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**Prisons and Probation Ombudsman
for England and Wales**

Annual Report 2001-2002

The Pursuit of Decency

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty
June 2002

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

Statement of values

To be accessible to all who are entitled to make use of the office of Prisons and Probation Ombudsman and actively to seek removal of any impediment to it.

To be independent and to demonstrate the highest standards of impartiality, objectivity, thoroughness, fairness and accuracy in the investigation, consideration and resolution of complaints.

To be fair in the treatment of all complainants without regard to criminal history, race, ethnicity, gender, disability, sexual orientation, age, religion, or any other irrelevant consideration.

To be effective by ensuring that complaints are dealt with as quickly as possible and that recommendations are well founded, capable of being implemented and are followed through.

To be constructive in helping the Prison Service and National Probation Service improve their handling of complaints, to eliminate the underlying causes of them and to bring about a just and humane penal system.

To be empowering by creating and maintaining a working environment in which staff are respected, engage in continuous learning, obtain job satisfaction and have equal opportunities for personal and career development.

To be accountable to stakeholders for the fulfilment of our mission statement, our values and aims and objectives.

To be efficient in the management of resources and deliver value for money.

Overview

This is my first Annual Report as Prisons and Probation Ombudsman. It does of course follow reports issued by myself and my predecessor, Sir Peter Woodhead, as Prisons Ombudsman. However, I emphasise the fresh start for two reasons. First, because the volume of cases and our working methods have changed massively in the past year. And second, because I regard the extension of my remit to probation as a major practical and symbolic step towards joining up the criminal justice system.

During the period covered by this report, the number of eligible prison complaints rose by 40 per cent. This was on top of the 53 per cent rise in 2000-01. That rise resulted in a backlog and delays for complainants. Sadly, both have been features of 2001-02. I take some satisfaction, however, from the fact that the size of the backlog ceased to grow quite early in the year, despite the rise in the number of eligible complaints.

The numbers of probation complaints have been modest. Almost all were ineligible (they had not exhausted the internal complaints system), and almost all have come from prisoners, not those currently on licence or other

forms of probation supervision. But already I believe my office is bringing its influence to bear. The establishment of an independent complaints system is an important step in modernising probation practice. This is not a matter of bureaucratic neatness; it is about a culture of accountability and performance management. Joining up prison and probation complaints procedures reflects real continuities in the penal system and provides opportunities for shared learning and shared practice.

Whereas last year my budget fell and I lost a number of staff, this year I have been able to take on some fine new Investigators and other staff. In addition, my colleagues have been pioneering new and accelerated methods of tackling investigations. Processes have also changed – with real service benefits.

The net effect of this is an increase in output of 112 per cent comparing 2001-02 with 2000-01. There can be few, if any, offices which can compete with this achievement.

Effectiveness and efficiency in the use of resources are core values of the office. This Annual Report describes developments in my workload, processes and remit. New partnerships, new approaches to complaints, rapid growth in input and output are documented within. Indeed, I pay happy tribute to my colleagues for having risen so splendidly to the challenges of change on this scale. This is the place too to thank those members of the Prison Service – from the Director General to the rawest recruit on a wing – and the National Probation Service who have engaged with and encouraged our work.

But it is not on bureaucratic procedures – and their refinement – that my office wishes ultimately to be judged. What is crucial is the objectivity and incisiveness we bring to our judgements, the values on which they are based, and the relevance and good sense of our recommendations. In this way, we contribute towards a more humane and decent penal system. I hope the cases summarised in this Annual Report demonstrate the extent of that contribution.

Some of the cases described in this Annual Report go to the heart of human rights in prison. Treating prisoners with decency underpins all our work and is the central theme of this report. In most cases, prisoners **are** treated professionally and decently. However, the potential for abuse (whether physical or the playing of ‘mind-games’) is ever-present in any prison system.

Late last year, I visited a large local prison, part of that Victorian legacy which still constitutes the backbone of the prison system. As is my custom, I spent some time in the segregation unit where I met a highly agitated young man who was protesting against being held there. The reasons for his being detained in the unit need not concern us – although they were flimsy. At the time, I was more concerned whether he could be calmed down.

Noticing a radio on his window-ledge, I asked if he listened much during the long hours on his own. “Doesn’t work,” he replied, “they’ve taken the lead away. They say I might hang myself.” “And batteries?” I asked. “They’ve taken those away too as they say I could use them as a weapon.”

Faced with this ruthless logic, I suspect many of us would also be agitated. Some might think it an especially delicate touch to leave the radio in place, having removed all means of making it work.

I am pleased to say that by the time I left the prison, batteries and lead had been restored and the man returned to normal location.

Here is an extract from a letter I received during the year, at first sight referring to something even more commonplace than a radio:

“On behalf of my family and myself, I would like to thank you for your interest and help concerning my son ... he is now allowed pens, and I’m sure this was because of your intervention.”

What could be more trivial than access to biro? Or what could be more important, given prisoners’ isolation and absolute reliance on the state, than the only means of staying in touch with family and friends?

I am conscious of prisoners' total dependence upon the professionalism and decency of staff. It is not of scant account that one prisoner was restored his pens, and another his radio, as a result of my office's intervention. On the contrary, inhumanity is as often demonstrated in small acts as in large ones.

In the year ahead, I intend to build on our success in meeting the targets set in our business plan. I will be paying particular attention to enhancing access to my office by both prisoners and those on probation, and to enhancing the quality of service. Most of all, I want to restore our reputation for timeliness, notwithstanding the huge increase in workload. Reducing the backlog of cases is the priority for 2002-03.

The Year in Summary

During 2001-02, we received 2,825 complaints. The vast majority (96 per cent) concerned the Prison Service. Just 97 were about the National Probation Service (NPS). Overall, the volume of complaints received rose by 30 per cent.

It is difficult to pinpoint why the volume of our work has continued to rise. It may, in part, be due to the higher profile we have adopted through personal visits and our publicity material. It may also be the result of Prison Service willingness to encourage prisoners to complain to me. Finally, the elimination of delays at Prison Service HQ may also have given prisoners greater heart to go through the whole complaints process to reach me

Of the total number of complaints, 1,202 (43 per cent) met our eligibility criteria.

The ratio of eligible to ineligible complaints has narrowed significantly in recent years.

We completed 1,107 investigations, a rise of no less than 112 per cent over 2000-01 and a magnificent achievement by my colleagues.

The high security estate continued to generate most complaints.

Once again, adjudications formed a significant proportion of our postbag – 17 per cent. Complaints about property were the second largest component.

The make-up of the rest of the workload has remained pretty consistent with previous years. We received comparatively few complaints about access to regimes. This is puzzling, particularly at a time when prisons are increasingly overcrowded and opportunities within them correspondingly diminished. I can only assume that prisoners' expectations in this respect remain depressingly low.

Complaint categories (eligible)

Refusal of Home Detention Curfew also generates fewer complaints than might be anticipated (given the real frustration and anguish it must engender). I understand that Prison Service HQ also receives very few appeals on this subject. At one of my regular meetings with the Director General of the Prison Service, I asked for a review of the appellate system. This currently consists of Governors reviewing decisions taken in their own name and – because of the time constraint – virtually excludes any independent review. The Director General agreed to consider further. I also wrote to Prison Service HQ following representations about prisoners being transferred to open prisons too late for them to be considered for release on the tag. I was advised that this was due largely to the current overcrowding, but was reassured that this issue was being taken seriously and would continue to be monitored.

Ineligible Complaints

We received a smaller proportion of ineligible complaints this year. Not having exhausted the internal complaints process continued, however, to be the most common reason for ineligibility. I am especially concerned to note that of 43 complaints specifically about race matters, some 29 were ineligible. None of them had been through the internal complaints procedure before coming to my office.

This leads me to wonder whether the ‘Confidential Access’ system, whereby prisoners may complain direct to the Governor or Area Manager, is working as it should, or whether prisoners are confident that they will not experience recriminations.

During the year, I personally undertook a review of ineligible complaints. As a result, I have encouraged my colleagues to interpret our terms of reference more liberally as they apply to third party complainants, especially where young offenders and other particularly vulnerable groups are concerned. I have also asked them to take a more flexible stance in certain types of cases – those alleging assaults by staff, for example, race, victimisation or other serious issues – and not automatically reject them because of a technicality.

Ineligible complaints 2001-2002 (%)

Outside time limits	5
Outside remit	6
Not followed full procedure	85
Other	4

Investigations

Our complement of Investigators has more than doubled. The office benefits from a diverse workforce who have brought different skills and experience to their work. This has been enormously stimulating for us all.

We have developed new ways of working, partly as a response to the backlog, but also to improve the quality of our work and our customer service. Increasingly, our Investigators have resolved complaints through dialogue with staff in the Prison Service's Briefing and Casework Unit (BCU) and Directorate of High Security Prisons (DHSP). This has provided redress for the prisoner with a minimum of bureaucracy. Visits to prisoners by Investigators have also become much more common. These provide a welcome personal touch, and tangible reassurance that someone is listening. In some cases, complaints can be resolved on the spot. It has brought other benefits to the office. By targeting particular establishments, we have been able to deal with a number of complaints at once. I plan to research the effectiveness of this new approach during the coming year. I feel sure, however, that it is a change that is here to stay.

Our product range has also developed once again. Letters direct to prisoners, rather than formal reports, have become increasingly the norm. In many instances, these have the same depth and detail as formal reports, but they address the prisoner. I am certain this is a more customer-friendly approach. It has become my practice to draw these letters to the attention of governing Governors where my investigation has highlighted shortcomings in procedures of which he or she should be aware, but where a formal recommendation is not warranted. In some cases, where Investigators have been able to explain their findings face to face to prisoners, we send short letters simply confirming what was agreed. Finally, the number of cases closed by local resolution (that is, redress agreed between the prisoner and the Prison Service, brokered by my office) has increased. This also is a trend I heartily welcome.

Time Targets

The Home Office Business Plan requires us to determine eligibility in 70 per cent of cases within 10 days. I am pleased to report that we have exceeded this, attaining a figure of 80 per cent. This is testament to the skills and professionalism of colleagues in the Assessment and Implementation Team, which was set up in 2000-01.

Our terms of reference say we should aim to close cases within 12 weeks of accepting them. We could only have achieved this in the past year by ring fencing (in effect, abandoning) those cases in the accumulated backlog. I did not believe that such an approach would be proper. Nor did I believe it would maximise the total throughput of cases. I opted instead for a universal cab-rank in which we took cases in date order, unless there were special reasons (impending release, for example) why they should enjoy priority.

I am pleased that 32 per cent of cases were completed on time, notwithstanding this change in process.

Recommendations

I made 324 formal recommendations this year, all to the Director General of the Prison Service. He accepted the vast majority (99 per cent). Not all my recommendations are welcome, however – amongst other things, one of the performance measures against which prisons are judged is the proportion of adjudications overturned on appeal.

Our terms of reference mean that where I find fault on the part of the Prison Service, I may only seek to resolve matters locally or make recommendations to the Director General. I cannot impose my findings. Nor do I seek such a power. But in theory, there is nothing to prevent a Director General routinely rejecting my recommendations. Were this to happen, it would have devastating implications for my office. What point could there be in prisoners complaining to me, if at the end of the day the Prison Service simply ignored my findings?

Like other Ombudsmen, I do not claim to be free from error. Many of my judgements are finely balanced – and thus ones about which reasonable people might reasonably disagree. However, my findings result from painstaking investigation and a careful assessment of the facts. Moreover, they are arrived at independently. Of itself, this should lend them considerable weight. Inevitably, I am concerned whenever my recommendations are challenged or rejected.

I discussed the rejection of several recommendations within a short time with the Director General. He assured me that he will only reject my recommendations in exceptional circumstances. He said that, even where he does not agree with my conclusions, he will accept my recommendations unless there are clear substantive reasons why he should not. I know there have been several instances where he has accepted my recommendation against the urgent advice of those in the operational line. I welcome this reaffirmation of what has been a close and mutually respectful working relationship.

The Director General initially rejected seven of my recommendations this year. In light of my further representations, he accepted my view on three of the seven. This left four rejected recommendations (the same number as in 2000-01). Two of these related to adjudications.

In the first, [Mr A \(11330/00\)](#) was found guilty of possession of a pipe.

The adjudicator seemed to have found Mr A guilty on the basis of his belief that the pipe was for use with illicit drugs. In the absence of corroborating evidence, I was not satisfied that this was reasonable. In light of this, I considered the adjudicator had made insufficient enquiry into whether Mr A knew the item was unauthorised. The Director General rejected my recommendation that the finding of guilt be quashed. He said Mr A would have been fully aware of the restrictions on items allowed in possession and on exchanging items with other prisoners. As such, his actions were at least reckless. This was sufficient for a finding of guilt. I asked the Director General to reconsider his conclusions. He said legal advice endorsed his original view and he therefore rejected my recommendation.

In the second case, [Mr B \(12680/01\)](#) was found guilty of disobeying a lawful order to leave the television room. It was his first offence. He was punished with 21 added days, 14 days stoppage of earnings (at 50 per cent), 14 days loss of canteen and 14 days loss of association. This was significantly higher than both the establishment's tariff for such

offences and what I would expect for an offence of disobeying a lawful order. Despite this, the adjudicator had offered no reasons for the penalty. I recommended mitigation. The Director General rejected my recommendation on the grounds that Mr B's action was part of a concerted act of indiscipline which had caused significant disruption. He said the Prison Service had a duty of care to prisoners and staff alike and acts of concerted indiscipline should be robustly challenged. Given the strength with which he held this view, I took no further action.

The third rejection related to a tape being stopped which [Mr C \(10906/00\)](#) was trying to send to a friend. Staff stated that it was stopped because it contained sexually explicit material. No copy or transcript of the tape was taken, however, and the tape was returned to Mr C. He sent it to me at fact check stage. The tape he sent contained nothing which could fall within the restrictions on content of correspondence as set out in Standing Order 5B. I concluded, therefore, that it should not have been stopped and that Mr C should receive an apology. The Director General thought the content of the tape could have been altered before being sent to me. He said the Governor at the prison was adamant that the contents of the stopped tape were indecent and offensive. He therefore considered that an apology was not appropriate. I argued that the Prison Service's inability to provide me with any physical evidence to counter Mr C's assertion that the tape he sent was the one stopped meant an apology was justified. Nevertheless, I accepted the Governor's personal assurance that the contents of the stopped tape were indecent, and decided not to pursue the matter further.

[Mr D \(10363/00\)](#) was denied access to the prison shop as a punishment for a disciplinary offence. He complained that he was not allowed to buy batteries for his radio during this period. Subsequently staff told Mr D that not allowing him to buy batteries had been a mistake. By then he had smashed the radio in frustration. I recommended that the Director should apologise to Mr D, for what was acknowledged to have been an error. The Deputy Director General said Mr D had already received an apology from an official in the Directorate of High Security Prisons and that no further apology was necessary.

He commented that my recommendations were only rejected in the most exceptional circumstances. I saw nothing exceptional in this case. It was simply a case of the Prison Service substituting its own view for mine.

Prison Service Pilot Complaints System

The Prison Service has piloted a new complaints system, which is now to be implemented nationally. With certain specified exceptions, it removes Prison Service HQ from the complaints procedure. Under the new system, prisoners' complaints are answered in the first instance by wing staff. They may then appeal to a manager or governor. If they are still dissatisfied, they may appeal to the governing Governor. I welcome this approach. It keeps the responsibility for dealing with complaints close to home and facilitates their early resolution. The knowledge that decisions may be reviewed by the respondent's line manager is also a powerful incentive to get it right.

On the whole, I have been impressed with the way the system has worked. We anticipated a huge increase in the number of appeals to my office, but this did not materialise. This suggests the system is working effectively. Staff have generally given reasoned responses. In addition, it has been interesting to note that my uphold rate for complaints from the pilot prisons has been lower than that for the rest of the estate. This would seem to suggest that, although prisoners may not always be getting the answers they want, the decisions themselves are sound.

Probation Complaints

In the period 1 September 2001 to 31 March 2002, we received 97 complaints concerning the National Probation Service. Members of my Probation Project Team have made presentations to the majority of the 42 Probation Boards. I say more about this at pages 19-21.

Public Face

Ombudsmen's offices do not generally enjoy a high public profile. But the launch of the Prisons and Probation Ombudsman's Office necessitated a major re-branding exercise and enabled me to refresh all my promotional material. We now have a range of posters, two videos, an audiotape, new leaflets and dispensers and new stationery. I am particularly proud that our video won a gold medal at the prestigious New York Festival of Film and Video, against 1,400 competitors from around the world.

We have also greatly enhanced our presence on the Internet, with a web address (www.ppo.gov.uk) which emphasises our independence.

Further copies of our newsletter

(now re-named **On the Case**) have been published and I welcome invitations to write or speak. I have written regularly for **Inside Time**, **Prison Service News** and **AMBoV Quarterly**, the publications most relevant to three of our key stakeholder groups. We have also endeavoured to place articles in probation outlets and prison magazines.

The joint Prisons and Probation Ombudsman service was formally launched at a well-attended conference in London in November 2001. Speakers included the Parliamentary Under Secretary for Custodial and Community Provision, Beverley Hughes MP, as well as senior figures from both the Prison Service and the National Probation Service.

Engagement with Stakeholders

We have continued to work with our stakeholders on projects of mutual concern. With the Prison Service, we have made a significant contribution to the revision of the Prison Discipline Manual. In addition, we worked closely with Prison Service HQ during the pilot of the new complaints system.

With the Youth Justice Board, we jointly sponsored a consultancy exercise into complaints procedures for juveniles (building upon my earlier study, *Listening to Young Prisoners*). Juveniles – in common with young offenders generally – rarely feature in our caseload. Further work in this area is planned during 2002-03.

Although we may reasonably disagree sometimes on the merits of individual cases, my office – while jealous of its independence – regards itself as working with the Prison Service and NPS and not against them. The insight that effective complaints systems are both a feature of modernisation, and one of the ways to achieve it, is now widely acknowledged. The office enjoys daily a host of formal and informal contacts with the Prison Service and NPS.

Finally, to clarify our respective roles, we have drafted a Memorandum of Undertaking with the Data Protection Commissioner. This sets out our respective responsibilities when prisoners complain about data protection issues.

Business Planning

The Prisons and Probation Ombudsman's Business Strategy 2001-2004 and Business Plan 2001-2002 were published in one document in September 2001, the first such strategy document to be made public. Progress on the plan and strategy has been very encouraging.

Staff numbers have almost doubled. We now have five secondees from the Prison Service and NPS and we are exploring the possibility of further secondments from other Ombudsmen's offices. A human resources consultancy exercise has led to longer-term plans for more flexible working as well as a renewed focus on training and open recruitment. We also plan to maximise the use of office space by encouraging hot-desking.

I have been truly fortunate in the calibre of colleagues who have joined us. But the fact remains that many of my colleagues have been in post for less than a year. To facilitate their development, we have introduced mentoring and job shadowing. We have also reviewed staff training and set up modules on jailcraft and personal safety and reinstated thematic lunchtime seminars.

All colleagues have been involved in focus groups looking at aspects of our procedures, and there has been a review of the office's meetings structure. We also strengthened our commitment to diversity and equal opportunity issues. The office's internal Annual Review again proved fruitful. We adopted two charities for the year.

A Case Management I.T. Project should finally bear fruit late in 2002-03. Delays in the delivery of this project have seemed interminable and utterly outside my control. The specification of the new I.T. system is, however, radical and exciting.

On 1 April 2002, we secured good-quality accommodation on a long-term basis, when the Home Office assumed the freehold of Ashley House – the building in which we are situated. Plans to co-locate with HM Inspectorates of Prisons and Probation and the Board of Visitors Secretariat are well-advanced. The synergies between our roles should provide significant business and efficiency gains.

In line with the Business Plan, I have kept my terms of reference under review. Complaints concerning clinical judgement of doctors are currently outside my remit. My preferred solution has been for such complaints to be addressed through the NHS complaints procedure. Discussions about this have taken place. There has also been further consideration of what role, if any, my office might play in investigating deaths in prison custody.

A rising volume of complaints can put quality of service under strain. Delays in handling cases are a clear example of where quality has suffered. We have, however, endeavoured to improve our correspondence-handling (in terms of both speed and quality). File security has also been improved, and the lessons from the successful Accelerated Process team shared with all Investigators. I also view the increasing numbers of personal visits by my staff as an improvement in quality.

Comprehensive desk-notes relating to assessment of eligibility and implementation of recommendations have been produced. A procedures manual for investigating complaints is in draft. This will reflect the findings of a fundamental review of our operations, which have already generated productivity gains.

Prisoners' Satisfaction Survey

Quarterly reviews of 'customer satisfaction' are mounted for me by the Research, Development and Statistics Directorate of the Home Office. Many prisoners have rightly been critical of the long delays in investigating their complaints. I do not underestimate the frustration and irritation such delays cause and I am constantly surprised that many are so patient, and generous in their thanks once the case is closed. That said, I am far from complacent. I am determined to reduce waiting times and then eliminate the backlog as swiftly as possible.

It is disappointing that a significant proportion of prisoners doubt my independence, believing that my Investigators accept too readily what Prison Service staff tell them. I suppose that such a view is inevitable if we do not uphold a prisoner's complaint. But given that we already treat critically all information given to us, it is difficult to know what further we can do to address this perception. Statutory independence – which remains the office's goal – would help.

Many prisoners would like us to raise our profile. Some have suggested there should be an Ombudsman in each establishment! I hope that increasing the number of visits by my Investigators is helping to meet this need. I am grateful to those Boards of Visitors who have been monitoring the use and display of my posters and other

material on wing noticeboards. I am grateful too to HM Chief Inspector of Probation who has agreed to monitor the position in relation to the NPS.

Outcome of Investigations 2001-2002 (%)><

Upheld	20
Local Resolution	14
Not upheld but recommendation	4
Not upheld no recommendation	62

A New Service

The extension of my remit to include the National Probation Service represented a major change for the office. It required the development and adaptation of systems to serve those on probation as well as prisoners. To this end, we set up a Probation Project team to establish within one year:

An independent complaints investigation service for offenders under the supervision of the National Probation Service; and

An awareness by all stakeholders of the extended service being provided.

The team consists of an ex-Assistant Chief Probation Officer, a Senior Probation Officer seconded from the NPS and one of my most experienced Investigators.

We held an official launch on 29 November 2001. All Chairs of Probation Boards, Chief Officers, Prison Governors, other Ombudsmen, voluntary organisations and other interested bodies and members of the press were invited to attend.

Beverley Hughes, the Prisons and Probation Minister, kindly agreed to speak. She said,

“This is an important event. It is not only an important service development in its own right, but is also symbolic of the level of changes we need to see in a modernised criminal justice system. I greatly welcome the extension of Stephen Shaw’s remit beyond the prison walls, giving those under the supervision of the National Probation Service the same rights of access to an independent adjudicator to deal with their grievances that are already available to prisoners.”

She added,

”The principle of having a system that focuses on the individual user’s experience of services and using that system not only to secure wider redress but also to drive change more generally is essential.”

Phil Wheatley, Deputy Director General of the Prison Service, also spoke. He acknowledged the contribution my office makes to ensuring a humane and decent penal system when he said,

“Having an Ombudsman is an improvement. I’ve no doubt about that. It has driven up the quality of our decision making, because decisions will be reviewed independently.”

Beryl Seaman, Chair of the Probation Boards Association and Tony Woolfenden from the National Probation Directorate also addressed the audience, echoing the positive remarks already made. Tony Woolfenden said,

“A good complaints system is an essential part of our processes in probation.
The Ombudsman adds the vital independent element, plus the expertise of his office.”

In order to ensure that the extension of our remit was widely publicised, we issued a press notice. We also sent copies of new promotional material to all prisons and probation areas. Our leaflets and posters were produced in both English and Welsh. The leaflet has also been translated into 19 other languages. New video and audio tapes will ensure that information about our services is readily available to all who wish to use them.

I also offered presentations about my work to all Chairs of Probation Boards. I am pleased to report that the majority of probation areas have already accepted my offer. By the completion of the project, I or my project team will have visited all of them. Feedback from these presentations is that they have helped significantly increase knowledge and understanding of our work.

Alongside our efforts to increase awareness and to ensure that our services are widely used, we have commissioned a new system for recording probation complaints. We have also devised a form for monitoring ethnicity, which will be sent to all those complaining about the National Probation Service. Taken together, these initiatives will enable us properly to record and monitor all probation complaints. We will then be well placed to target those who, for whatever reason, are not using our service.

Complaints

Between 1 September 2001 and 31 March 2002, we received just 97 probation complaints. Sadly, only 8 of these met our eligibility criteria. Not having first gone through the internal complaints system was by far the main reason. Of the total received, 85 were from prisoners, with just 12 coming from offenders in the community.

Despite the modest number of eligible complaints received, some themes are already beginning to emerge. One is the destruction of offenders' property when they are returned to prison following breach or recall after a period of hostel residence. Another is the lack of response from probation staff to requests for contact and information. During the coming year I shall be interested to see what other issues emerge.

I anticipate that the number of probation complaints will increase over the coming 12 months as awareness of our service spreads. In order to meet this anticipated increase, we have devised a training programme for Investigators in procedures to be followed for probation complaints. I have no doubt that my colleagues will meet this new challenge with the same enthusiasm and professionalism they bring to other areas of their work

Decency

The Director General of the Prison Service has spoken powerfully about treating prisoners with decency. Simply stated, it means being treated as we would expect to be treated ourselves. Treating prisoners decently underpins the work of my office. Decent treatment – or the lack of it – can manifest itself in myriad ways.

[Mr E \(10410/01\)](#) had missed a number of hospital appointments due to failings by the prison. He submitted a request form to ensure he attended the next one. Mr E had recently been on a successful town visit. He was shocked therefore when, on the morning of his appointment, he was told he would have to be handcuffed and escorted by two officers. He refused, and missed the appointment yet again. To add insult to injury, Mr E was re-categorised from D to C because his behaviour when told he was to be handcuffed was “not such as would be expected of a Category D prisoner.” He was apparently ‘surly’ and ‘aggressive’. While I do not condone his reaction, I cannot say I find it surprising nor, in the circumstances, particularly reprehensible.

An Investigator discovered that the risk assessment process was not begun until the day after Healthcare responded to Mr E's written request. This suggested that action was only prompted by his request.

The Security Department recommended that Mr E be allowed to attend two appointments without restraints and with just one escorting officer. The form was not signed off, however, until six days later. ‘Escort by two officers or more with restraints applied’ had been ticked. The Investigator was informed that the reason for this was that Mr E's medical appointment came through and there was no time to arrange for a temporary release licence to be issued. I

considered the treatment Mr E received to have been very poor. I recommended that he receive an apology from the prison. I also recommended that his security category be reviewed.

In another case, a prison's efforts to treat a 74 year old female prisoner with compassion and decency met with some indifference at Prison Service HQ.

Normal practice is for lifers to be tested in open conditions prior to being considered for release on temporary licence. Ms F (10382/01) asked, in view of her age, infirmity and temperament, to be allowed to remain in closed conditions. She said she would not be able to pursue the usual programme of phased integration into the community, which was the main reason for requiring lifers to go through open conditions. The Parole Board accepted in March 1999 that there were exceptional reasons for Ms F not to progress to open conditions, but said she was ready to begin preparation for release. What followed was confusing. A Lifer Governor at Ms F's establishment drew up a plan to prepare Ms F for release. This included escorted and unescorted visits as well as resettlement leave, which he wanted to take place before Ms F's next review. He pressed Lifer Unit hard to be able to implement the plan. Unfortunately, Ms F's particular circumstances did not fall into any of the norms, and rules which were intended for other circumstances did not fit her case. The Lifer Governor's many letters were met either with no reply or much delayed replies. Ms F herself applied to Lifer Unit for an unescorted town visit with a friend with whom she planned to live on release. She said she wanted full reasons if this was refused. She did not receive a reply. Various arrangements for Ms F had to be cancelled at short notice when Lifer Unit objected to proposals late in the day. In the event, Ms F was able to complete a period of resettlement leave before her Parole Board review. However, at the time I closed her case, she had passed her tariff date and I had no doubt that she had been caused much additional stress and worry because of delays in replying to correspondence and making a coherent plan. I did not criticise Lifer Unit for their caution in addressing Ms F's particular circumstances, but I considered their approach to the issue to have been piecemeal and beset with administrative shortcomings. I recommended they apologise to her

Complaining with Confidence

I have mentioned our new publicity material, which includes a video called 'Complain with Confidence.' Effective handling of complaints lies at the heart of treating prisoners with decency. It is also an essential part of a healthy prison. An inefficient complaints system is almost worse than no system at all. This is, after all, my office's raison d'être. It was set up following the Strangeways riots in 1990, and the Woolf Report's finding that much frustration had built up due to (sometimes apparently quite trivial) complaints not being satisfactorily addressed. It is vital that prisoners are given free access to a complaints mechanism and that they are able to complain without fear of reprisal.

[Mr G \(10378/01\)](#) complained that he was only allowed to have one request/complaint form at a time, that he was required to give staff reasons for having a form and that it took some time to receive a form once applied for. I discovered that there was some confusion at the prison as to the correct procedures to be followed. Undoubtedly, this impinged on Mr G's ability to complain freely. In particular, I was concerned that Mr G was apparently obliged to discuss his complaint with staff before he was able to obtain a form. While I wholly endorse an approach which facilitates informal, early resolution of complaints, I deprecate artificial barriers preventing or delaying access to the formal complaints system.

I was especially concerned by what I perceived to be action taken against a prisoner who exercised his right to complain.

[Mr H \(10922/01\)](#) complained about his sudden transfer. He was told it was to make room for a prisoner from another prison and that his attitude towards staff, his refusal to comply with sentence planning and his lack of visits were contributory factors. Mr H was apparently unwilling to engage in sentence planning as he thought addressing offending behaviour would weaken his appeal against conviction. Documentary evidence of Mr H's attitude to staff, suggested that part of this 'attitude', at least, appeared to have been his readiness to complain. There was a reference to his using the request/complaint system to his advantage, 'generating paperwork.' With certain exceptions, I considered that Mr H's behaviour fell within the boundaries of what was acceptable. I concluded that the prison simply found it inconvenient to deal with his complaints. They transferred him without even giving him the notice they were required to give. However irritating Mr H was to staff, he still deserved to be treated in an even-handed manner. I noted that the prison had come perilously close to using transfer as an informal punishment

A Damaged Young Man

Crime scars the lives of victims and those who fear becoming victims. Those who commit crime are frequently emotionally scarred themselves. The story of [Mr J \(11545/01\)](#) demonstrates the difficulties faced by the Prison Service, and how the system often fails despite the best intentions of staff.

Mr J came from a family of travellers. He had just turned 16 when convicted of robbery and theft. He and his brother had jostled elderly women as they boarded buses, and stolen their purses to fund a drug habit. He received a long sentence of detention. A project helping travelling families complained on Mr J's behalf about his treatment

whilst in prison. My investigation was one of the largest ever mounted by this office. I reviewed Mr J's entire prison file. It was depressing reading.

During his first six months in custody, Mr J was adjudicated upon 25 times, accumulating a very large number of added days. The majority of charges were for fighting, assaults, damaging property and abusive words. Mr J later said that other prisoners were picking on him and he did not intend to allow himself to be bullied.

I learned that Mr J had had only sporadic schooling and had learning difficulties. He was totally isolated from family while in prison and was unable to write because of his poor literacy skills.

After further adjudications, Mr J threatened to self-harm. Suicide prevention measures were taken. He said he was on hunger strike and intermittently refused food. His father died after he had been in prison for 18 months. He was allowed to attend the funeral but tried, unsuccessfully, to escape. More disciplinary measures ensued.

After a settled couple of months, he was found in his cell trying to hang himself. Six more weeks of apparent improvement followed. He had already served time in three establishments and was now transferred "on a sale or return basis" to yet another. His sentence management document referred to the need to lower the risk of re-offending, to stop the need for drugs and alcohol, and reduce the risk of suicide and self-harm. The plan noted that Mr J was easily stressed, suffered from panic attacks and had an anger management problem. As the months proceeded, little seems to have been done to meet those needs and there were yet more serious concerns about self-harm.

Further transfers, violence and threats of self-harm followed as Mr J's behaviour became more erratic. A psychiatrist recommended that he needed psychiatric care. The next week, Mr J tried to set fire to his cell and threatened to injure both himself and members of staff. After two weeks in yet another prison (cell-mate tried to hang himself; Mr J cut his own arm; threats from other prisoners), Mr J was transferred again.

Mr J oscillated between normal location and the segregation unit. He received no visits. There were more adjudications. An officer noted, "I am at a loss what further to try."

Another move. Mr J became aggressive, saying he would self-harm and smash his cell if he was not taken to the segregation unit. He was taken to healthcare but returned to normal location for a few days. He then reported he could hear voices in his head telling him to kill himself. He was again disruptive, refused to see a psychiatrist, and declined to take his medication. A fortnight after arriving, he went back to the prison whence he had come.

There he threatened to destroy property, stab a prisoner and staff and said he would kill a nurse. He tried to barricade his cell. An array of adjudications followed. Some months later and another transfer. And more threats to self-harm or take hostages or refuse to eat. His mental state deteriorated. Reports say he believed he was Jesus reincarnated, was exhibiting bizarre behaviour and was unaware of his actions. Mr J was transferred to hospital for compulsory treatment under the Mental Health Act.

There is much evidence in the various prison records of staff spending time with Mr J. Many entries start, "Had a long discussion with Mr J today..." It is clear, however, that he was a difficult lad to talk to. His understanding

was slow and limited. There are a number of references to his constantly ringing his cell bell, only to do the same thing minutes later having already been given the answer.

I identified 17 times Mr J moved between establishments during his period in custody. Some of these moves were overnight stays for court appearances or to attend his father's funeral. Nevertheless, Mr J was moved round the prison estate to a quite extraordinary degree.

Individually, the reasonableness of most transfers stood up to scrutiny. However, the ability of prisons to pick and choose whom they take means that young prisoners may not be placed according to their needs, but on the basis of who will take them. The approach to Mr J's allocation was piecemeal and short-termist. Many transfers broke down because they were inherently inappropriate. The continual movement can only have had a damaging effect on Mr J. What he needed was continuity and stability; what he received was constant change.

I particularly object to the phrase 'on sale or return' when applied to transfers, with its implications of so much unwanted merchandise. In addition, such transfers had failure built into them for Mr J. His worst periods seem to have followed the disruption of a transfer.

Forty-six adjudications meant Mr J was adjudicated upon at least once a month. I could see that these charges were justified. Many of them related to fighting or damaging prison property. I could not have expected Mr J to have been treated differently from other young prisoners. Indeed, I found instances where his behaviour might ordinarily have warranted an adjudication but none took place.

Many adjudications resulted in added days. Perhaps adjudicators thought they had little choice (cellular confinement being particularly inappropriate). But I doubt the deterrent effect, as well as the sense, of increasing the custody time of a young man who was so self-evidently having difficulty with the long sentence he had been given. Some punishments seemed particularly harsh. I can imagine few circumstances where 28 added days, 7 days stoppage of earnings, loss of a visit and 3 days loss of association would be warranted for a vulnerable teenager accused of fighting.

Each YOI seems to have managed Mr J in the short term – some quite successfully – but there was no single strategy being worked through. For that reason, improvements to his behaviour were unlikely to be sustained. In particular, none of the needs identified early on were addressed. A more rigorous approach to Mr J's education would undoubtedly have helped his self-esteem.

All that said, day-to-day care was impressive. Various individuals clearly took great pains with Mr J and did their best to support him. Towards the end, staff tried repeatedly to get his mother to visit (she refused). There are many references to staff helping him to write letters to her. On at least one occasion, Mr J was introduced to a prison visitor. It was a testament to staff's care that Mr J did not harm himself seriously while in their custody.

But day-to-day care was not the issue. It was the lack of an overarching systematic approach to addressing Mr J's needs. He was undoubtedly a very difficult and challenging young man. I was not persuaded, however, that his

particular circumstances – his low intelligence, poor education, immaturity etc – were unique. Sadly, there are many others like him.

I felt the Prison Service had coped with Mr J as best it could. But its best fell far short of its own aspirations and of what the public had a right to expect. I recommended that copies of my report be drawn to the attention of the Governors of all establishments holding juveniles and to the heads of the relevant Headquarters units. Happily, the Director General accepted my recommendation.

Investigating the Investigators

Many complaints we receive concern the outcome of investigations mounted by the Prison Service itself. As when reviewing adjudications, I do not generally see my role as being to re-hear all the evidence. Rather, I look to see if the internal investigation has been thorough, properly recorded, and with conclusions soundly based on the evidence.

As I well know, conducting a watertight investigation is a challenging undertaking. In some cases, I find the Prison Service investigation has been well done.

[Mr K \(10221/01\)](#) said that he had witnessed an assault on a prisoner by a member of staff.

I found this had led to a very full inquiry. Mr K's evidence, and that of another prisoner witness, had been reproduced in full.

However, there was countervailing evidence from staff. This too had been properly considered. In light of my review, Mr K was satisfied that the matter had in fact been handled correctly.

There are other cases, however, which reveal significant flaws in the internal investigation.

[Mr L \(11029/00\)](#) complained about racial abuse and assaults by staff. There could be few more serious allegations. Yet the internal investigation report was not submitted for two months, not the two weeks intended by the governor who commissioned it.

Despite this delay, I found significant gaps in the investigation. Some prisoner witnesses had not been interviewed, Mr L's own role seemed to have been very limited (he was interviewed just once), and the staff witnesses had been asked almost exclusively about Mr L's behaviour rather than their own or their colleagues'.

All in all, I did not think the investigation had been conducted with the required rigour and impartiality. I could form no conclusion about whether Mr L had been racially abused or assaulted by staff. But neither did I think his complaints were “malicious” or “egregious”, two words used by the Prison Service’s investigator. I recommended an apology for the way Mr L’s complaint had been investigated, and renewed advice on the importance of investigators adhering to the relevant instructions.

Although my role is often limited to reviewing the papers, there are times when important new information comes to light.

[Mr M \(10270/01\)](#) complained that a member of staff had told another prisoner that Mr M was responsible for the prisoner losing his job. The internal investigator did not record his interviews with the other prisoner or the officer. He said Mr M declined to be interviewed (Mr M denied this). He concluded that there was nothing to the allegation.

At first, I felt there was nowhere to take the investigation. However, I eventually traced the other prisoner concerned. He denied being interviewed, saying he had simply been asked to write a statement. The information he provided me offered confirmation of Mr M’s account. Most telling of all, both Mr M and the other prisoner were privy to information which could only have come from a staff source. I upheld the complaint.

There are times, however, when prisoners seem to abuse their right to an investigation of a complaint:

[Mr N \(10948/01\)](#), a white prisoner, said he was receiving racist harassment, slights and condescension from a prison officer. The Race Relations Liaison Officer investigated the complaint. He found no evidence to support the claims. In contrast, there was clear evidence that Mr N had referred to the officer as a “bastard” and “half-breed”. Mr N said his comments were based on his personal experience around the globe. I considered them simply insulting and outrageous

Property

Respect for prisoners can be shown in many different ways. I believe that respect for their property is an important part of the pursuit of decency.

However, thousands upon thousands of receptions, cell-moves and inter-prison transfers take place in the prison system every year.

In these circumstances, it is inevitable that – on occasions – property will be damaged or go astray. For this reason, it is no surprise that complaints about loss of, or damage to, prisoners’ property are the second largest component of our workload.

[Mr P \(10011/01\)](#) said another prisoner had tricked him into handing over his trainers. When the other prisoner was moved to the segregation unit, Mr P asked staff to help get them back. However, the trainers had been bagged with the other prisoner’s legitimate property and were eventually transferred with him to another jail.

Mr P should not have handed over his trainers, whatever the circumstances. But the Prison Service had also slipped up. The trainers were not on the other prisoner’s property cards and should not have been bagged up with the items that were. Given this evidence of negligence, I recommended the Prison Service compensate Mr P for their loss.

[Mr R \(11040/01\)](#) was transferred unexpectedly for his own protection while giving evidence for the Crown. He had left some property in the laundry and it had gone missing. The prison said it had made a thorough check for the missing items, but had not found them. However, I discovered that staff did not attend to his property until six days after he had left. This meant he was without a change of clothes for a week. (Given his transfer came about because he was giving evidence for the Crown, this in itself falls far short of what Mr R had a right to expect.)

There were other problems. The book recording the searching of cells had gone missing. And the cell clearance had been conducted by one officer, not two as required. It was a shoddy story and I recommended Mr R receive compensation for his losses.

Prison Service guidance on the handling of prisoners’ property makes it clear it is retained in possession at the prisoner’s own risk. However, there are circumstances where responsibility passes to the Prison Service. One such is the sudden removal of a prisoner for disciplinary or control reasons. The guidance in such cases is that the prisoner’s property should be secured until it can be checked against the prisoner’s in-possession property record and removed from the cell. Two members of staff should complete the process and the property should be placed in sealed property bags. A note should be made of any discrepancies between the property removed and that listed on the property card.

This case illustrates the importance of conducting cell clearances properly.

[Mr S \(10450/00\)](#) complained about missing property following his removal to the segregation unit. The prison and Prison Service Headquarters confidently replied to enquiries that Mr S’s cell was sealed immediately, that no-one had access to it for the next fortnight, and that anything listed as missing on the cell clearance certificate must have been missing when Mr S was removed from his cell. Our investigation revealed that all three of these assertions were

untrue. Although I found no evidence that Mr S's property was stolen or that his cell was left insecure, I concluded on the balance of probabilities that some of his property went missing while the Prison Service was responsible for it.

But prisoners too have responsibilities.

[Mr T \(11579/00\)](#) was taken to the segregation unit. His property was bagged and no fewer than nine cell clearance forms were completed.

Mr T said that food items had been crushed and clothing had gone missing.

There was evidence that one item had been broken and, notwithstanding that this had not been recorded on the forms, the Prison Service had quite properly offered compensation. However, I could find no evidence to support Mr T's other claims. I discovered Mr T had previously been warned about leaving clothing in communal areas for drying. Mr T accepted that this was so, but insisted that the items were in his cell when he left it. Self-evidently, I could not know what actually occurred. But prisoners must take special care of their possessions. What we take for granted in our own homes cannot apply in prisons. When the Prison Service says that in-possession property is held at the prisoner's own risk, quite rightly, it means what it says.

Property cases often leave many imponderables.

[Mr V \(10054/01\)](#) said his stereo system had been damaged sometime between his leaving one prison and receiving his property at another.

The property had certainly been delayed – reception staff speculated that it had simply been forgotten on successive occasions. The seal on the bag had also been changed – without Mr V's knowledge or in his presence. I did not discover why. Nor did I discover where or when the damage occurred. However, responsibility for Mr V's property transferred to the Prison Service at the moment the seals were changed in his absence. I concluded that the Prison Service was liable for the damage.

I applied similar reasoning in other cases.

[Mr W \(11114/01\)](#) complained about the loss of some money sent in by his mother. The rule governing letters sent by recorded delivery states that they must be opened by staff in the presence of the prisoner. However, Mr W's prison said this was not "logistically possible". I understand the resource implications. But I did not think this could justify a failure to follow guidance aimed at avoiding exactly the kind of dispute which arose in this case.

I had no independent record that the package was sent by recorded delivery, nor that it contained money. But I also had no reason to doubt what Mr W's mother told me. As I had evidence that Mr W's prison did not follow proper

procedures,

I concluded that negligence might well have contributed to the loss and recommended compensation.

Sometimes the uncertainties defeat me.

[Mr X \(10125/01\)](#) complained that his Gameboy had been damaged during a cell search. There was evidence that Mr X had been improperly 'wiring up' his radio to the electricity supply, and staff obviously felt the Gameboy had been used in the same way. Mr X denied this and there was no evidential basis for it. On the other hand, Mr X said the toy must have been damaged by being mishandled or dropped. I could find no evidence of that either. In the absence of hard facts either way, I did not feel I could uphold Mr X's complaint. What had actually occurred remained a mystery.

Determining how much compensation should be paid is an inexact science. I try to restore the prisoner to the position he would have enjoyed had the loss or damage not taken place.

[Mr Y \(11384/01\)](#) wanted increased compensation for Gameboy games the Prison Service accepted had gone missing in its care. His claim was for the goods when new. The Prison Service had offered him their value if purchased second-hand. Although I could not be certain how old the games were, their value must have depreciated to some degree. I discovered that their second-hand price would actually be below the sum offered by the Prison Service and did not uphold Mr Y's complaint.

This was not the only occasion when I found the Prison Service had been over-generous.

[Mr Z \(10294/01\)](#) claimed for over £1,200 for a variety of items. He was offered £100 by the Prison Service, as many of the items had never appeared on Mr Z's property cards. The sum of £100 was arrived at because Headquarters could not retrieve the relevant cell clearance form in order to establish true liability. My Investigator traced the cell clearance form. This suggested that the number of items for which the Prison Service was actually liable was lower still. The Prison Service confirmed, however, that their offer of £100 settlement stood.

I am pleased to say that some property claims can be happily settled through local resolution.

[Mr A \(12650/01\)](#) asked for reimbursement of the costs of a new passport to replace the one which had been lost by the Prison Service. Mr A had been repatriated and his passport had gone from a consulate abroad to Prison Service Headquarters to Mr A's prison, where it had gone astray. As a result of an Investigator's intervention, Mr A was offered the full cost of a 10-year British passport. This was a just and proper outcome.

Family Ties

I attach great importance to the maintenance and enhancement of prisoners' family ties. This is not only out of respect to the families themselves – although they are innocent victims of their relatives' wrongdoings. It is also because of the compelling evidence relating a strong family to a prisoner's success in rehabilitation.

[Mr B's \(10095/01\)](#) complaint was about his accumulated visits. He was transferred from a high security prison to a new private prison to receive about 12 of them. On arrival, however, he was taken to the segregation unit for reasons of Good Order or Discipline (GOOD). After one night, he was transferred to a publicly-run prison where he took five of his accumulated visits. He was then returned to the high security estate. When he applied for further accumulated visits at the public prison, he was told he would have to wait over a year.

Apparently, the private prison simply felt they could not cope with Mr B. I could not judge whether the decision of the Director of the private prison that a new jail with inexperienced staff was not equipped to accommodate Mr B was reasonable. However, having made that judgement, I did not think it was unreasonable to segregate Mr B for one night and then arrange his transfer. What was unreasonable, was the absence of proper liaison before Mr B's transfer there. As a direct consequence, he spent a night in segregation and was unable to enjoy his full quota of visits. I felt he was due an apology. I also felt that Mr B's application for accumulated visits should be given priority to enable him to receive his visits at the earliest opportunity.

The right to enjoy visits freely may be restricted for a variety of reasons.

The imposition of restrictions is a frequent source of complaints to me.

[Mr C \(11138/01\)](#) complained about being placed on closed visits following an adjudication for possession of cannabis. I discovered that his prison routinely imposed closed visits in response to drug offences. I did not think this was reasonable.

As I have said in previous Annual Reports, I do not believe this policy is consistent with the relevant Prison Service Order, nor is it justified on its merits. It is not acceptable to impose closed visits on prisoners where there is no indication that they or their visitors are involved in trying to bring drugs into prison. It spreads the net too wide and is disproportionately punitive of prisoners and their visitors (including, let it not be forgotten, parents or children who may never have had any involvement with drugs in their lives).

Closed visits are deeply resented by prisoners and by their families. They add to the stress which surrounds most prison visits. Some prisoners, and some families, prefer to have no visits than to have them in these conditions. I am deeply disturbed by the reduction in the number of visits in recent years, and suspect that closed visits may be one reason for it.

Mr D and Mr E raised complaints about the effect of child protection measures on their right to receive visits.

[Mr D \(12627/01\)](#) complained that he was not allowed to receive visits from persons under the age of 18. Under Prison Service Order 4400, governors are required to identify prisoners who present a potential risk to children. No-one can doubt the benign intentions of this Order. However, decisions to prevent visits from young people should only be taken after a properly conducted risk assessment. They should also be regularly reviewed.

Mr D's prison, however, had applied a once-and-for-all ban. I could not say that the decision in Mr D's case was wrong – and the interests of children must be paramount – but the procedure was flawed. I recommended both a review of Mr D's position and a wider review of policy and practice.

Mr E (10879/01) was placed on a special Child Protection Register because of concerns about a spent conviction. For seven weeks, while the prison made further enquiries, Mr E was not allowed phonecards in possession, his phone calls and correspondence were monitored, and his own children were prevented from visiting until photographs of them had been produced. These indignities must have been very upsetting for Mr E. But I considered they were justified, given the scant information available when he first arrived. The prison had acted in the best interests of children.

Prisoners may also wish to keep in contact with people other than close family or friends.

Mr F (11253/00) complained about not being allowed to telephone business services via the PIN system. The purpose of the PIN system is to prevent prisoners harassing their victims or others. In Mr F's prison, prisoners are allowed to have up to 15 telephone numbers for family and friends, as well as five legal numbers and other so-called global numbers (including my own office). Calls to unauthorised numbers may result in disciplinary action.

In the particular circumstances of his complaint, I could not find in Mr F's favour. But I do not believe there is a case for an absolute ban on business numbers. I appreciate that there may be concerns that prisoners could try to phone their victims at work, or could use business numbers for other illicit purposes. However, Mr F's reasons for wishing to add a business number to his PIN account seemed entirely proper. I could envisage other circumstances – if a prisoner wanted to phone a family member at their workplace in the absence of a home phone, for example – which would be equally compelling.

There can be few things more traumatic for a prisoner than to learn of the death of a close relative. The death of a loved one can be hard enough to bear at the best of times. For a prisoner, the sense of loss, regret and helplessness are all the greater.

[Mr G \(11723/01\)](#) made an urgent approach to me to be able to attend his mother's funeral. The grounds for denying such a request must be compelling. In Mr G's case, I found them to be so. The Prison Service had reason to be concerned about the escape risk and concluded that a funeral – at a fixed time and place widely known in advance – posed a particular problem. Much as I sympathised with Mr G and his family, I could not say the Prison Service's decision was unreasonable.

[Mr H \(11663/00\)](#) complained about not being allowed an escorted visit to his mother's grave. He said he had been trying for eight years to get permission. I found a catalogue of errors. Mr H had been treated poorly, and in some instances with a lack of compassion and sensitivity. The replies Mr H received from prisons and Prison Service HQ left much to be desired. However, the story had a happier ending. The deputy governor saw my draft report and personally escorted Mr H to visit his mother's grave. This prompt response redounds to the great credit of the deputy governor. I hope too it will have restored Mr H's confidence in the basic decency of many prison staff and helped him come to terms with his mother's death.

Problems with mail are another frequent area of concern for prisoners. Rightly or wrongly, many believe that their letters are improperly opened, delayed, or lost altogether.

[Mr J \(11952/00\)](#) complained about the handling of his mail. It was apparent from my investigation that he had experienced substantial delays and unauthorised interference with his correspondence. In particular, letters from the European Court of Human Rights had been opened improperly. I was satisfied, however, that he was not being targeted deliberately.

Two points of special note arose from this investigation. First, I was pleased that the deputy governor speedily adopted my suggestion for an Opened in Error logbook. This will help identify whose mail is being opened in error and the staff responsible for the mistakes. I commend the practice more widely.

Second, I noted that both Mr J and prison staff used the archaic term, the “censors” office. I dislike this term, which does not correctly represent the duties of staff who process prisoners’ mail. I prefer the “correspondence” office and hope this term can be widely adopted.

[Mr K \(11398/00\)](#) complained about being denied access to his legal advisers while he was on dirty protest. I learned that staff were concerned about the health hazards of handling Mr K’s mail. The Post Office had also advised that letters from the cell of a prisoner on dirty protest would be classed as ‘filth’. As such, it would constitute an offence to post it.

I was satisfied that, under difficult circumstances, the Prison Service did everything it could to facilitate contact between Mr K and his legal representatives. Mr K’s protest was a voluntary act and it created difficulties of his own making. However, I was also pleased to learn of new arrangements to process the mail of prisoners on dirty protest. In essence, the posting of the item will conform with the system used for sending any biohazard through the post.

Prisoners understandably wish to be held in jails which are reasonably accessible for family and friends. However, there may be competing criteria for allocation.

[Mr L \(11669/00\)](#), a lifer, was moved from a jail in the North-West to one in the Midlands in order to undertake offence-related courses. He said his original prison could have provided the courses. In fact, I found that the first prison did not provide the mix of courses available at the second. Whilst the Prison Service must endeavour to accommodate prisoners to facilitate maintenance of family ties, the overriding consideration must be to assist a prisoner (especially a lifer) to progress through their sentence. While I sympathised with Mr L and his visitors, I thought the decisions made by the Prison Service were reasonable.

I also thought the Prison Service acted reasonably in another complaint which illustrates a conflict between desirable objectives.

[Mr M \(10625/01\)](#) complained that he was not allowed to receive newspapers from his mother. He said newspapers from his home area helped him to maintain links and counter feelings of isolation. He might well have added that the ability to send local papers is a simple loving kindness between mother and son.

The prison took a different view. They said Mr M could have his newspapers, but would have to purchase them direct from the publisher. This followed incidents of prisoners being sent drugs and money concealed in newspapers and periodicals.

It was hard not to sympathise with Mr M. Prisoners who have never been involved in smuggling contraband into jail will understandably be aggrieved to be constrained in this way. I do not like to see prisons impose blanket bans simply because some might seek to abuse a privilege. After much deliberation, however, I concluded that the restriction – while harsh – was not disproportionate to the threat in the context of a high security prison.

Life Goes On

The term ‘total institution’ is not heard so much these days. In prisons, this may in part reflect the far greater openness to outside agencies and influences than was the case 30 years ago. Nevertheless, prisons must cater for prisoners’ needs 24 hours a day, 7 days a week, 365 days a year. My colleagues and I find the most rewarding complaints are those which concern the day-to-day realities of prison life.

[Mr M \(11244/01\)](#) complained about the limited time he spent in the open air. He listed dates when exercise had been cancelled because of ‘staff shortages’. The Prison Service acknowledged that exercise had been cancelled on those days, but could not identify the reasons. An Investigator discovered this was not an ongoing problem, so I did not make a formal recommendation. However, while there will be times when periods in the open air have to be curtailed or cancelled for operational or control reasons, these should be properly authorised and recorded, with a clear explanation of the reason. Time in the open air is important. In my view, 30 minutes should be the absolute minimum. I do not expect it to be whittled away.

[Mr N \(11477/01\)](#) and [Mr P \(11539/00\)](#) complained about levels of association in their respective prisons. Mr N’s complaint – which echoed the views of HM Chief Inspector of Prisons – had been overtaken by events. Association on all wings on weekdays and on Saturday and Sunday afternoons had been ensured. The amounts were not generous – especially at the weekends – but at least they represented progress.

Mr P was a newly sentenced lifer in a local prison awaiting allocation to a main lifer centre. He said if he was not working he could spend virtually all his time locked in his cell. This was clearly unacceptable. Long periods of inactivity are in no-one's interests, least of all lifers who want to make progress against their sentence plans. But I cannot wish away the problems faced by the Prison Service with a new lifer arriving on average each working day of the year. Unfortunately, transfers to lifer centres cannot take place as fast as I would wish.

Every aspect of a prisoner's life must be catered for.

[Mr R \(11814/00\)](#) complained that the food he received did not include meat and two veg. I felt that the menus at his prison were varied and nutritious. I did not consider the absence of roast potatoes – a particular complaint – to be a major flaw.

[Mr S \(12744/01\)](#) complained that he had to pay for a proprietary cleanser for his dentures. The prison justified the decision on the grounds that Mr S could not obtain the cleanser free of charge from the NHS. I found a stronger reason to be the advice I received from the British Dental Health Foundation. This was that soap and water is better for false teeth than a proprietary brand cleaner which contains bleach and which can weaken the dentures.

However, the investigation of Mr S's case revealed a wider problem. Prison Service policy in respect of hygiene is that prisoners should have the same facilities as they would in the community under the NHS. There is therefore no requirement to provide soap, toothpaste or toothbrushes free of charge. But some prisons do provide these items (and more besides) while others do not.

I believe strongly that prisons should encourage prisoners to maintain proper standards of personal hygiene, for reasons of decency, cleanliness and self-respect. In my view, the free supply of soap and other basic hygiene products is essential to achieve these standards. In particular, toothpaste and toothbrushes are necessary to prevent tooth decay and other dental problems. I am concerned that prisoners in some prisons have to pay for these items out of their earnings. This will be particularly harsh on those who are unemployed, or on relatively low wages.

Purchasing goods by mail order is a routine part of modern life. Increasingly, it is a part of prison life too. My office has considered a number of complaints relating to mail order. This year was no different.

[Mr T \(10346/01\)](#) complained about the limited choice of catalogues from which he could make purchases. I accepted, however, that the Governor of a high security prison was entitled to restrict the number of nominated suppliers both on administrative grounds and because of the security implications of goods arriving from several different sources.

However,
I would welcome a more consistent and liberal approach.

There is no national policy on which firms may be nominated suppliers. It is a matter for local discretion. Who holds the contract for the prison shops also seems to be a factor.

[Mr V \(11393/01\)](#) purchased a stereo radio/CD player from the prison shop but later discovered a well-known mail order retailer offered it for two-thirds the price. He wanted a refund. I could not recommend one. I found that the prison had done its best to enter into competitive contracts with suppliers. Even in the free world, we sometimes end up buying goods which are cheaper elsewhere. But Mr V's case illustrates the benefits of expanding the range of catalogues available so that prisoners can shop around.

Prisoners' spending is restricted to their prison wages and a limited weekly allowance from their private cash – if they have any. Many prisons do not allow friends or family to send in any property. Everything prisoners want has to be bought new and sent to the prison direct by approved suppliers. I accept that these measures may be justified on security grounds, but equally, I understand the importance Mr V and others attach to getting goods which suit their taste, are good quality and provide value for money.

[Mr W \(10057/01\)](#) made a series of complaints about mail order restrictions which prevented him using the companies of his choice. He said this meant he could not always buy the products he wanted or get the best value for money. He also pointed out that some prisons were more restrictive than others.

An Investigator confirmed much of what Mr W said. Prison 'canteens', which are contracted to a single supplier, supply a range of everyday items. In addition, there are various systems for prisoners to order through mail order catalogues. These differ from one prison to another. In some establishments there is a narrow range of approved catalogues. Others, however, accommodate a much wider range and operate a presumption of agreeing prisoners' requests to order from additional suppliers, provided certain conditions are met.

Random differences of this kind between prisons are a frequent source of discontent amongst prisoners. Whilst I recognise that not all prisons are the same, I believe a core set of principles and guidance would facilitate a better and more consistent service at local level, thereby reducing unnecessary restrictions and discrepancies between jails. I have said this before, and am disappointed at the lack of significant progress.

Even when prisoners have obtained the item they want, they may be prevented from using it as they would wish.

[Mr X \(10367/01\)](#)

was not allowed an external microphone to use with his radio cassette recorder. He was told an external microphone represented a greater risk of abuse and the machine's internal microphone would have to suffice. There are no regulations governing this matter, and once again it is up to each prison to decide its own policy.

I did not think the disadvantage to Mr X was so great that I could uphold his complaint. On the other hand, the prison's arguments were less than compelling. They said they were concerned a prisoner might record staff conversations, although it was not clear why this was not also a risk with an internal microphone. They also said that prisoners might harm themselves with the flex. Neither argument seemed pertinent to Mr X's circumstances. It is not right to deprive everyone of something because a minority might abuse the facility. I asked the Governor to give further consideration to Mr X's request.

[Mr Y \(11755/00\)](#) said he had been refused permission to have religious CDs sent in, or handed in on visits. He said this was the only way he could obtain them. After discussions involving the chaplain and the Governor, a method by which Mr Y could obtain his CDs was identified. As is often the case, a seemingly intractable problem was settled through commonsense and a willingness to find a compromise.

The right to practise one's religion is one of the most precious human rights. And the very fact of imprisonment is often the catalyst for religious reflection and revelation. It is of the greatest importance, therefore, that the needs of all religious groups are properly respected by the Prison Service.

[Mr Z \(10188/01\)](#) complained he was prevented from taking a shower on the day of the Eid festival. Since purification by showering is an obligation for Muslims before attending Eid prayer, he did not attend the feast.

What happened to Mr Z was the result not of malice but simply of a late change in the timing of the movement for Eid. I found staff had shown little flexibility or sensitivity to Mr Z's religious needs. They were aware of the importance of Eid in the Muslim calendar. But they were not prepared to reflect that importance in their own actions.

Not all prisoners' wants and needs derive from a spiritual motive.

[Mr A \(12618/01\)](#) complained about his television being switched off during the day. He said he paid £1 a week rental, and it was reasonable to allow him to watch it when he was not required for work. He was told the TVs were turned off during the day to discourage prisoners from refusing to attend work or feigning illness.

I discovered that there was no central policy on this. It was a matter for local discretion. But I also found that other prisons had encountered no problems with leaving the sets on. Inconsistency of this kind simply results in frustration for prisoners. Nor is it fair if some prisoners are paying the same price for partial access to a TV as prisoners at other jails pay for full access. Finally, just as in the case of Mr X, I am critical if all prisoners at a particular jail are disadvantaged by the possibility that others might abuse a facility. I recommended that the Governor reconsider his policy.

Mr B's interests (12190/00) were not of the mind but of the flesh. He complained that he was not allowed hard-core pornographic magazines.

The magazines in question portrayed consensual sex with no overtones of sexual violence, or the involvement of minors or animals. Their distribution was legal, albeit restricted, in the UK. Mr B could have obtained the magazines if at liberty.

Mr B said that the ban breached Article 10 of the European Convention on Human Rights. I did not agree, although I would welcome an authoritative view from the courts. I took the view that the magazines could have undermined progress on the sex offender treatment programme and become an illicit currency. The implications for good order and discipline therefore justified the Prison Service's actions.

Governors may stop items which might infringe on good order and discipline but are given no guidance as to what might cross this line. In practice, pornographic magazines are considered acceptable if they are available from reputable newsagents. In effect, therefore, so-called 'top shelf' magazines should normally be permitted. I do not think this rule of thumb is a bad one. Standards of what is acceptable have changed over the years. The Prison Service's approach should mean that standards move in tandem either side of the prison wall.

Several complaints have concerned work and pay.

Mr C (10801/00) asked for the minimum national wage for his work in a prison workshop. However, work done "in pursuance of prison rules" is specifically excluded from the National Minimum Wage Act. Nor was I persuaded that international conventions and covenants dictated otherwise. Of course, I wish that prisoners' wages were higher – so they can save for release and support their families. However, that is much easier to say than to deliver.

Mr D (12132/01) complained that high risk Category A prisoners were excluded from the highest paid jobs. He said that they were being discriminated against "through no fault of their own". Whatever the merits of that argument, it was clear to me that there were good grounds why restrictions were placed on the work allocation of high risk prisoners. Although Mr D was disadvantaged relative to some other prisoners, I felt this was an inevitable and necessary result of his escape risk classification and did not amount to unfair or unreasonable discrimination.

[Mr E \(11883/00\)](#) complained about being dismissed from his job as a serving orderly. He said he was sacked because he would not work a session for which he received no pay or bonus.

I found that Mr E's dismissal had not followed the agreed procedure. I also found that the extra work he had been asked to do fell outside the stated policy in regard to evening duties. I understood Mr E's reluctance to do extra work without additional pay, and his sense of injustice when he was then dismissed for his refusal to do so. I concluded that he had suffered unfair dismissal and recommended compensation for the wages he had lost as a consequence.

[Mr F \(10502/01\)](#) complained that whilst in a Scottish prison on accumulated visits he received lower wages than he would have done if he had taken the visits in England. This was not disputed. The difficulty arose from the existence of different rules either side of the border. I have no authority for prisons in Scotland, but I did not feel this absolved the Prison Service in England from its duty of equal treatment to Mr F. I concluded both that Mr F should be recompensed the lost pay and that the rules in England should be changed to ensure prisoners taking accumulated visits anywhere in Britain would no longer be financially disadvantaged

Reports

It is regrettable that in prison, where so much depends on what is written about a prisoner, the standard of documentation is, by and large, so poor. Those making decisions about a prisoner's management will refer closely to what other people have written, sometimes years later. Information is replicated from one document to another, with little consideration being given to the accuracy of the initial report or whether it remains appropriate to refer to it. It is vital, therefore, that whatever is written down is objective and accurate.

[Mr G \(12015/00\)](#) queried the reason for his transfer to another prison. He was advised that it was due to his fighting with and threatening to kill a prisoner who had converted from Islam to Roman Catholicism. Mr G denied that religious intolerance played any part in the fight, which he said was about some burnt chapatis. The other prisoner said Mr G disliked him because of his conversion. Mr G was never challenged about this assertion. Subsequently, the other prisoner made a number of allegations that Mr G was threatening him. Staff appeared to have accepted this was so without any independent corroboration. As a result, they ascribed motives to Mr G's actions which may or may not have been there.

My Investigator discovered that a psychologist's report contained the line, "He was moved for threatening to kill and fighting with a prisoner who had converted to Catholicism from Islam." The psychologist said that she had obtained

the information from Mr G's record. A report by the Head of Lifer Unit at the prison said, "It is documented that he was transferred ... following fighting and threats to kill being made against a prisoner who had changed religion from Islam to Catholicism". He too said he had read it in other reports, including the psychologist's, and assumed it to be legitimate. Mr G's Lifer Management Unit file also held a number of documents that contained the allegations of religious intolerance. I recommended that the reports be re-written.

During the course of a life sentence, prisoners will have a considerable number of reports written about them. The length of the sentence and the establishments in which it is served are influenced by the contents of the Life Sentence Plan, F75s, annual reviews and security reports amongst others. Life sentence prisoners are unlikely to progress towards release unless their reports are positive. This places upon authors a particular duty to ensure that the information they produce is accurate and withstands scrutiny.

In some cases, the precise words used matter a great deal.

[Mr H \(10192/01\)](#) was involved in a confrontation with a female officer. Mr H was quoted in his wing history sheets as swearing and saying he would "do her". Mr H fully acknowledged using foul language, but denied having made the comment recorded. The incident had been separately reported in a Security Information Report. In this, Mr H was quoted as swearing and saying he would "do it." An Investigator found out that the Security Information Report would have been completed immediately after the event, but the wing history sheet some time afterwards. It seemed likely to me, therefore, that the security report reflected what was actually said. It was relevant also that, straight after making the comment, Mr H submitted a written complaint about the officer. On balance, it seemed likely that Mr H had announced his intention formally to complain about the officer, not to do any violence to her. The shift in emphasis from 'it' to 'her' may seem small. However, a comment of this sort on Mr H's history sheets could be referred to many times in future reports and harm his progress towards eventual release.

Imprecise writing can also create problems.

[Mr J \(11827/00\)](#) objected to a reference in his Category A gist to his being "willing to prey on others." The remark apparently derived from security reports. I checked the Security Information Reports. One explicitly mentioned bullying, but Mr J was only mentioned as one of three possible perpetrators. Another three reports were classified in the Report Category 'Bully/Taker', but none of them suggested that Mr J was a bully/taker.

I found no evidence elsewhere that Mr J was willing to prey on others. On the contrary, the picture that emerged was of someone who had settled well into prison life, got on well with others and enjoyed a laugh. There were references to his aggressiveness in response to particular decisions, but this did not make him someone who was "willing to prey

on others". The term is emotive and I can quite understand why Mr J took exception to it. I recommended both that Mr J received an apology and that greater care was taken when writing gists to ensure their accuracy.

There is also a need to select carefully the information to be included in reports.

[Mr K \(12685/01\)](#) complained about the dossier prepared for the Parole Board. He was concerned that it included information about a serious offence – attempted murder of a policeman – which he hotly contested and which had not been proceeded with. He complained that including this information was prejudicial. The Parole, Early Release and Recall Manual warns against the inclusion of pre-trial prosecution evidence which does “not necessarily set out the circumstances of the offence as established in court ... and could mislead the Parole Board.” The problem appeared to be a lack of information which could legitimately be included in the dossier. With Mr K’s Parole Eligibility Date fast approaching, one of my Assistant Ombudsmen secured the agreement of the Prison Service to agree with Mr K’s solicitors a revised dossier

Incentives and Earned Privileges Scheme (IEPS)

In last year’s annual report, I described the case of [Mr M \(11892/99\)](#) who believed that the IEP scheme at his high security prison discriminated unfairly against prisoners who asserted their innocence.

Mr M had been downgraded to standard regime because of his refusal to undertake offending behaviour work (he denied his guilt and argued he had nothing to work on). While appreciating the dilemmas facing the Prison Service, I upheld Mr M’s complaint and recommended a more balanced assessment of behaviour so that prisoners who said they were innocent still had opportunities of achieving enhanced status. The Director General rejected my view.

The matter has since been tested through judicial review. On all points of substance, the court decided in the Prison Service’s favour.

I have considered a variety of other complaints about IEPS during the past year.

[Mr L \(11864/00\)](#) complained he was victimised by being placed on the basic regime. I found that Mr L’s conduct reflected poorly on him, but that the process by which he was placed on basic was deeply flawed. An adjudication had collapsed, but the adjudicating governor referred to the evidence presented in placing Mr L on basic. This came

very close to using IEPS as a “secondary disciplinary system,” something which is specifically debarred. Furthermore, no other staff had been involved in the governor’s decision, nor was it based on a pattern of behaviour. I upheld Mr L’s complaint that he had been treated unfairly.

Location-based IEPS schemes may be necessary for a variety of reasons. But they can impose a straitjacket on what are supposed to be individualised decisions.

[Mr N \(10259/02\)](#) complained about being downgraded from enhanced to standard level. Initially, Mr N had been placed on the same wing as a relative. However, he was told he would have to move wings if he wanted to retain his enhanced status. Otherwise he would be downgraded to standard.

As IEPS levels are supposed to be determined by a pattern of behaviour, I concluded that downgrading Mr N was not within the spirit of the national IEPS. However, as Mr N’s prison operated a location-based incentives scheme, their action was not irrational. Indeed, I commended the prison’s good sense in not charging Mr N with disobeying a lawful order to move.

Sometimes, a complaint about one matter can lead to my making a recommendation about something else.

[Mr P \(11792/01 and 11949/01\)](#) complained about access to physical education. He also complained about difficulties he had encountered in submitting his appeal to Prison Service Headquarters. I found against him on the first matter – the prison actually provided more than the one hour’s P.E. required by the Prison Rules. I found in his favour on the second – I was very concerned about the way the request/complaint system operated.

However, during the course of my investigation, I discovered that Mr P was being debarred from enhanced status because he did not work, when – as a remand prisoner – he was not required to do so. This did not seem proper. I recommended an urgent review of the prison’s IEP scheme to ensure that it took full account of remand prisoners’ legal status.

Sometimes too, prisoners can put matters right themselves.

[Mr R \(12167/00\)](#) complained that the IEPS at his prison was operated unfairly. He said staff were recording warnings under the scheme when there was no reason to do so. He also said the scheme was being used to bully prisoners.

By the time Mr R met an Investigator, however, he said he was using the complaints system to record incidents he believed were an abuse of the system. As a consequence, he said, there had been many fewer such incidents and he no longer wished us to investigate.

In other instances, my office has had a critical role to play in ensuring that the IEPS is operated fairly.

[Mr S \(10756/01\)](#) complained about being treated as a basic level prisoner on transfer back to the dispersal system. Although Mr S had been moved between a number of prisons under the terms of Instruction to Governors (IG) 28/1993, he settled and earned enhanced status at one. He lost it, however, on his return to a dispersal.

Generally, prisoners received from other prisons must enter at no lower than standard level. However, the Director of High Security Prisons issued a temporary non-compliance notice allowing prisoners to be transferred at basic level, where the transfer is for bad behaviour or under IG 28/1993. The purpose of the notice is to prevent prisoners profiting from their bad behaviour. This is entirely valid. But it should not have applied to Mr S.

The thrust of IG 28/1993 is to secure the return of a disruptive prisoner to a settled pattern of behaviour on normal location. Mr S had achieved exactly that. Routinely to return him to basic regime without any further assessment seemed to me unfair and counter-productive. I upheld his complaint, recommended he received an apology and called for a review of the non-compliance notice to take account of cases such as that of Mr S.

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Adjudications

Over 100,000 prison disciplinary hearings are held each year. The standard of proof is the same as in the criminal courts. But the appeal rate is much lower. Nevertheless, complaints relating to prison discipline are the largest single component of our workload.

Adjudications resulting from positive Mandatory Drugs Tests (MDTs) are especially sensitive. The Prison Discipline Manual says that it is an express defence to the charge of administering or failing to prevent administration of any controlled drug to oneself if the drug was administered by or to the accused without their knowledge. Not surprisingly, many prisoners use this defence. But I find that there is a good deal of confusion among adjudicators about the test to be applied when a prisoner claims to have taken a drug in circumstances in which he neither knew or had reason to suspect he was doing so.

[Mr T \(11543/01\)](#) was charged with taking opiates. He told the adjudicator that he asked another prisoner for a smoke. Mr T said he took two or three draws of the other prisoner's cigarette and was violently sick. The other prisoner told him the cigarette contained 'a bit of gear'.

The adjudicator then drew Mr T's attention to the wording of the charge and said, "I am afraid that you failed to prevent the administration of a controlled drug by another person in that you took drags from [the other prisoner's] cigarette. Since you had asked him for a smoke, it was your responsibility." In considering his appeal, the Briefing and Casework Unit caseworker said, "Mr T asked [the other prisoner] for a few draws on his cigarette. He was reckless in his act as he did not know [the other prisoner] very well and he didn't even ask him whether his cigarette is free of any substance. He failed to prevent the administration of drugs by being naive and reckless."

That is not the right test. To find Mr T guilty, the adjudicator had to find that Mr T had reason to suspect the cigarette contained heroin. The Prison Service sought to justify the finding in this case on the grounds that sharing another prisoner's cigarette, as Mr T claimed, is reckless. But recklessness is not an element of this charge. The question is purely whether the prisoner knew or had reason to suspect he was being administered drugs.

The Director General accepted my recommendation to quash in Mr T's case. He has commented subsequently that this was because of the failure to call a relevant witness, and not because the adjudicator applied the wrong test. His view is that Prison Rule 52 requires the prisoner to prove, on the balance of probabilities, that he had reason not to have suspected he was going to receive drugs. We are still in discussion on this matter.

A couple of cases relating to Mandatory Drugs Testing have raised wider policy issues, which I referred to the Prison Service.

[Mr V \(11284/01\)](#) was ordered to provide a sample of urine under the Mandatory Drug Testing programme. He was told it was on grounds of 'reasonable suspicion.' Mr V demanded to know what the reasonable suspicion was. The

officer could, or would, not tell him, so Mr V refused on the grounds that the order was not lawful. None of the adjudicators enquired into the lawfulness of the order. At the final hearing, the adjudicator abruptly announced that the order was lawful and staff did not have to give prisoners reasons. He found the charge proven.

I took legal advice and concluded that, once Mr V had questioned the lawfulness of the order, the adjudicator was obliged to address the point before determining guilt. The adjudicator should have enquired into the basis of the suspicion. Because this did not happen, I concluded that the proceedings were fatally flawed and recommended the finding of guilt be quashed. I also recommended that Drugs Strategy Unit at Prison Service HQ considered what information should be given to prisoners in these circumstances to meet the question of lawfulness.

[Mr W \(11921/00\)](#) provided a sample of urine which tested positive for drugs. At the resulting adjudication, he said he had borrowed the medicine Kapake from another prisoner and that this explained the presence of drugs in his system. My Investigator sought advice from Drugs Strategy Unit. They advised that the levels and ratios of morphine to codeine in Mr W's sample were consistent with a medicinal dose of Kapake. More importantly, they added that codeine when in the form of a medicinal product such as Kapake is not, strictly speaking, controlled under the Misuse of Drugs Act 1971. I recommended that the finding of guilt be quashed and further advice about the issue of prisoners taking medicinal drugs which are not controlled under the Misuse of Drugs Act be issued with the minimum of delay.

Cases where prisoners have been charged for alleging racism on the part of officers have caused me grave concern once again this year. Sad to say, the number of such cases we have been asked to investigate appears to have increased. The following is representative of a number I have considered.

[Mr X \(10157/01\)](#) was charged with calling an officer a racist. Mr X was expecting a transfer to a different wing. He saw that another prisoner had been moved ahead of him and wanted to know the reason. He said the Reporting Officer said, "I don't like the look of you." Mr X said he replied, "I am assuming you are a racist then." Mr X's argument at the hearing was that he reasonably believed that the officer had acted in a racist manner towards him and that his remark was therefore justified. The Reporting Officer said that he meant only that he had checked Mr X's history sheets and had concluded from them that Mr X was not suitable for transfer.

There was some dispute over the actual words said, but for me that was not the central issue. I do not expect the Prison Service to respond to allegations of racism with a disciplinary charge, where the actions or words of the member of staff may reasonably be interpreted as racially abusive or indicative of discriminatory treatment. Such a response to an allegation of racism is damaging to race relations and undermines the efforts of the Prison Service to win confidence in its commitment to fair treatment of all prisoners.

I realise this is asking prison staff to exercise tolerance sometimes in the face of provocation. It is not pleasant to be accused unfairly of racism and, although the officer may have unwittingly used a turn of phrase which could be misinterpreted, I do not doubt that he genuinely intended to refer to Mr X's record. But many people in Britain from minority ethnic groups have experienced racism in many areas of their lives. If, as a consequence, they sometimes suspect racism where it does not exist that is not surprising.

I see my role as ensuring the Prison Service does not discriminate against prisoners from minorities. Not all allegations of discrimination are justified, however.

Mr Y complained (12128/00) that he was required to stand before the adjudicator to give his name. He consistently refused to do so as, he said, it was contrary to his Muslim faith. As a result, a number of adjudications were carried out in his absence. My Investigator discovered that the Governor expected all prisoners and staff to stand at the beginning of an adjudication. I cannot take exception to this. It is, of course, the same procedure as in the outside courts. Nevertheless, I sought expert advice. An Imam advised my Investigator that a Muslim should stand before an adjudicator because they should respect the authority of both the hearing and the Prison Rules. I did not therefore uphold Mr Y's complaint.

In my 2000-01 Annual Report, I wrote:

“I hope the time may not be long away when the requirement that adjudicators keep a contemporaneous handwritten record is dispensed with, and tape-recording introduced as standard.”

I have come across many cases during the course of the year, where a prisoner has told me that important things were said at an adjudication, but that they were not recorded. This puts me in a difficult position. As I have no way of knowing what was said, my normal practice is to be guided by what is written down. Indeed, this is the only course I can reasonably take. Recording is often not carried out to the highest standard, however, and it will usually be the prisoner who is disadvantaged by my rule of thumb. In one such case, a prisoner alleged that the adjudicator had suppressed allegations the prisoner made about staff. The case illustrated the problems faced by both parties when it is alleged that the record of hearing is inaccurate. It may be that the prisoner was done a disservice. Alternatively, as I believed likely in this case, the adjudicator was done a disservice by being accused of suppressing evidence, a position he was unable to defend. I believe the existence of a tape would be a protection both to prisoners and to staff. I therefore recommended that the Prison Service reviewed the costs and benefits of introducing tape-recording of adjudications. I am happy to say that HMP Risley is shortly to pilot such a scheme.

Dirty protests are among the most unpleasant aspects of prison life. Quite often no disciplinary action is taken against those engaged in such protests. There is no reason why staff should not exercise their discretion to charge in some instances, however.

[Mr Z \(10961/01\)](#) regularly engaged in dirty protests. After telling officers he was ending one such protest, he was moved to a clean cell. Officers carrying out roll check the following morning discovered Mr Z had smeared excrement over the walls of his cell. He was placed on a charge of intentionally endangering the health or personal safety of others. Mr Z argued that he had not caused a “definite and serious risk of harm” to others (the standard of proof required by the Prison Discipline Manual). He said staff would have been aware of the state of his cell before approaching it, and since they did not enter it, could have been in no real danger. I took the view that commonsense should prevail. The presence of untreated excrement in a confined space where other people work and live must inevitably create a “definite and serious risk” to health.

Punishments

The use of suspended punishments can be a useful disciplinary tool, especially for first-time or infrequent offenders. They serve to place a prisoner on final notice that if they transgress once again, they will be punished. This meets the desired end of reducing acts of indiscipline in prisons. I have become concerned, however, at what I perceive to be a trend to weight suspended punishments more heavily.

[Mr A \(12638/01\)](#) was charged with refusing an order to transfer to another prison. He had learned that the prison to which he had been allocated did not have appropriate education facilities. Attempts to draw his concerns to the attention of staff met with no success. He therefore refused the order to transfer, knowing that this way, at least, he would get the ear of a governor. The adjudicator was sympathetic. But she punished him with 14 added days, suspended for three months, and two days cellular confinement. Had the added days been activated, the number would, in my judgement, have been completely out of proportion to the particular circumstances of the offence.

I dislike stoppages of earnings at 100 per cent. This may leave prisoners without the means to buy phonecards and stamps with which to keep in contact with family and friends. I made a formal recommendation in this respect in the case of [Mr B \(10012/02\)](#). The Director General said that while he was content to advise the Governor of my view, decisions about this issue must remain the adjudicator’s in the light of the particular circumstances of each case. That is as it may be. I will continue to spread the word in my own letters to governing Governors.

My approach to punishments is motivated in part by the knowledge that most decisions to charge prisoners are inherently discretionary. This is not to say that discretion is exercised inappropriately, but many of the adjudications I review concern trivial matters which often could have been dealt with in a less formal, certainly less disciplinary, fashion. I applaud efforts to bring a more restorative approach to the problems of order and discipline in prison.

I came across one innovative approach to punishment.

Mr C (10873/01) was found guilty of giving another prisoner some painkilling tablets. His punishment included 10 hours 'community service' – usually some additional cleaning duties on the wing or association/ community areas. This is intended to benefit the rest of the prison community, and to enable the prisoner to make amends for having not acted as a responsible member of the community by committing an offence. Although ultra vires at present, I believe such a punishment may have much to commend it. I recommended, therefore, that Prison Service HQ considered whether there might be a role for community service as a formal punishment under the Prison Rules and YOI Rules.

My approach to punishments generally is guided by Prison Service Instruction (PSI) 61/2000. This says:

“Before making a decision to impose additional days, adjudicators must ensure that they have considered whether any other punishment available to them would be more appropriate, given all the circumstances of the case. Adjudicators must satisfy themselves that any punishment imposed is justified, and whether it is proportionate...”

The PSI suggests that matters which any reasonable person would consider as serious – escapes, assaults on staff, concerted acts of indiscipline – are the sorts of offences which might attract added days. While I accept that this is not intended as a definitive list, I infer that the use of added days in other circumstances should increasingly become the exception. Where they are imposed, care must be taken in determining the appropriate number.

In a significant number of cases, I upheld the finding of guilt, but recommended that the punishment be mitigated.

Mr D (12001/01) was found guilty of being in bed after 10am on a Saturday. He was punished with seven added days and seven days forfeiture of privileges. I considered this to have been excessive. I recommended that the added days be remitted.

Mr E (10790/01) was charged with lending his beard trimmer to another prisoner. (Prisoners are not allowed to lend or give property to other prisoners.) He was punished with three added days. I recommended the punishment be suspended.

Mr F (11195/01) was found guilty on four occasions of refusing an order to return from the segregation unit to normal location. The orders in question were given one week apart. Mr F was given 14 added days for each. I recommended that each be reduced to seven added days.

[Mr G \(11332/01\)](#) was given 21 added days for being in possession of alcohol. He complained that this was harsh and unfair. I agreed, and recommended the punishment be mitigated to seven added days. I also recommended that the prison reviewed its tariff for this offence.

[Mr H \(12151/00\)](#) was given seven added days for disobeying an order not to remove a tray of pork from the wing oven. His defence was that he could not allow pork to be cooked at the same time as chicken because of his religion. I thought the punishment harsh and recommended the added days be suspended.

[Mr J \(10082/02\)](#) was found guilty of possessing a screwdriver which he was not authorised to have. He said that he used the screwdriver to tighten a problematic screw on his spectacles. The adjudicator punished him with 14 added days, which I considered to be excessive in the circumstances. Worse, he justified the punishment to Prison Service HQ, “as a deterrent to other prisoners and to ensure that staff did not become ‘conditioned’ to accepting the use/possession of a screwdriver as the norm in a High Security Prison.” I understood and accepted the principal of deterrence. I did not accept, however, that reminding staff how to do their jobs should have any part in setting punishments.

My draft report in one case produced an interesting response from a governor.

[Mr K \(12692/01\)](#) was punished with seven added days for possessing more phonecards than he was allowed. There was no suggestion at the hearing that he bullied other prisoners for their phonecards, had stolen them or was using them as currency for illicit goods. I recommended that the added days be remitted. The Residential Governor wrote to me at fact check stage. He referred to undesirable behaviour sometimes associated with possession of too many phonecards and said that it was vital that the Ombudsman supported the prison authorities, to enable them to do their job.

I sympathised with his sentiments. But I must remain independent from the Prison Service. Clearly, I must be sensitive to Prison Service concerns and objectives, but it is vital that prisoners are punished proportionately. It is also important that they are not punished for behaviour which might be associated with a specific activity or which might result from it. Apart from the question of justice in the particular instance, there is the wider question of confidence in the disciplinary system. Anything else must be put to one side.

The very nature of my role means that I tend to see some of the poorer examples of adjudications. Record keeping is often skimpy, and prisoners' defences are not explored. But some adjudicators conduct hearings with scrupulous fairness. I have sat in on a number of adjudications and have come across much good sense and good practice. I was also impressed by the sensitivity and jailcraft shown in the case which follows.

Between 9 February 2000 and 1 April 2000, [Mr L \(12153/00 et al\)](#) was charged with 14 offences. He pleaded guilty to all charges on 9 May 2000 and was punished with 14 days cellular confinement, suspended for three months, and seven days loss of association and canteen. His representatives complained about a 'deal' having been made between Mr L and prison staff. They said this 'deal' resulted in Mr L changing his not guilty pleas to guilty, writing a letter of contrition and asking to be dealt with leniently.

Our investigation revealed that Mr L had been engaging in dirty protests and other disruptive behaviour for some time. Outstanding adjudications had accrued because his behaviour precluded the charges being heard.

Over a lengthy period, staff encouraged him to conform so that he could return to normal location. They offered a number of legitimate incentives. Once restored to normal location and back on an even keel, Mr L was encouraged to clear his backlog of adjudications. He was told that if he were to explain to the adjudicator why he acted the way he did, the adjudicator could take this in mitigation and reduce the severity of punishment. An Investigator spoke to Mr L. He said that he did not "throw his hands in" to anything he did not do and that he was genuinely grateful for the opportunity to clear the slate.

I believe that the adjudicator found a balance which satisfied all concerned. Mr L had pleaded for a chance to stay out of segregation in return for good behaviour. The adjudicator offered him that chance by suspending the punishment. In my view, the 'deal' was in fact a sound and sensible plan to progress what had become a dangerous and damaging stalemate. Far from meriting criticism, I thought the adjudicator – and staff as a whole – should be strongly commended for their actions.

Security Concerns

I am asked to review many decisions relating to security category. These have particular resonance with prisoners because to a large extent they will determine the kind of regime offered. Reduction in security category also has symbolic importance, in that it makes prisoners feel they are progressing through their sentences towards eventual release. Finally, reviews of security category are often contentious because they may be based on information to which the prisoner is denied access.

The Prison Service is invariably cautious where issues of security are concerned. Given the potential consequences of errors in judgement being made – where for example, someone is placed in lower security conditions, escapes and re-offends – I also exercise circumspection.

[Mr M \(11959/01\)](#) asked me to review the Category A Committee's decision to retain him as a Category A prisoner. He pointed to reports which said his behaviour was satisfactory and he had a good relationship with staff. His own establishment had recommended that he be downgraded. He could not understand, therefore, why the Committee took a contrary view.

The gist which the Committee considered said many positive things about him. On the down side, however, Mr M had sometimes been manipulative with staff and had not done any work to address his offending behaviour. The Committee also considered the seriousness of Mr M's offence, in particular, his use of weapons. I reviewed the reports on which the gist was based, and concluded that it accurately reflected them. The decision not to downgrade Mr M was, in my view, very finely balanced. Given the stakes, however, I could not criticise the Committee's decision.

[Mr N's solicitors \(11395/01\)](#) complained that he had not been downgraded to Category B. Mr N objected, in particular, to the Review Team saying he could have demonstrated a further reduction in risk by demonstrating to staff a change in attitude towards offending behaviour. Since Mr N denied his offence, he said this was nonsensical. The Review Team accepted that Mr N's denial of guilt and his lack of participation in offence-specific coursework should not by themselves debar his downgrading. They did, however, have to proceed on the basis that Mr N had been lawfully convicted. I do not think this position is unlawful. Nor do I consider it unreasonable. All of prison life in the convicted estate is based on the premise that a court has found prisoners guilty. I did not uphold Mr N's complaint.

In some cases, however, manifestly wrong or perverse decisions are made.

When [Mr P \(11823/01\)](#) was sentenced, the Attorney General's office immediately announced its intention to appeal against his 'unduly lenient' sentence. Mr P knew this, and that a longer sentence was therefore on the cards. Nevertheless, he was categorised D and allocated to an open prison. Some months later, staff concluded from two phonecalls by Mr P that he might be planning to escape. His security category was upgraded to C. Mr P appealed. Under some pressure from Mr P's solicitors, a governor reviewed the recording of his phone calls. He thought the belief that Mr P was planning to escape was 'misguided'. However, he considered that, in light of the Attorney General's appeal, Mr P should remain Category C. Given that Mr P had had some four months in which to

abscond if this was his intention, and that during that time he left the prison on his own on eight separate occasions without any problems, I took the view that the decision was perverse. I recommended the position be reviewed. I am glad to say that Mr P promptly re-gained his Category D status.

It is not always possible for prisons to act on the basis of absolute certainty. In the interests of good order or discipline, they must often take decisions on the basis of suspicion alone. I accept this. It is, however, vital that where serious action is taken in respect of a prisoner, the prison does what it can to establish the facts of the matter.

A prisoner reported that he had overheard [Mr R \(11538/00\)](#) talking to another prisoner about bringing firearms into the prison and planning to escape. The officer recording the information noted that the informant "can be a liar", but had previously given him information which proved to be true. A later entry questioned the prisoner's sudden willingness to help. Mr R was placed on Good Order or Discipline (GOOD) and the escape list. He remained in the Segregation Unit for four months.

His position was reviewed on several occasions. It was decided to retain Mr R on GOOD until transfer to more secure conditions could be arranged.

Despite exhaustive efforts to obtain details of an investigation which had apparently supported the allegation, my Investigator could find none. She was offered various theories, but none could be substantiated. In the circumstances, and given the somewhat dubious source of the original information, I had to conclude that, while there were grounds for his initial placement on GOOD, the decision to retain Mr R on GOOD and subsequently transfer him were wrong. Unfortunately, Mr R had been transferred to a prison away from his family sometime previously. I could only recommend that the Governor apologise to him and his family.

The fail-safe in segregation decisions is that the Board of Visitors (BoV) must authorise continued segregation beyond the first three days. Mr R's case was one instance where they were not sufficiently robust in this role. Here is another particularly worrying one.

A BoV member advised [Mr S \(11243/01\)](#) that she had extended his segregation. When he asked why, she said she could not recall the details but felt it was fair. My Investigator could find nothing to suggest why the BoV member agreed to the extension. In itself this was disappointing. In this case, however, the documented reasons for Mr S's segregation were flimsy to say the least. I would have hoped, therefore, that the BoV member would have challenged the segregation. Had she done so, I am persuaded that Mr S would have been taken out of the segregation unit. The BoV must do more than simply rubber stamp an establishment's decisions.

The use of handcuffs when a prisoner is transferred or is otherwise out of custody is, understandably, an emotive subject.

[Ms T \(10390/01\)](#) complained that she was transferred in handcuffs with her child to another prison. The Prison Service's Security Manual states that, although restraints will not normally be necessary, those in charge of an escort can authorise the use of handcuffs in certain circumstances. In this case, the deputy governor personally ordered the use of handcuffs, in light of Ms T's "unruly and uncooperative" behaviour just prior to transfer. His concern was to ensure the safety of Ms T, her child and staff during the journey. The concept of handcuffing mothers in the presence of their children is abhorrent. It should be a wholly exceptional occurrence. I was confident in Ms T's case, however, that due consideration was given by the deputy governor, who used his discretion in accordance with the guidelines. While I did not like what had happened, I had no grounds to uphold Ms T's complaint.

[Mr V \(10088/02\)](#) complained that he was required to wear handcuffs at his father's funeral. He suggested that the Security Manual gave Governors discretion in the matter and that, in this case, discretion had been misapplied. In fact, I discovered that the Security Manual allowed no discretion at all for those not eligible for temporary release. An Investigator pursued this with the Head of the Security Policy Unit at Prison Service HQ. She said the Prison Service must take steps to reduce the risks of a possible escape whenever a prisoner is escorted outside a prison. I fully accept that having to wear handcuffs whilst attending the funeral of a close relative will be difficult for the prisoner, his family and friends. However, in light of the instructions in the Security Manual, I could not uphold Mr V's complaint. Nevertheless, I deprecate a blanket rule that prisoners must always be handcuffed at funerals.

Happily, I understand that a review of the Security Manual, including the use of handcuffs on escorts, is already underway. I very much hope that this will result in Governors having greater discretion.

The Blantyre House ‘

The so-called Blantyre House ‘raid’, over the night of 5-6 May 2000, was the subject of considerable controversy and an inquiry by the House of Commons Home Affairs Committee. The Governor was suddenly transferred and a team of Prison Service staff from other establishments conducted a search of the premises and the prisoners. I received complaints from two prisoners transferred out of Blantyre House that night.

Mr W complained about his transfer, his re-categorisation from D to C and a subsequent decision not to restore him to Category D. He said the Area Manager was prejudiced against him. I carried out a detailed investigation.

As the Home Affairs Select Committee identified, there was a culture clash between the Area Manager on one side, and the former Governor and staff at Blantyre House on the other. Relationships between staff and prisoners at Blantyre were very different from those obtaining in most Category C prisons. Good staff-prisoner relationships were seen by Blantyre House as a strengthening of the resettlement process, rather than as a threat to good order through conditioning or corruption. I celebrate the fact, and the commitment to resettlement which it represented.

All that said, I concluded that the incoming Governor did have sufficient grounds for transferring Mr W. However, as with many cases involving transfers based on security intelligence, on the evidence I saw I could not be certain whether serious wrongdoing had been prevented or whether Mr W had in fact suffered an injustice.

I was also satisfied that there were sufficient reasons for the other decisions in respect of Mr W which the Prison Service took.

I could not say the same was true in the case of Mr X.

Mr X (12082/00) had served eight years of a 15 year sentence. He was married with six children and a stable home. He said he had been transferred out of Blantyre House without explanation at about 2.30am. Four days later, he was given a slip of paper saying he had been transferred because of concerns he might have had contact with active criminals.

I asked the Prison Service about the reason for transferring Mr X. I was told the adverse information relating to him was as follows:

His allocation to Blantyre House did not meet normal criteria in that he had a disciplinary report within the previous six months. He moved there two days short of the required six months period without adjudication.

There were concerns about the circumstances in which an earlier work placement in London had been terminated. Mr X was thought to have broken the terms of his licence and to have met possibly criminal associates. Moreover, his movements could not be adequately monitored.

He had resigned his position at a butcher's shop in anticipation of a transfer to a London prison, but then declined the transfer after realising he would not be eligible for release on licence for the first three months.

Instead of returning to the butcher's, where he had made good progress, Mr X chose another job driving a van, making it difficult to supervise his movements.

There were concerns about his latest employer.

I did not believe that, even taken together, these concerns were sufficient to justify Mr X's transfer. Indeed, had the transfer been arranged other than in the small hours of the night by a new Governor, I do not believe Mr X would have been transferred. I saw nothing suspicious in his being transferred to Blantyre House a few days prematurely. I also noted that the concerns about the London work placement pre-dated his transfer by many months, as well as pre-dating his gaining Category D status. Mr X's reasons for leaving the butcher's – and for not wishing to move to a London prison – seemed entirely intelligible in terms of wishing to maximise earnings and maintain family ties. And I could see no reason why Mr X should have been penalised for unsubstantiated concerns over a firm to which Blantyre House had sent other prisoners. If there were continuing concerns over the placement, it could and should have been withdrawn without Mr X being transferred elsewhere. I upheld Mr X's complaint.

Summary of Costs – 1 April 2001 to 31 March 2002

Running costs £

Staffing costs (salaries)	1,098,445
Non-pay running costs	564,070
TOTAL	1,662,515
Cost of administrative work	
(These costs have not been included in the calculations of average costs, below.)	498,003
Casework costs	
Average cost per complaint received	412
Average cost of dealing with each ineligible complaint	119
Average cost of each investigation	877

Terms of Reference

1. The Prisons and Probation Ombudsman, who is appointed by the Home Secretary, is independent of the Prison Service and the National Probation Service for England and Wales (the NPS) and reports to the Home Secretary.

2. The Ombudsman will investigate complaints submitted by the following categories of person:

individual prisoners who have failed to obtain satisfaction from the Prison Service complaints system and who are eligible in other respects, and

individuals who are, or have been, under the supervision of the NPS or housed in NPS accommodation or who have had pre-sentence reports prepared on them by the NPS and who have failed to obtain satisfaction from the NPS complaints systems and who are eligible in other respects.

3. The Ombudsman will normally act on the basis only of eligible complaints from those individuals described in paragraph 2 and not on those from other individuals or organisations.

4. The Ombudsman will be able to consider the merits of matters complained of as well as the procedures involved.

5. The Ombudsman will be able to investigate:

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 Ombudsman's Terms of Reference thus include contracted out prisons, contracted out services and the actions of people working in prisons but not employed by the Prison Service, and

all decisions relating to individuals described in paragraph 2 which are taken by NPS staff or by people acting as agents of area boards in the performance of their statutory functions including contractors.

6. The Terms of Reference do not cover:

policy decisions taken by a Minister¹ and the official advice to Ministers upon which such decisions are based;

the merits of decisions taken by Ministers, save in cases which have been approved by Ministers for consideration;

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 and the National Probation 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 Parole Board and its Secretariat.

Submitting Complaints and Time Limits

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

Determining Eligibility of a Complaint

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

board will then provide the Ombudsman with such documents or other information as the Ombudsman considers are relevant to considering eligibility.

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

Access to Documents for the Investigation

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

Local Settlement

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

Visits and Interviews

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

Disclosure of Sensitive Information

16. In accordance with the practice applying throughout government departments, the Ombudsman will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so. Such circumstances will arise when disclosure is:

against the interests of national security;

likely to prejudice security measures designed to prevent the escape of particular prisoners or classes of prisoners;

likely to put at risk a third party source of information;

likely to be detrimental on medical or psychiatric grounds to the mental or physical health of a prisoner or anyone described in paragraph 2 of these terms of reference;

likely to prejudice the administration of justice including legal proceedings; or

of papers capable of attracting legal professional privilege.

17. Prison Service and NPS staff providing information should identify any information which they consider needs to be withheld on any of the above named grounds with a further check undertaken by the relevant service on receipt of the draft report from the Ombudsman.

Draft Investigation Reports

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

Recommendations by the Ombudsman

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

Final Reports and Responses to Complaints

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

21. The Ombudsman has a target date to give a substantive reply to the complainant within 12 weeks from accepting the complaint as eligible. Progress reports will be given if this is not possible.

Prison Service and National Probation Service Response to recommendations

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

Annual Report

23. The Ombudsman will submit an annual report to the Home Secretary, which the Home Secretary will lay before Parliament. The report will include:

a summary of the number of complaints received and answered, the principal subjects and the office's success in meeting time targets;

examples of replies given in anonymous form and examples of recommendations made and of responses;

any issues of more general significance arising from individual complaints on which the Ombudsman has approached the Prison Service or the National Probation Service; and

a summary of the costs of the office

1 A personal Ministerial decision is one where the Minister makes a decision either in writing or orally following the receipt of official advice or signs off a letter drafted for their signature

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Statistics collated by John Maggi. Financial information prepared by Geoff Hubbard.

Designed and produced by GWS Ltd.

Photography by Third Avenue, with thanks to HMP Downview, HMP Highdown
and the London Area of the National Probation Service.

ISBN I 84082 8129>