, or anyone else for that matter, to listen to their point of view, still less to act on it voluntarily. The Governor in this case proved the cynics wrong.**

"This unnecessary practice just adds more tension and confrontation to what is already a distressing time for an inmate, whether he is on cellular confinement, GOAD, VP or whatever. Worse than that, it is degrading and demoralising." (Mr S)

### Time in the open air

Another complaint which contributed to an improvement in conditions for segregated prisoners was that made by Mr T about time in the open air.

**Mr T (12094/00) complained that prisoners in the segregation unit at his prison were getting only half an hour in the open air. Prison Service Order 4275 requires that prisoners in segregation should be provided with the opportunity to spend a minimum of one hour in the open air each day. The prison said that the full 60 minutes was sometimes not allowed because of the weather or because of staff duties elsewhere. My investigator consulted the Chair of the Board of Visitors who discovered that prisoners were frequently receiving less than the full hour. The Chair discussed the matter with the Governor who agreed to issue a reminder to staff that one hour's exercise should be allowed where possible and – importantly – that times when the full hour could not be given must be logged. This was a good example of collaboration between my office and the BoV. The Board of Visitors will now be able to check the records and intervene if standards slip.**

It is neither right nor sensible to try to fob prisoners off with false reasons.

### Prison Life

**Prisons are total institutions. They must provide for every aspect of a prisoner's life, 24 hours a day, seven days a week. Within the perimeter wall, every prison has its factories, its kitchens, its school, its doctor's surgery, its library, as well as its living units.**

**But while the wall exists to keep prisoners in, even a total institution is not impermeable to visitors or to ideas. Prisons cannot pretend that the world at large does not exist. On the contrary, the healthiest prisons are those which maximise their links with the wider community.**

**I receive a range of complaints about work, education and day-to-day prison life. I wish I received more, especially about access to programmes and activities. I would like to raise prisoners' expectations of what the Prison Service should deliver.**

## Employment

Allocation of work in prison should be governed by the same attention to equality of opportunity that employers should apply in the outside world.

**Mr U (10935/00) was turned down for a job as a gymnasium orderly. He was given various explanations. One was that he was involved with drugs. Where a prisoner's work will bring him into contact with many other prisoners, I understand why prisons must be careful. Continued involvement with drugs, and particularly evidence of trafficking, would reasonably preclude a prisoner from a gym orderly or cleaning post.**

**Yet Mr U had no drugs related finding of guilt while in prison, had several negative mandatory drugs tests and there was no reference to drugs in his history sheets from the prison where he made the application. In commenting on Mr U's labour application the security department said he "was found in possession of cannabis". My investigator found that the allegation dated from another prison some two years previously. Mr U had been charged with being in possession of herbal cannabis in visits but the charge had been dismissed. Before that, there was an occasion when he had been suspected of smoking cannabis in his cell.**

**This history was not suggestive of a prisoner who regularly abused drugs or was involved in trafficking. It seemed unreasonable, therefore, that involvement in drugs should have been taken into account when assessing Mr U's job application. One of the problems with security 'intelligence' is that it gets routinely perpetuated from one document to another with little consideration of its relevance in the particular instance and, sometimes, of its accuracy.**

**Finally, I was alarmed to read the comment in one of the security reports that Mr U is "definitely of the Rastafarian type". It is deeply disappointing that this sort of observation can still be made, although I am pleased that the Prison Service has now apologised.**

Prison workshops must adopt safe working practices. Again the ordinary standards of civil life apply.

**Mr V (10060/00) received facial injuries in an accident in the upholstery shop when a chipboard base for a sofa snapped under tension. I was satisfied that there was a fault in the structure and I recommended that he receive compensation. The Prison Service accepted my decision and sought legal advice on the appropriate amount.**

## Food

One of the peculiar features of prison life is the unusually early time of the last main meal of the day – the so-called 'tea meal'. The Prison Service standard on catering provides that, if the gap between the evening meal and breakfast exceeds 14 hours and prisoners are locked up in the evening, establishments must provide an additional snack and hot drink for consumption later than the evening meal. PSO 5000, which deals with Prison Catering, says that cold food taken from refrigerated storage must be consumed within four hours.

**Mr W (10264/00) suffers from Type 1 diabetes. He and other diabetic prisoners were given two sandwiches with various diabetic fillings as an evening snack. After PSO 5000 was issued, the sandwich fillings were stopped and instead they were given just slices of bread with a low fat spread. I found this to have been in the mistaken belief that the bread was simply supplied as a precaution – to be used only in emergencies in the event of a hypoglycaemic attack during overnight lock-up – not a regular part of the daily diet.**

When the last meal of the day is served in the afternoon it is essential for Type 1 diabetics to have a high carbohydrate snack to consume in the evening. The prison medical officer confirmed that the carbohydrate provided by the bread was adequate from a nutritional point of view, but I did not think that an evening snack of bread and low fat spread seven days a week was acceptable. I asked for reinstatement of a healthy and tasty evening snack with a high carbohydrate content.

## Visits

The most common complaint I receive about visiting arrangements is from prisoners who have been placed on closed visits under Prison Service Order 3610. This is a contentious topic. Governors tell me that putting prisoners on closed visits is a sure way of stopping drugs getting into prison. But – as I said in my Annual Report last year – there is a balance to be struck between the requirements of security and humanity.

**Mr X (10494/00) complained about a prison's policy of imposing closed visits automatically after a second positive mandatory drug test. He said he had been placed on closed visits for a period of six weeks or three visits, whichever was longer. Since he was unwilling to subject his visitors to closed visits he was no longer having any visits at all. The reply to Mr X's request/complaint said that the prison aimed to discourage supply and use of drugs by targetting prisoners who repeatedly supplied positive samples. The ban on open visits would be lifted if he supplied a negative sample.**

**Any sensible person backs the efforts of the Prison Service to reduce the use of illegal drugs and provide support and rehabilitation to prisoners with drug problems. However, for very good reasons, the Prison Service Order says that closed visits should be imposed only where there is evidence that open visits have been abused by the individual concerned. Closed visits should not be imposed as a punishment or a deterrent. Closed visits affect innocent visitors as well as the guilty. They are a major disincentive to visiting. Some families prefer not to have visits at all than have them in those conditions. That can damage the family relationships that are a key element in preventing re-offending – humanitarian considerations apart.**

**In the case of Mr X, the Prison Service accepted my recommendation. The prison agreed that, instead of a blanket policy, each case would be decided on its own merits and a decision to place a prisoner on closed visits would need to be justified by the individual circumstances.**

**I expect all establishments to adhere to the practice of imposing closed visits only when there is evidence that a particular prisoner has abused visits. Drug use alone is not a sufficient reason.**

It is especially hard for prisoners and for their friends and families when they are placed far from home. Location is of great importance to prisoners' quality of life and to the maintenance of their family ties. Sadly, many prisoners are located in establishments that are not convenient for their visitors. Arrangements for accumulated visits at a prison closer to home are much sought after but there are often long waiting lists.

**Mr Y (10617/00) applied for accumulated visits at a prison near his home. My investigator learned that the prison rarely had accommodation free, and usually took no more than one or two prisoners a year for accumulated visits although there was considerable demand. Having talked to my investigator, the Governor decided to dedicate two places in the prison for accumulated visits. Mr Y spent a month there shortly afterwards.**

## The technology of modern life

Standards of what constitutes proper treatment change over time. Complaints about debit cards, televisions and computers illustrate how new developments can create anomalies which prisoners experience as unfair. The following cases show some of the challenges faced by the modern Prison Service.

**Mr Z (11018/00) wanted to order flowers to be sent to relatives and friends at Christmas. He completed the order forms, quoting details of the debit card for his personal bank account. The prison returned the forms, saying he had to pay for the flowers through his prison spends account. Mr Z questioned this. He knew that Prison Service Standing Orders provided for prisoners to "arrange personal financial transactions", though the nature of permissible transactions was not defined. He put in an application for an interview with the Governor to put his case to be issued with his cheque book to pay for the flowers. Three weeks later, a Principal Officer saw Mr Z to reiterate that he could only buy the flowers through his spends account. By then it was five days to Christmas. Mr Z took matters into his own hands. He ordered and paid for the flowers by telephone, quoting his debit card number.**

Mr Z argued that the restriction the prison sought to impose was a disproportionate interference with his right to peaceful enjoyment of his possessions. The prison's argument was that the Incentives and Earned Privileges scheme sets limits on the amount of money prisoners are allowed to spend each week, according to whether they are on basic, standard or enhanced level. To allow prisoners to conduct financial transactions as they chose would undermine the scheme. Mr Z replied that he was not intending to bring the flowers into prison. The prison rejoined that wealthy prisoners with resources outside could use them to wield power inside the prison, even if the money was not spent there.

I understand the prison's point of view, although I suspect that in practice prisons cannot prevent wealthy prisoners exercising control over their assets outside jail. I am telling the story, however, to show that controls which operated in the past when money was generally transferred by cheque no longer have the same effect in the age of telephone banking. Mr Z's complaint demonstrated ambiguities and anomalies in an important area of Prison Service policy.

**Mr A (11622/00) had a miniature black and white television that he bought through a prison shop to use in his cell. He was moved to another prison where he was not allowed to have it in possession. In line with Prison Service policy, the only televisions allowed there were a limited number of portable televisions owned by the prison. These were passed round on a daily rota to enhanced prisoners and to standard prisoners who had signed a voluntary drug testing compact.**

The Governor explained that the electrical supply in most of the prison was inadequate to run in-cell televisions (though it was suitable for Mr A's miniature television). Two new wings had in-cell electricity which could support televisions but, in the interests of fairness, the prison had decided not to install televisions until the whole prison could be provided with them. The prison wanted to upgrade the electrical wiring but this would cost in the region of £300,000 and was unlikely to happen soon.

I am a strong supporter of in-cell television. Television shows a world beyond the walls, as well as being a recreation much to be preferred to other forms of escapism to which prisoners sometimes resort. Even the most high-minded of us might find it hard to cope without television if we were locked up every evening by eight o'clock.

In-cell television is now one of the 'key earnable privileges' in the Incentives and Earned Privileges scheme. The Prison Service takes the view that this is incompatible with letting

prisoners use their own televisions. That is all well and good when the scheme is fully operational, but for Mr A the new system is a step backwards.

I accepted that the prison was acting in accordance with Prison Service policy, and in pursuit of overall fairness, in not allowing Mr A to use his own television. But I was concerned that the prison's inability to supply televisions to more than a minority of prisoners might become increasingly out-of-step with practice elsewhere. I recommended that the Governor and his Area Manager review the number of portable television sets available to prisoners in the light of capital spending plans and my findings. The Director General was still considering my recommendation at the end of the year.

**Mr B (10259/00) is a lifer. He has developed an interest in creative writing and had work published. He also helped to start a prison magazine. From another prison he wanted to send an article and graphics on floppy disk as a contribution to the millennium edition of the magazine. He also wanted to establish that he would be able to send out other work in future. The prison would not let him send out floppy disks because they were thought to pose a risk to security. Prison Service Security Group suggested that the prison could copy Mr B's authorised work on to another floppy disk. The prison was unwilling to do this for fear of setting a precedent.**

Prison Service Instruction 2/2001 has recently been issued on 'Computers in Possession: Prisoner Access to Justice'. This gives guidance to Governors about applications from prisoners who request access to computers for handling legal work. But Governors retain discretion – balancing the benefits against security considerations – when prisoners want to use IT for other purposes. Complaints to my office indicate wide variations in the approach that Governors take to these matters.

Inconsistency is a severe irritant to prisoners, who cannot see why a facility acceptable in one prison is unacceptable in another. However, I would not want to see inconsistency eliminated in favour of a uniformly restrictive approach. I did not uphold Mr B's complaint, although I am always sceptical when something quick and sensible is not pursued for fear of opening the floodgates. The fact is that the use of computers is now commonplace in home, school and workplace and prisoners need access to computers to pursue a wide range of constructive and legitimate occupations. The Prison Service has told me it is piloting interactive software to enhance prisoners' basic educational skills, but I do not think that Prison Service policies yet adequately recognise how far the world has changed.

## Security, Categorisation and Transfers

**It is axiomatic that the duty of the Prison Service is to ensure prisoners do not escape. Prisoners are placed in different security categories according to the degree of danger they are considered to pose to the public and the likelihood that they will attempt to escape.**

**Complaints about decisions based on security intelligence are those I find most difficult. Prisoners understandably complain when they are suddenly moved to another prison and recategorised on the basis of suspicion. Often they are not allowed to know the grounds for suspicion. Sometimes they are not told what they are accused of. It offends against every principle of justice that prisoners should be subject to such dislocation with no opportunity to answer the charges against them. Yet usually I cannot share the information with the complainant any more than the Prison Service has done, because to do so might lead to harm to others.**

**No doubt some prisoners know very well the reason for security action against them. But, if the standards of evidence which normally apply mean anything, then there are bound to be innocent victims of a security process which adopts inferior standards.**

### Recategorisation on security grounds

Governors taking decisions based on security grounds have to balance the risk to security against the consequences for the prisoner of an adverse decision. I examine the security information to see whether it has been properly recorded and evaluated. There is a system by which the Prison Service assesses information for importance and evidential value. I then consider whether the information provides a reasonable basis for the Governor's decision. Generally I have concluded that it does. There was only one case this year in which I upheld a complaint that a decision to transfer a prisoner from open prison was wrong.

**Mr C (10965/00) was recategorised from D to C and moved to a Category B prison. He was told only that concern about his suitability for open conditions had been growing for some time and he was being transferred because of security information that could not be disclosed. There were some adverse references on Mr C's record at the open prison. He had been dismissed from his job in reception for suspicious behaviour and was said to have used a tampered phone card. There were also four occasions when he had asked to change the arrangements for community visits and he once came back late. Consideration was twice given to returning Mr C to a closed prison but it was decided this was not justified. Then, just a few days after the second review confirmed Mr C's category D status, he again asked to change the arrangements for a town visit. This was because his wife, who was coming to meet him, had a motor accident on the way. This fifth request was treated as sufficient to justify recategorisation. I disagreed. Mr C's explanation was true and should have been checked. Since he had been considered suitable for open prison a few days earlier, I saw no reason why that had changed.**

I was also concerned that Mr C was left in a B category prison for the next seven months. When prisoners are recategorised on grounds of security intelligence, I think the Prison Service has a special responsibility to keep their security category under careful review. When prisoners are transferred to a prison which their offence and custodial record would not otherwise justify, there is a danger that the reason is forgotten, or accepted as unquestionably true, to the detriment of their progress thereafter.

**Mr D (11148/00) had an altercation with another prisoner for which he was given a suspended punishment of 14 added days. Shortly afterwards he was said to have been heard to say he would 'stitch up' the officer who reported him and it was decided to monitor his behaviour. Other information was contradictory. Then intelligence was received that another prisoner had been paid to assault the officer concerned. Although the intelligence did not name Mr D directly, it was decided to transfer him. He was moved back to a high security prison.**

I was satisfied that the information had been considered carefully by a senior member of staff and that the information about a possible assault had been critical. Staff safety is of paramount importance. I did not criticise the decision. I noted, however, that there had been no concerns about Mr D's behaviour before the altercation. He was described as polite, respectful and causing no problems. When I issued my report he had spent over six months in the high security prison. This was a regressive move for him and I recommended that his allocation be reviewed. He is now back in a Category B prison.

**Ms E (10504/00), was a lifer transferred within the women's estate on suspicion that she and a friend might be planning an escape. The evidence was highly circumstantial. The**

**women's actions could be interpreted in this way but might equally have been entirely innocent. The Governor placed a note on Ms E's file saying she felt bound to take action on grounds of public protection but there was no hard evidence and her suspicion might be wrong. She made clear that she had no criticism about the behaviour of either of the women and would have been pleased for them to remain if the prison were more secure.**

I thought the Governor dealt with the conflict between security and individual rights with commendable openness and honesty and I told Ms E that I did not think there was any more I could do to help. She wrote thanking me and accepting my decision, although she said she would have preferred all reference to the incident to be removed from her file. I could not ask the Prison Service to do that, but Ms E's letter reminded me how disruptive such unexpected moves are, especially when they seem to impede the progress of life sentence prisoners towards release. Ms E wrote:

*"I understand that you have done all you can, but I feel I must stress the fact that this whole incident turned my life upside down. It seems so unfair that I have had to endure nearly two years in a prison that has nothing to offer lifers, all because the Governor had a suspicion (which she states could be wrong)."*

Here are three cases where I had little difficulty in accepting that recategorisation was justified.

**Mr F (10611/00) was recategorised from D to C and moved out of open conditions. On the face of it, his prison record was admirable but he was suspected of having a mobile phone in the prison. A search of his cell yielded a charger and an earpiece, believed to be from a mobile phone, and a hollowed out block of wood where a phone could have been hidden. A phone was later found in the prison and there was compelling evidence Mr F had used it to make nuisance telephone calls.**

**Mr G (10219/00) was also a D category prisoner. He admitted being out of bounds to pick up a 'drop'. His defence that he did not know the 'drop' contained bottles of vodka was one of the least persuasive I have heard during the year.**

**Mr H (10944/00) was a zealous adherent to the enterprise culture. He was pursuing a Business Skills course but was transferred back to a B category prison from C category conditions after he wrote to companies that supplied prisons, requesting information about high security ID passes for the private detective business he was hoping to start. His intentions may have been innocent but I was not surprised the prison took exception to his business plan.**

## Category A

Recategorisation as a result of an incident is the exception. All prisoners should have their security category reviewed regularly. I became concerned this year about delays in conducting Category A reviews.

**Mr I (10408/00) complained about the decision in November 1999 that he should remain a Category A prisoner. The reports for the review were prepared between March and October 1998 but the gist was not sent to Mr I until July 1999. After an exchange of correspondence with the Category A Review Team, Mr I's solicitors put in representations on his behalf in October. The decision was made very soon afterwards, but by then all the reports were over a year old. I recommended that the Prison Service take steps to ensure that review reports are no older than 12 months – and preferably much more recent – at the time decisions are made. The Director General accepted my recommendation in July 2000 and told me that backlogs had been substantially reduced.**

**Mr J (11237/00) was sentenced in 1996 and confirmed as a Category A prisoner. Mr J's security category was reviewed in March 1997 but not reviewed again until February 2000. Prison Service guidance says that reviews should usually be carried out every year, although with some flexibility in timing to allow for the preparation of reports and the prisoner's consideration of the gist. I upheld Mr J's complaint and asked the Director General to consider whether the present machinery was adequate to achieve annual reviews. The Director General has assured me that the position has improved markedly and that most reviews are now undertaken annually.**

### Progressive transfers

**Mr K (10481/00) was a lifer who told me he was fearful of going to his proposed prison because he believed some prisoners there would cause trouble for him. When my investigator looked into the case, she found that Mr K had not explained clearly to Lifer Management Unit (LMU) why he objected to the move. He had given other reasons and referred only vaguely to his fears that other prisoners held a grudge against him. My investigator spoke to the lifer liaison officer at Mr K's prison and to LMU. From the information the lifer liaison officer was able to provide, LMU agreed that Mr K should move to a different prison. This was a very satisfactory local resolution and I was grateful to the establishment and Headquarters staff for the helpful way they dealt with it.**

In last year's Annual Report, I referred to a complaint in which I found that a prison was unwilling to consider applications for Category C until prisoners had served one-third of their sentence. I pointed out that this was contrary to Prison Service guidance and that security category should be based solely on risk factors and reviewed regularly. Mr L's complaint, opposite, brought to light a similar practice in another prison in relation to applications for Category D.

**Mr L (10664/00) was hoping to be transferred to an open prison. However, his own prison had a list of qualifying criteria for category D for prisoners serving four years and over. The criteria included requirements to have served at least 18 months from date of sentence and having no more than 24 months left to serve (to non parole date). In my view, these criteria were not consistent with the requirement that prisoners should be categorised solely according to the likelihood that they would seek to escape and the risk that they would pose to the public should an escape attempt succeed. When Mr L appealed to Prison Service Headquarters about his complaint, the Briefing and Casework Unit saw the defect in the prison's criteria. The caseworker's note put it admirably:**

**"While the length of time remaining on a prisoner's sentence may be taken into account when assessing the likelihood that they will seek to escape the apparently blanket policy being imposed É implies that prisoners will be refused solely on their time to serve. In the circumstances, I do not believe that [Mr L's] application for recategorisation has been dealt with correctly."**

The reply to the appeal said the Area Manager had agreed that Mr L's security category should be reviewed:

**"in accordance with the provisions of the Sentence Management and Planning Manual".**

**Mr L was asked to show the reply to wing staff who would make the necessary arrangements. However, the particular defect was not explained to Mr L nor, apparently, drawn to the attention of the prison. At the time of my investigation, the position remained uncertain. My investigator was told by a governor that the criterion for category D had been widened so that prisoners could be considered when they had three years left to**

**serve. Subsequently, this reply was revised and I was told that the criterion was a general guideline only and each case was heard on its merits.**

**I recommended that the criteria for category D be amended, removing the requirements that prisoners must have served 18 months from sentence and have not less than 36 months to serve.**

## Terms of Reference

1. The Prisons Ombudsman, who is appointed by the Home Secretary, is independent of the Prison Service agency and reports to the Home Secretary.
2. The Prisons Ombudsman will investigate complaints which are submitted by individual prisoners who have failed to obtain satisfaction from the Prison Service requests and complaints system and which are eligible in all other respects. The Prisons Ombudsman will normally act on the basis only of eligible complaints from prisoners and not on those from other individuals or organisations.
3. The Prisons Ombudsman will be able to consider the merits of matters complained of as well as the procedures involved.
4. The Prisons Ombudsman will be able to investigate all 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 Board of Visitors, with the exception of decisions involving the clinical judgement of doctors. The Prisons 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.
5. 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<sup>1</sup>, save in cases which have been approved by Ministers for consideration;
  - the personal exercise by Ministers of their function in the setting and review of tariff and the release of mandatory life sentenced prisoners;
  - actions and decisions outside the responsibility of the Prison Service such as issues about conviction and sentence; 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 Immigration Service, the Parole Board and its Secretariat.

## Procedures

### Submitting Complaints and Time Limits

6. Before putting a grievance to the Prisons Ombudsman a prisoner must first seek redress through appropriate use of the Prison Service requests and complaints procedure. Complaints will be considered for possible investigation by the Ombudsman if the prisoner is dissatisfied with the reply from the Prison Service or receives no final reply within six weeks. Prisoners will have confidential access to the Prisons Ombudsman. Prison Service staff will not seek to prevent a prisoner from referring a complaint to the Prisons Ombudsman.
7. Prisoners submitting a complaint to the Prisons Ombudsman must do so within one calendar month of receiving a sub-stative reply from the Prison Service. However, the Prisons Ombudsman will not normally accept complaints where there has been a delay of more than 12

months between the prisoner becoming aware of the relevant facts and submitting a complaint to the Prisons Ombudsman, unless the delay has been the fault of the Prison Service.

8. Complaints submitted after these deadlines will not normally be eligible, but the Prisons Ombudsman has a 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**

9. The Prisons 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 Prisons Ombudsman will inform the Prison Service of the nature of the complaint and, where necessary, the Prison Service will then provide the Prisons Ombudsman with such documents or other information as the Ombudsman considers are relevant to considering eligibility.

10. The Prisons Ombudsman may decide not to accept a complaint or to discontinue any investigation where he considers that no worthwhile outcome can be achieved or the complaint raises no substantial issue. The Prisons Ombudsman is also free not to accept for investigation more than one complaint from a prisoner at any one time unless the matters raised are serious or urgent.

### **Access to Documents for the Investigation**

11. The Director General of the Prison Service will ensure that the Prisons Ombudsman has unfettered access to Prison Service documents, including classified material and information entrusted to the Prison 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 14 below for the withholding of information from the complainant and public in some circumstances.

### **Local Settlement**

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

### **Visits and Interviews**

13. The Prisons Ombudsman and staff will be entitled to visit establishments, after making arrangements with the governor or his or her staff, and headquarters for the purpose of interviewing Prison Service employees, prisoners 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 14 below.

### **Disclosure of Sensitive Information**

14. In accordance with the practice applying throughout government departments, the Prisons 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;
- likely to prejudice the administration of justice including legal proceedings;
- of papers capable of attracting legal professional privilege.

15. Prison Service 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 Prison Service on receipt of the draft report from the Prisons Ombudsman.

### **Draft Investigation Reports**

16. Before issuing his final report on an investigation, the Prisons Ombudsman will send a draft to the Director General of the Prison Service to allow the Service to draw attention to points of factual inaccuracy, to confidential or sensitive material which it considers ought to be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations.

### **Recommendations by the Ombudsman**

17. All recommendations will be made either to the Director General of the Prison Service or to the Home Secretary as appropriate. Recommendations should take account of the roles, duties and powers of those to whom they are directed.

### **Final Reports and Response to Complaints**

18. The Prisons Ombudsman will reply to all those whose complaints have been investigated, sending copies to the Prison Service, and making any recommendations at the same time. The Ombudsman will also inform complainants of the response to any recommendations made.

19. The Prisons 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 Response to Recommendations**

20. The Prison Service has a target of four weeks to reply to recommendations from the Prisons Ombudsman. The Prison Service should inform the Prisons Ombudsman of the reasons for delay when it occurs.

### **Annual Report**

21. The Prisons Ombudsman will submit an annual report to the Home Secretary, which the Home Secretary will lay before Parliament. The reply 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 Prisons Ombudsman has approached the Prison Service;
- a summary of the costs of the office.

### **Summary of Costs**

Running costs

£

Staffing costs (salaries) 509,070

Non-pay running costs 280,260

TOTAL 789,330

Cost of staff time spent on administrative work\_(These costs have not been included in the calculation of average costs, below.) 117,739

Casework costs

£

Average cost per complaint received 280

Average cost of dealing with each ineligible complaint 140

Average cost of each investigation 814

## Staff at the Prisons Ombudsman's Office

### **Prisons Ombudsman**

Stephen Shaw

### **Personal Secretary**

Jennifer Buck

### **Assistant Prisons Ombudsmen**

Lindsay Addyman (to 30 September 2000)

David Barnes

Tony Heal

Ali McMurray

Olivia Morrison-Lyons

Barbara Stow

### **Secretary to the Assistants**

Olajumoke Amure

### **Assessment and Implementation Team**

Nazma Begum

Margaret Holt (to 17 January 2001)

Nicola Jeffrey

Joanne Cripps (to 31 October 2000)

Rubina Mir

Ian Patterson-Sharpe (to 1 June 2000)

Tracy Wright

### **Investigators**

Mark Brookes-Duncan (to 6 October 2000)

Russ Crooks

Karen Evans (to 24 November 2000)

Stewart Greer

Ann Hosking

Hilary Howard

Andy King

John Maggi

Julie Minnette (to 24 November 2000)

Rebecca Mulcahy

Anita Mulinder (to 27 July 2000)

Sarah Range

Anna Siraut

Annie Tanner

Stephen Toyne

Nick Woodhead

Office Manager –

Geoff Hubbard