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Towards Resettlement

Prisons and Probation Ombudsman for England and Wales
Annual Report 2002-2003

"Independent investigation of complaints
for a just and humane penal system."

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Mission Statement and Statement of Values

Mission Statement

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

Statement of values

•To be accessible to all who are entitled to make use of the office of 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.

Respect and Resettlement

I entitled the PPO 2001-2002 Annual Report The Pursuit of Decency. This deliberately identified the Ombudsman's office with the 'decency agenda' pioneered by the then Director General of the Prison Service. Among the many comments I received was one from a lawyer working in one of the southern states of the USA, who had read the report on the internet. In much of America, she wrote, no public official could conceivably speak of an aspiration to decency in the treatment of offenders. She commended both that ideal and the legitimacy and authority vested in my office by prison managers and staff.

This year's Annual Report bears the title Towards Resettlement. At first sight, this is a blander, less visionary statement. I hope this will not disappoint my American correspondent or others. It is intended to indicate the tangible ways in which the Ombudsman's office affects the lives of our complainants, and the policies and practices of the Prison Service and National Probation Service. It is less about bold words and more about practical improvements in the lives and life-chances of offenders, and in the way the prison and probation services operate. From aspiration to achievement, if you like.

For the individual complainant, it is not hard to see how the PPO can make a difference. A transfer to a prison closer to home, or offering relevant treatment programmes, may be arranged. An unfair disciplinary hearing may be quashed. Compensation may be offered for lost or damaged property. Or an apology may be received for the mistaken actions or inactions of staff. Even where – as in the majority of cases – I cannot uphold the complaint, the offender knows that his or her problem has been taken seriously and investigated thoroughly.

I am sometimes criticised for investigating apparently minor matters. But nothing is trivial in prison when you have so little autonomy, so few possessions, so little influence, and when every aspect of your life is ordered for you. Any reader unfortunate enough to have spent time in hospital will recognise why small things matter so much when you have no control over the really large ones. Independent investigation of complaints is not just about ensuring that the power of the state is exercised properly – critical though that is. It is also about assuring the offender that he or she is being treated fairly – a prerequisite to engagement in tackling offending behaviour and preparing for resettlement.

What are the benefits to the agencies that come within remit? There are the direct ways – drawing attention to inconsistencies or flaws in practice, identifying gaps in provision, praising staff where – as is often the case – independent examination of a complaint reveals a hitherto unacknowledged success. But I place particular emphasis on the indirect influences – complaints

investigation as a safeguard or backstop, complaints as management information, complaints as qualitative data to supplement the reams of statistical targets and key performance indicators.

Perhaps I may illustrate that from our probation work. The number of complaints investigated has been tiny. Yet virtually every probation investigation has shone light on the day-to-day reality of probation practice – an essential complement to the quantitative data now routinely collected.

Much of what we have found has reflected well on the National Probation Service. But other aspects of probation practice revealed in our investigations have been less flattering. Letters unanswered; complaints ignored; systems not followed. In one particularly egregious example, a probation officer wrote in a mocking tone to a prisoner who had the effrontery to complain about his treatment.1 As I have written elsewhere, it seems that at least some in the National Probation Service could learn from the Prison Service's approach to decency.

This is not to say that the Prison Service always gets it right. A governor told a prisoner who had complained that she appeared to have forgotten that she was in a prison, not at home nor in a hotel, and accused her of deliberately causing additional work by using 'confidential access' to make her complaint. Staff in another prison referred adversely in life sentence reports to a prisoner's use of the complaints system. One prisoner had to wait some 20 months for a reply to stage 1 of his complaint. Another was told repeatedly, by different prisons over several months, that his property had transferred with him. It had not. They had not even bothered to check. Successful resettlement is about engagement with society and authority. One of the ways my office can contribute is by ensuring that prisoners feel able to complain and that, if they do, their complaints will be treated with respect. In a small way, it is an exercise in citizenship.

Behind the scenes, there have been major changes in our business processes. In our working methods, recruitment and training, the office is unrecognisable from that which existed just a short while ago. Investigators have been empowered to use a variety of settlement methods, with an emphasis both on productivity and on quality. Output has increased by over one-third, while by the end of the year we were well on our way to restoring a reputation for timeliness. Indeed, our Assessment and Implementation Team consistently exceeded their exacting time-targets for assessing the eligibility of complaints received.

During the year, there have been important changes in the nature of the prison workload. By the end of 2002–03, the vast majority of prison complaints had come through the 'new' internal complaints system. Notwithstanding some teething troubles – most notably, unnecessary use of confidential access – I believe the new system has proved a great improvement. Prisoners have ready access to the forms. Responsibility for answering them has been placed where it should be – with front-line staff. And the quality of the replies has ensured that governing governors and my office have not been swamped.

There has also been a change in the subject matter of complaints. The number of appeals about adjudications has plummeted this year. This is almost certainly due to the abolition of governors' powers to impose added days. The decisions of the District Judges now acting as independent adjudicators may be little different from those of governors (no less quixotic in some instances I have witnessed), but they have a legitimacy no internal disciplinary body can enjoy. The atmosphere has changed hugely for the better, resulting in fewer appeals. In their place, I have seen a welcome (albeit small) increase in complaints about regimes, preparation for release and opportunities for resettlement.

Credit for responding to these changes rests with my colleagues. I am very fortunate to head a team of such quality and commitment. It is they who have met unprecedented increases in demand. It is they who have virtually eliminated our backlog and reduced waiting times. It is they who have adopted new ways of working, transforming our approach and our public face. And, I might add, it is they who have wrestled with an unfriendly and antiquated I.T. system, the replacement of which seems as far off as ever.

I have before me two letters. In the first, a prisoner writes to tell me that we have both sorted out his problem (a matter of some missing property) and restored his confidence that things can be put right if you approach them in the correct way. The second is a letter from a prison governor to the daughter of one of her prisoners, a beautifully crafted, child-friendly letter that explains why dad cannot come home yet but that the love and support of his family will be crucial on his release. The first shows an offender making his peace with society. The second shows the Prison Service at its best in protecting and strengthening family ties. What unites these letters is that they are both steps towards resettlement.

Stephen Shaw

Prisons and Probation Ombudsman

A Year of Achievement

Last year, I said I intended to build on our success in meeting the targets set in our business plan. I said I would enhance both access to my office by prisoners and those on probation and the quality of service. Most of all, I wanted to restore our reputation for timeliness, notwithstanding the huge increase in workload. Reducing the backlog of cases was the priority for 2002-03. This chapter reports on the extent to which we have achieved those aims.

Workload

During 2002–2003, we received 3,132 complaints about the Prison Service. This was 15 per cent more than in the previous year. This followed a 25 per cent rise in

2001-02, and a 12 per cent rise in 2000-01. In three years, therefore, numbers have risen by 62 per cent. The number of complaints about the National Probation Service was 192 (this was our first full year dealing with probation complaints). In total, therefore, demand has risen by 72 per cent in three years. In addition, 1,317 (42 per cent) met my eligibility criteria. This meant an increase in eligible cases on 2001-02 of 9 per cent. The eligibility rate for complaints about the Probation Service was 17 per cent.

Despite the very positive impact of the Prison Service’s new complaints system, failure to exhaust the internal complaints system remains the most common reason for ineligibility. A breakdown of ineligible cases is as follows:

Performance

We started the year with a pernicious backlog of complaints from prisoners. This diminished our ability to meet our time targets. Happily, and despite the increase in eligible complaints, we have succeeded in virtually eliminating the backlog. To do this, the office investigated a quite remarkable 1,485 cases. This is 34 per cent more than in 2001-02 (itself a record year). In the last three years, our output has risen by 202 per cent. This is a magnificent achievement, of which my colleagues can rightly be proud.

We have also made progress on restoring our reputation for timeliness. During 2002-03 we closed 41 per cent of cases within our target of 12 weeks. This compares with 32 per cent during 2001-02. By the end of the reporting period, the monthly proportion of cases completed on time had reached 55 per cent. Once the backlog has disappeared completely (which I anticipate will happen very soon), I fully expect that meeting our target will once again be the norm.

I should repeat here that we have sustained our impressive record for determining eligibility within 10 working days. Our target is to do so in 70 per cent of cases. We did so in 83 per cent of cases.

Better productivity has resulted in part from an operations review (of which I say more below) which further refined the changes to working practices I described last year. We resolve more complaints locally rather than resorting to the longer (and bureaucratic) process of issuing formal reports. We have also reaped the benefits of 'batching' complaints, rather than taking each one individually as was previously our practice. Those complaints which could be dealt with quickly, have been, rather than being put to the back of the queue.

New Complaints System

We have also reviewed our approach in light of the Prison Service introducing a new complaints system during 2002–03. To avoid injecting delay into what is generally a much slicker system, we have given new style complaints priority. This created efficiency savings, since complaints are easier to investigate when matters are fresh in people's minds, important evidence has not been lost with the passage of time and the complaint has not 'grown' with age. Nevertheless, we continue to work as quickly as possible through the cases in the old 'cabrank.' I am happy to say that we appear to have got the balance right.

Value for Money

The office spent £2,045,427 this year. The average cost of assessment was £112 per complaint, while the average cost of a completed investigation was £1,016. A different method of calculation makes comparison with previous years inappropriate.

Who Complains?

The high security estate continues to generate most complaints from prisoners. Of the 3,132 prison complaints received, 108 (3 per cent) were from young offenders and 139 (4 per cent) were from women. I describe below work undertaken by my office in relation to complaints from women prisoners. I regret that I have had little success in improving access to the Ombudsman by young offenders and those serving short sentences or on remand. However, I am encouraged by plans to introduce more appropriate grievance systems into juvenile establishments.

Almost all the complaints I received about the National Probation Service were from prisoners.

Types of Complaint

Adjudications formed a much reduced proportion of my postbag from prisoners compared with previous years – 9 per cent of all cases, as opposed to 20 per cent the previous year. Complaints about property (17 per cent) are now the largest component of my postbag from prisoners and complaints about general conditions comprise 12 per cent.

Figures for the last three years are as follows:

The breakdown for complaints about the National Probation Service was as follows:

Uphold Rates

I upheld, either wholly or in part, or locally resolved 483 complaints about the Prison Service (33 per cent). This compares with 34 per cent the previous year.

I upheld 1 complaint about the National Probation Service. I partially upheld 6 (25 per cent of those investigated).

Complaints about the National Probation Service tend to be more multifaceted than those about the Prison Service. This leads to a higher proportion of partial upholds.

Recommendations

Historically, the number of recommendations made and accepted has constituted a significant measurement of the output of the office. Increasingly, however, we are moving away from the formal report with recommendations. More and more, we try to resolve matters – that is, my Investigators identify where things have gone wrong and what needs to be done to put them right and agree the necessary action with the establishment. Another string to our bow is the 'informal' recommendation. This might be appropriate where an aspect of a particular case raises issues or gives concern, but not to such an extent as to warrant a formal recommendation being made. In such cases, we bring the Governor's attention to the particular point and ask him or her to consider it. I see this burgeoning repertoire of responses as a very positive development, since it keeps the resolution of complaints close to home, where it should be.

Formal recommendations continue, however, to play an important part in our work. It is critically important to the authority of the Ombudsman's office that the number of recommendations rejected by the Prison Service should be tiny. Both the current Director General and his predecessor have understood why this must be so.

Delays in acceptance have, however, been a source of some concern. I made a recommendation in relation to long-term prisoners not having to reach their parole eligibility date in order to be considered for release on temporary licence. I pursued this after another prisoner made a similar complaint, only to be told that no progress had been made, due to staff shortages in the relevant section at Prison Service HQ.

I also recommended that prisoners be allowed to contact business numbers in a wider range of circumstances than Prison Service policy currently allows. Some eleven months later, we are no further forward, despite a new Prison Service Order being in draft. While I am aware that the Prison Service is under extreme pressure due to the increase in prisoner numbers and there must be some sensitivity in placing additional burdens on establishments, such delays are frustrating for prisoners, my colleagues and me.

Judicial Review

In a new development, there have been five applications from prisoners to have my decisions judicially reviewed. In the event, none of the applications succeeded. Nevertheless, they embroiled my staff in additional work. If this trend continues, it will have significant implications for my office.

Business Plan

The Business Plan for 2002–03 was ambitious, setting out 34 areas of work to be completed during the year. This was a huge challenge, especially given the continuing pressures of increasing numbers of complaints. We completed an impressive 32 strands of work within the

time allocated for the purpose. This has ensured that the office has continued to evolve at a quite startling rate.

I set out below some of the projects we have completed during the year.

Operations Review

I reported last year on a fundamental review of our procedures which we had carried out in relation to complaints by prisoners. During 2002–03 the refinements to our ways of working identified by the review were enshrined in a new procedures manual, entitled ‘How to Make a Difference’. Changes included:

- moving to a presumption towards local resolution and mediation rather than formal report writing;
- enhancing Investigator targets for completing cases;
- making our letters and reports more customer friendly (including abandoning wherever possible our custom of anonymising the players);
- disclosing as much information as possible to prisoners compatible with safeguarding security;
- reducing bureaucracy in relation to disclosure and fact checks; and
- devolving greater decision making powers to the Assistant Ombudsmen.

Diversity

We assessed the office’s performance in terms of embracing diversity amongst the staff. Colleagues were asked to complete a questionnaire anonymously and focus groups explored specific areas highlighted by the responses. Generally, the feedback was very positive. Nevertheless, we have set ourselves a challenging action plan further to enhance our performance in this respect. Some ‘quick wins’ were implemented immediately.

European Excellence

We also evaluated the overall performance of the office by reference to the European Excellence Model. While the results were generally encouraging, we identified areas for improvement and will address these.

Accountability to our Users

Reflecting and building upon the ethos of ‘How to make a Difference’, we drew up a User Charter. This lets complainants know what they can expect of us and advises them how to complain if they are unhappy with our service. Not before time, perhaps, we also devised a complaints procedure for dealing with complaints about ourselves.

Satisfaction Survey

We reviewed mechanisms for obtaining feedback from our users to ensure the information we obtained was useful and enabled us to assess the effectiveness, quality and consistency of our service. Work on this, in partnership with colleagues from the Home Office’s Research, Development and Statistics Directorate, was ongoing at the end of the year.

Improving Access

The Business Plan for 2002-03 committed us to improving our accessibility to potential users of our service. In this connection, we undertook a survey of the use that was made of our publicity materials in the Prison and National Probation Services.2 The results of the surveys were disappointing, and we will be stepping up efforts to ensure our publicity material is prominently displayed.

We also updated some of our publicity material yet again to bring it up to date and make it more user friendly.

Statutory Footing

In line with the Government's commitment in the White Paper, Justice for All, a working group, led by Home Office colleagues, took forward work to prepare for legislation to place PPO on a proper statutory footing. This means that we will be ready to go, should a legislative opportunity present itself. Being placed on a statutory footing will be a significant development for the office, particularly in terms of enhancing perceptions of its independence, and I welcome it heartily.

Deaths in Custody

The same working group has also been considering detailed proposals for PPO to take over investigations of deaths of prisoners and probation hostel residents. Should this happen, I believe there would be significant benefits in terms of the quality and consistency of investigations, allied to an ability to consider wider implications than those concerned narrowly with Prison Service processes. It would also require major changes in our organisation, and would greatly increase our public profile and alter the nature of our relationship with the prison and probation services. I do not underestimate the challenge of preparing for such a major new development. It is a sign of the importance I attach to this work that I have freed up one of my Assistant Ombudsmen to work full time on this initiative.

Recruitment

The Business Plan also committed us to recruiting additional Investigators to meet the increasing demands placed on the office. I thus achieved a long held ambition when we recruited new Investigators by open competition. Formerly, my Investigators and administrative staff (but not my Assistant Ombudsmen) came from the Home Office. While I have always been entirely confident of the objectivity of our judgements and findings, I have been concerned about the perception of a lack of independence from the Home Office.

The response to our advertisement was overwhelming. By the end of the year, a gruelling Assessment Centre process had delivered seven excellent new Investigators.

Training Plan

We have reviewed and updated our Training Plan. It provides a comprehensive and robust framework to facilitate the development of all staff. New types of training have been added. For example, staff at the Prison Service College at Newbold Revel designed for us a two day interviewing skills course. Induction processes have also been refined.

Accommodation

In a significant example of joined-up government, we have now been joined in Ashley House by HM Inspectorates of Prisons and Probation and the Independent Monitoring Boards Secretariat. The building has been comprehensively modernised and the Ombudsman's office moved to more spacious accommodation on the third floor in April 2003.

I.T.

Sadly, one aspect of the Business Plan that I consider fundamental to the long-term success of the office and our ability to quality assure our work, was not achieved. In last year's report, I said: "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."

Twelve months on, despite our best efforts, we appear to be little nearer to getting our new system. The plain fact of the matter is that, under the Home Office's I.T. arrangements, I have little or no sway over this essential aspect of our business.

Doing our Bit

On a happier note, the office supported two charities during the year. Fundraising has taken various forms with a number of side-benefits to the unity and sense of purpose of the staff team.

Environmentally Friendly

Imprisonment inevitably carries with it many privations. If prisoners are to be

treated decently, these should be kept to the minimum possible consistent with the need to accommodate large numbers in relatively confined spaces and to maintain security and good order.

Mr A (11623/99) complained that his makeshift privacy screen had been confiscated. The screen was about 2 foot by 18 inches. Mr A said women worked on the wing and the board screened the middle part of his body when viewed from the door observation hatch. Mr A said he found it embarrassing, degrading and humiliating to be viewed when using the toilet. The Prison Service view was that prisoners needed to be visible at all times of the day and night for reasons of security and safety.

I understood the concerns about safety and security. I also accepted that requiring staff to assess a plethora of makeshift screens to determine whether they met those concerns would not be reasonable. Although I recommended that the Governor issue a notice reminding staff of the importance of respecting prisoners' privacy when using the toilet, I did not, therefore, uphold Mr A's specific complaint.

Nevertheless, I had every sympathy for Mr A. I found Prison Service policy muddled. I did not think that the case had been made out that safety and security required unimpeded visibility from the observation hatch of all parts of a prisoner's body when he or she is using the toilet. If this were necessary, then some of the designs which had been adopted for officially sanctioned screening would not have been acceptable. That being so, I considered that the absence of some kind of screen in the cell configuration in the refurbished cells at the prison was an unwarranted erosion of the needs of decency and dignity. In-cell sanitation was a great advance on slopping out, but we should not suspend judgement about the new indignities that in-cell sanitation can entail. I greatly regretted that the Prison Service had adopted as one of the acceptable designs for new and refurbished cells a layout which did not provide a measure of privacy for prisoners using the toilet. I duly recommended that the Director General commission a report on the feasibility of providing modesty screening in refurbished cells.

Increased visits to prisons and prisoners by my staff have enabled them to see at first hand some of the things about which prisoners have complained. This has brought an invaluable new dimension to our investigations.

Mr B (10269/02) complained about the insanitary conditions of the shower block and the toilet facilities. He said up to 13 prisoners were expected to share one toilet and sink. The situation worsened when someone was taken sick. The lack of ventilation in one of the toilets caused a smell on the landing, where prisoners watched television. In addition, the shower became infested with small black flies in warm weather. Mr B thought this had been caused in part by cutbacks in the amount of disinfectant and cleaning fluid used.

My Investigator did not accept that cleaning standards were poor, but concluded that the facilities were. They were shared by a number of prisoners over a long period of time, particularly at the weekends. I was heartened that the Head of Works readily undertook to work towards improving matters. Nevertheless, I formally recommended that the Prison Service urgently seek to improve conditions with the provision of ventilation and improved lighting. I also recommended that the Governor arrange regular inspection of the shower areas prone to infestation to ensure cleanliness and improve monitoring of the pest problem during the summer months.

Mr C (11558/01) complained about insufficient ventilation in the cells.

This was exacerbated by the presence of toilets. He said it was unhygienic, demeaning and prejudicial to health.

My Investigator visited the prison. She reported that, whilst it was not a particularly warm day, the cell was stuffy and did not appear to be especially well ventilated. I had previously noted that the cells at the prison seemed noticeably warm and airless. I therefore sympathised with Mr C's complaint. However, an independent engineer had concluded that the ventilation system was working adequately. This was an expert opinion, to which I had to defer notwithstanding my own perceptions and those of others. There was no further action I could recommend.

Mr D (12195/01) complained that he was kept all day in a holding cell at Crown Court following a brief morning hearing. The cell was small, poorly ventilated and furnished only with a wooden bench. There was no facility for him to exercise. He left his cell only to go to the toilet.

My investigation revealed that this was commonplace. While I recognised that the contractor could not be expected to provide an individual taxi service, I was concerned that the holding cells were designed for short-term use only. I recommended that my report be sent to the Board considering enhancements in the escort service in preparation for the next round of tendering.

Mr E (12628/01) complained that insufficient clean clothing was available.

I found that the prison had closed its laundry. A cleaning contract with another prison was suffering from teething problems, which resulted in some prisoners not receiving adequate clean

clothing. My Investigator was assured that initial problems had been overcome and that all prisoners were issued with two full sets of kit, one of which was exchanged weekly.

Mr F (12818/02) complained that he was woken up by a 5:30am nightly roll check, when officers turned on his cell nightlight. He said the 5:30 check was unnecessary as checks were also carried out at 9.00pm and 7:00am. Mr F said staff should use torches to check, rather than turning on the lights. He said they used the nightlight 99 per cent of the time. He thought denying him an undisturbed night's sleep breached the Human Rights Act.

The prison maintained that the 5:30 checks were necessary as they had to account for prisoners at all times. It was also important for night staff to account for all prisoners before handing over to day staff. In the circumstances, I did not consider a 5:30am rollcheck unreasonable. A governor advised my Investigator that staff were instructed to use a torch wherever possible, but they had to ensure they could see the face of the prisoner. I could not be certain to what extent staff used the nightlight rather than a torch, but noted that only one other prisoner had complained. I did not uphold Mr F's complaint.

Prisoners are sometimes subject to the same trials and irritations as people on the outside. The Prison Service cannot be held responsible for everything that goes wrong.

Mr G (12960/02) complained that a meal he was preparing had been spoiled due to a power failure. The power went off at 18:15 and was not restored until 19:45. Mr G was unable to cook his food as he was due to be locked up again at 20:00. He complained that, as his food had defrosted, it had to be thrown away.

My Investigator found that the power had failed without warning and the back-up generator, which under normal circumstances would have kicked in at that point, also failed. This was not a situation the prison could have forestalled or prevented.

I did not uphold Mr G's complaint.

Outside In

Links to the community are an essential aspect of resettlement. When contact with the outside world is necessarily limited, what are seen as unwarranted

additional restrictions on contact will inevitably generate complaints.

The PINphone system has been introduced in a number of prisons. Restricted access to different parties has prompted many to complain. One theme was the refusal of the Prison Service to allow prisoners access to business numbers, other than to speak to family or friends

Mr H (11185/01) wanted the number for a music shop added to his list of numbers. The prison refused. Mr H said he could not see how having access to such a number could contravene Prison Rules or constitute a security risk. Mr H told me that speaking to suppliers direct meant he could find out about special offers. He could also ask for advice. He said queries directed in the approved manner through the prison shop either were not pursued or took months. Mr H said he

had no wish actually to place his orders direct. The prison advised that the policy was based on security grounds (the need to know what items were coming into the prison and to maintain the integrity of the Incentives and Earned Privileges Scheme (IEPS)) and because there had been previous incidents of prisoners abusing shop staff.

The Prison Service had previously acted upon my recommendation that prisoners should be allowed to contact family and friends at their workplace. However, the resulting draft Prison Service Order (PSO) did not allow calls to business numbers for "commercial enquiries or to order goods".

The introduction of the PINphone system was designed to allow the Prison Service to strike a balance between the security of prisons, the need for prisoners to keep in contact with friends and family and the protection of the public from unwanted calls. While I accepted that the prison's reasons for refusing the number were relevant factors to take into account, I did not believe they justified a policy of only allowing prisoners to contact business numbers to speak to friends and family at work. I considered that there were a number of other situations in which a prisoner might have a legitimate reason for wanting to contact a business or commercial organisation. The key issue was whether the current proposals were a justified and proportionate response to the perceived threat. I took the view that the matter should be left to the discretion of Governors but that any restriction must be based on clear evidence of risk. In Mr H's case, I considered that his reasons for wishing to add the music shop's number to his list were entirely proper. I believed his case was an illustration that the Prison Service's proposed policy on business numbers would result in unreasonable restrictions and unfairness. I therefore recommended that the Prison Service urgently review its position and issue guidance.

The need for discretion to be exercised on a case by case basis, however, was illustrated by Mr J's complaint.

Mr J (12679/02) complained that he was not allowed to add a friend's work phone number to his account. He said it was the only time he could contact her, as she did not arrive home until after the prison phones were switched off for the evening. The prison objected to the number because the friend's work place was the business address of a known sex-offender. Mr J was convicted of sex offences and the prison did not think contact with the other sex offender would help Mr J's rehabilitation.

The evidence suggested that Mr J had an ulterior motive for wanting his 'friend's' work number on his list. I did not uphold his complaint.

Communication can take many forms. I have received complaints about a too restrictive interpretation of the term.

Mr K (12672/02) was sent a tape by his cousin on which she performed songs which she had composed. She wanted his views. He re-recorded the tape, inserting his comments on each of the songs. When he tried to send the tape out, it was returned to him, on the grounds that it contained more than six songs. When Mr K complained, he was told that tapes were for communicating and songs did not meet that criterion. He was subsequently told he was not allowed to send the tape because of copyright laws.

It was perplexing that a tape with songs on had been allowed in, but was not allowed out. I did not much like the inconsistency. Moreover, I did not consider any of the explanations Mr K was given to be reasonable. While the Prison Service could not turn a blind eye to criminal activity, it was not its role to police copyright laws (not that I thought any had been broken). And I thought it peculiar that songs were not considered to be 'communication'. Communication can take many forms. I did not think it was appropriate for the prison to prescribe that prose takes precedence over verse. I upheld Mr K's complaint.

On other occasions, the restrictions are reasonable if regrettable.

Mr L (10810/02), a non-UK national, had previously been allowed to watch two videos of his family. His request to view a video of his son's engagement, however, was refused. He was told the practice of viewing 'home' videos had ceased for all prisoners.

My Investigator discovered that requests to be allowed to view 'home' videos had snow-balled and were difficult to resource, given that they had to be viewed in the education department with an officer present throughout. While I understood how important it was to Mr L to be able to see his family – especially given that they could not visit – I acknowledged that governors had to take account of the operational needs of their establishment. I was pleased to learn, however, that the Prison Service was to consider issuing guidance on viewing videos. I hoped the guidance would be as permissive as possible.

The ability of prisoners to see their families is inevitably restricted as a result of their imprisonment. The difficulty is exacerbated when two family members are in prison.

Mr M (11486/02) asked in November 2000 when he would be able to visit his brother at another prison. He had originally been told staff resources meant it was not possible to accommodate inter-prison visits, but that a transfer was being sought on his behalf. Mr M chased progress in March 2001. He was advised that the other prison would not take him. The possibility of accumulated visits instead was being pursued. Mr M appealed in July 2001. Prison Service HQ told him that a transfer was being arranged. However, Mr M objected to a compact he was required to sign which, amongst other things, meant he would only see his brother on the sports field at the weekends. In November 2001, Mr M was advised his brother had transferred to another prison. If he wanted to pursue the question of inter-prison visits, he would have to submit another application at his own prison. He did so, but was advised in January 2002 that, in view of the distance between the two establishments, it would be more appropriate for Mr M to apply for accumulated visits. And so the story went on. By June 2002, no visit had been effected.

I attach particular importance to prisoners being able to maintain contact with friends and family whilst serving their sentences. The issue is no less important when it involves imprisoned close relatives, especially when alternative arrangements have not been made for them to contact each other beyond exchange of letters. Whilst I accepted that staff resources were particularly constrained, it could not be desirable that an inter-prison visit between brothers took over two years to arrange, with still no immediate prospect of its taking place. I had no hesitation in upholding Mr M's complaint. Happily, he has now taken his visit.

However, families have responsibilities too:

Mr N (12718/02) complained that his brother had been banned from visiting him at one prison and that the ban had continued at his next prison.

My Investigator discovered that, during one visit, Mr N's mother and brother had abused staff. The ban on Mr N's mother was subsequently lifted, but the ban on his brother remained. When the latter tried to visit whilst banned, he was refused entry. He became abusive and threatening, kicked the bottom of the door and broke the glass. When Mr N transferred to another prison, his brother remained banned until the Security Committee could review the matter. I did not consider that either prison had acted unreasonably.

Mr P (12579/02) complained that his previously agreed accumulated visit was cancelled at the last minute because the prison at which he was to take it was full. He said he was 600 miles from home, his wife was disabled and he had only seen her four times in 13 months.

My investigation revealed that all accumulated visits to the prison to which Mr P wished to go had been cancelled and that it was not thought the situation would improve for at least 12 months. The prison was unable even to take people from the courts. In light of this, I could not uphold Mr P's complaint. I did recommend, however, that consideration be given at his next Sentence Planning Board to re-allocating Mr P, bearing in mind both his need to progress through his sentence and for him to receive visits from his family.

Mr Q (10221/00) complained that he missed a substantial part of his visit because healthcare staff did not unlock him. It was his mother's first visit for 18 months and followed a suicide attempt by Mr Q. She had simply waited and waited in the visits room, with no explanation.

It transpired that staff were attending a healthcare meeting and no prisoners could be unlocked for the duration. The Governor acknowledged that appropriate arrangements should have been made in advance and offered Mr Q and his mother an apology. He also offered to fund a replacement visit by Mr Q's mother. Even though there was no further action I could recommend, I upheld Mr Q's complaint unreservedly. Arrangements should have been made to safeguard this key aspect of the prison regime. Visits are always important. The decline in the number of visits to prisoners in recent years is a matter of deep concern to me.

Ms R (11564/02) applied for release on temporary licence (ROTL) on compassionate grounds to attend her nephews' funeral. They had been killed in a car crash. Ms R had been the main carer of one of her nephews for about seven years. The Governor said she could not make an exception, as the rules allowing attendance at funerals did not cover the relationship between Ms R and her nephews.

I had reluctantly not upheld similar cases because of the terms of the Instruction to Governors, but I had criticised the lack of discretion it afforded Governors. Sadly, a review prompted by me of the eligibility criteria for release on compassionate licence resulted in no change. In Ms R's case, I could not say that the Governor and Area Manager had acted irrationally in applying the rules. But I was concerned that decisions based purely on closeness of family members might be in breach of Article 8 of the European Convention on Human Rights (ECHR). I also believed that the regulations governing compassionate licence conflicted with Prison Rule 4 on the maintenance of family ties.

I considered there might be grounds to look at the different needs of female prisoners. While family structures have undoubtedly changed, women still have the principal caring role in most families. This was the case for Ms R for the seven years she cared for her nephew. Although I did not uphold Ms R's complaint, I remained very unhappy with the wording and implications of the Instruction and recommended Governors be allowed greater discretion. I further recommended that the Operational Manager for Women's Prisons review the application of compassionate leave specifically as it affected female prisoners.

Being physically separated from family, friends, legal advisers and business contacts means that people who would never normally set pen to paper rely to a great extent on mail. Interruptions to its flow, or suspicions that it is being tampered with, are a major and understandable source of grievance for prisoners. While some control of mail is required, it should be the minimum necessary for security and good order. Any intervention should be reasonable, explained to the prisoner and documented.

Mr S (12109/01) complained about his mail being stopped. He said that he had previously been assured that Correspondence Officers would inform him immediately when his correspondence was stopped. He said this had not happened. If he was informed, it was often weeks after the event. Mr S also wanted me to view one of the stopped letters to determine whether it had been withheld appropriately.

My investigation uncovered a number of deficiencies in mail handling procedures at the prison and in guidance issued centrally. Recorded delivery mail was not opened in the prisoner's presence and stopped letters had not been placed in Mr S's stored property, but destroyed. A serious matter in itself, this also meant I was unable to determine whether the prison was right to stop the mail. Circumstantial evidence suggested, however, that the letters were stopped on account of the person who sent them rather than of specific concerns about the contents. I was pleased to note that the Governor apologised to Mr S immediately upon reading my draft report.

In view of the seriousness of interference with prisoners' mail, and in light of lack of clarity about whether and when Mr S was informed about his stopped mail, I recommended that the Prison

Service Instruction be revised to require staff to inform prisoners immediately and in writing when their mail is stopped.

Mr T (10190/03) complained that his mail was opened and photocopied. He thought this contravened Standing Order 5 which limits the circumstances in which mail may be stopped or copied.

The letter in question was opened as part of the random five per cent of mail opened and read at the prison. It contained information about a robbery. The Director and Police Liaison Officer were both consulted and the former authorised the copying of the letter and its disclosure to the police. I was satisfied that the prison had acted entirely in accordance with prescribed procedures.

Work and a Decent Wage

Money to spend makes us all feel good about ourselves. This is no less true in prison. If anything, small amounts mean even more. In addition, the ability to earn money and make decisions on

how it is spent provides normality, restoring to prisoners a degree of control over their affairs and encouraging personal responsibility. It is hardly surprising that earnings and related matters are the cause of many grievances.

Mr V (11676/02) complained that his bonus payment was short by £1.80. He was told that bonus payments were a privilege and not a right and that the bonus he had received was “very fair”.

The Industries Manager acknowledged to my Investigator that a mistake had been made in calculating the bonus, but that he and the Head of Activities had decided that the prisoners had received a sufficient amount. He added that if bonus payments were consistently high, the budget would soon become exhausted, resulting in prisoners having to be unemployed.

The prison said it had discretion to determine the amount of bonus in light of available monies. It also made much of the fact that the bonus paid to prisoners was a privilege, not a right. Of course, no worker should expect a bonus every week – that is the nature of bonuses. However, it was clear that, but for a clerical error, the correct amount would have been paid. The prison was guilty of moving the goalposts. The bonus payment had been earned. Mr V was justified in expecting to receive the full amount owed to him. I recommended he be paid the additional £1.80.

Mr W (11538/02) complained that wages at his prison were lower than those at the neighbouring establishment, which held the same category of prisoner, but whose population did not consist mainly of vulnerable prisoners as his did. He said vulnerable prisoners were systematically paid less than those on normal location throughout the prison estate, and complained of discrimination.

My Investigator obtained information from a number of category B prisons. This showed a wide variation in pay, but nothing which suggested vulnerable prisoners were routinely paid less. Prisons tried to ensure that vulnerable prisoners had access to the same types of work as those on normal location. Where they did not, there were objective reasons for this.

Mr X (10268/03), conversely, complained that he was not allowed the opportunity to work in some of the workshops, the kitchen, gardens, stores and library because they were only open to vulnerable prisoners.

I received a few complaints from Mr X’s prison on this subject. My Investigator discovered that the prison had reviewed its allocation of work. There was a long-standing problem that there were not enough jobs available for vulnerable prisoners but too many for normal location prisoners. Jobs were therefore reassigned. Over 200 jobs were available to normal location prisoners.

The duty of care to ensure vulnerable prisoners were separated from the rest of the prison population inevitably had a knock-on effect for work allocation. Within these constraints, I was satisfied that the prison was endeavouring to treat both groups equitably.

Mr Y (12028/02) asked to pay a fee due for disclosure of material under the Data Protection Act (DPA) from private cash. The fee was taken instead from his spends account, in line with local policy. Mr Y complained that the requirement that the fee should be paid from his spends account was an attempt to obstruct prisoners’ access to material they were entitled to see.

The prison said subject access requests were not listed under the exceptions in the Prison Service Instruction (PSI) about Private Cash. However, the Instruction was issued before the DPA came into force. Prisoners have a right to make a subject access request under the DPA, and it is difficult to see why they should be restricted in how they pay for this. I considered the prison’s policy was unreasonable. It could not be fair that prisoners might have to choose between making a subject access request or, for example, purchasing canteen goods that week. I recommended the prison change their policy forthwith and that Prison Service HQ should consider whether further central guidance should be issued.

Mr Z (10813/02) complained that he was not allowed to spend £229.95 of his earnings on a mini disc system, as he was only allowed to spend up to £150 per item. Mr Z said he did not consider

the provisions of Prison Service Instruction 79/1997 on Private Cash related to him as his spends account consisted entirely of money he had earned.

Mr Z argued that the relevant Instruction imposed no limit on the amount of earnings he could spend in one go. However, staff at Prisoner Administration Group (PAG) confirmed that prisoners were only allowed to spend a maximum of ten times their weekly private cash allowance. They said this limit applied whether the spends account consisted wholly of private cash, wholly of earnings, or a combination of the two. The Instruction was far from clear on this issue, and I fully understood why Mr Z interpreted it the way he did. However, I accepted PAG's explanation of how the limits set out in the Instruction were supposed to apply. I also understood the reasons for wanting to prevent prisoners building up considerable sums in their spends account. I did not, therefore, uphold Mr Z's complaint.

Spending limits had not been reviewed, however, since 1996. I recommended they be urgently reviewed along with the maximum amount of money prisoners could accrue in their spends account. I had previously asked the Director General to review the private cash limits as a matter of urgency. I now recommended that, as part of the review, Prison Service HQ should consider new guidance on whether prisoners should be allowed to spend in excess of the limit on one item if all of the money in the spends account came from earnings. While I understood why the Prison Service wished to restrict prisoners' access to private cash, it was more difficult to see why a prisoner should be restricted from spending money earned through worthwhile activities.

Mr A (10920/02) complained that he was not allowed to receive payment for his written work. He was told that Standing Order 5 prohibited prisoners from sending out material intended for publication and that prisoners were not allowed to run a business from prison. Being paid for writing would be classed as a business enterprise. The prison acknowledged that some prisoners won prize money for their work, but argued that this was acceptable because they were not paid to produce work.

This complaint highlighted an inconsistency between Standing Orders (SOs) 4 and 5. Hence, a prisoner could not receive payment for his work from a commercial organisation (SO 5), but could do so from a charitable organisation approved for this purpose by the Chief Education Officer's Branch (SO 4). PAG advised that the prohibition in SO 5 was unconnected with the rule about not running a business from prison, but were unable to provide an alternative rationale for prohibiting prisoners from submitting work (other than that relating to their crimes) for payment.

Given that there appeared to be no objection in principle to prisoners receiving payment for sale of their literature, and that a separate Standing Order made specific provision for them to do so, the prohibition at SO 5 seemed to me to be unreasonable. Notwithstanding the fact that the prison had acted within the letter of the rules, I took the view that the restriction had no merit. If prisoners could make a living from their artistic talents, this must be in the interests of their resettlement and rehabilitation, and hence of public safety. I therefore upheld Mr A's complaint.

Worldly Goods

Complaints about property now constitute the largest proportion of our workload. They run along a variety of themes, including what is allowed, access, damage and loss by the Prison Service and related matters of compensation and observance of proper cell search procedures.

Mr B (12647/01) complained that he was prevented from buying mail order goods relating to his hobbies, as the authorised catalogue did not supply them. He had had no difficulty using the supplier of his choice while in other prisons. Mr B also complained that the prices of goods from the authorised sports equipment supplier were excessive – in most cases twice the price of the previous supplier. Mr B told me he had been informed that the reason for restricting sources of goods was to reduce work for the prison. He had also been told that the sports supplier had been chosen because it was owned by the wife of a member of staff at the prison.

The prison maintained that it was necessary to restrict the number of approved suppliers and I could understand why this might be the case. I noted, however, that this was not the first time I had been asked to investigate a complaint about restrictions on mail order and discrepancies between prisons. I urged the Prison Service to offer new guidelines on mail order which would reduce unnecessary restrictions.

As far as Mr B's complaint about the sports supplier was concerned, we learned that the previous company had been found to be unreliable, and they were therefore dropped from the list of approved suppliers. My Investigator discovered, however, that the new supplier was indeed owned by the wife of a member of staff. Upon consideration, the Fraud Investigation Unit had concluded that the contract could continue. The Prison Service Handbook does not specifically preclude contracts being let to relations of members of staff, but I considered it undesirable for a member of staff to be in a position to benefit, directly or indirectly, from a contract with their place of work. Unusually, I copied my report to the Fraud Investigation Unit. I also recommended that the Area Manager provided terms of reference for a further consideration of the contract between the prison and the supplier.

The security and good order of a prison are of course paramount. It is important, however, that they do not lead to disproportionate restrictions on prisoners' rights.

Mr C (10622/02) complained that he had been refused access to an edition of 'Fight Racism/Fight Imperialism' (FRFI) newspaper, published by the Revolutionary Communist Group. He had been told the particular edition of the newspaper had been stopped because it was "not suitable due to its very strong political and racist views". He was also told that the newspaper contained derogatory comments about the Prison Service and was therefore not suitable for issue. A further reply informed him that the publication contained "anti-Muslim and general society issues" and an article depicting the Prison Service as "force feeding its prisoners conformism through officers' brutality".

I examined the articles contained in this edition of FRFI. I saw no articles which could be termed as 'anti-Muslim'. In fact, it was an anti-racist publication. I considered it nothing less than fanciful to suggest that FRFI would "compromise the racial policy of the Prison Service," as suggested by Prison Service HQ.

I was equally perplexed by the prison's objections to the article referring to the Prison Service. The cartoon was clearly a satirical reference to the Incentives and Earned Privileges Scheme (IEPS). It was mild in comparison to some cartoonists featured in national newspapers. I believed that only the ultra-sensitive would regard it as a threat to good order. I had no hesitation in upholding Mr C's complaint.

Mr D (12319/01) complained that access to in-cell television was restricted to enhanced level prisoners. He said this was in breach of the national framework for the IEPS. He also complained that this was different from what had been promised and from the system operating within similar prisons.

The establishment had decided on the policy, as it considered access to in-cell television was perhaps the only device staff had to encourage serious offenders, who posed a grave risk to the public, to co-operate with sentence planning and take part in courses to reduce their risk factors.

While I had some sympathy with the prison's view, I considered that the benefits to both prisoners and to the Prison Service of in-cell television were now so manifest that the prison's restrictions on access should not be allowed to continue. In-cell television is a key way of connecting prisoners to the outside world. It helps to bring some degree of normality to prisoners' lives and ready them for life on release. It may also have an impact on suicide rates. I upheld Mr D's complaint and recommended that the relevant PSO be re-drafted as a matter of urgency, giving clear guidance on standard level prisoners' right of access to in-cell television.

Much frustration may arise where a prisoner is allowed an item in possession, but may not get hold of it because of restrictions on access to his stored property.

This was Mr E's complaint (12093/02). He wanted to swap some of the CDs he had in-possession for some in his stored property. He was told he was only allowed access to his stored property in exceptional circumstances and that, because of the increase in prison population and increased movements through reception, resources were not available to facilitate routine property exchanges.

There are valid reasons for restricting the volume of property retained by prisoners in their cells. However, this means prisoners are restricted in the number of books and CDs they can have. It is both understandable and reasonable for them to wish to exchange property from time to time. I was not persuaded that the prison's lack of resources justified the restriction imposed. Nor did I consider the prison's position was consistent with decent treatment of prisoners. I recommended Mr E be given access to his stored property and that the policy be urgently reviewed.

Damage to and loss of prisoners' property continues to be a major source of grievance. Property complaints can be some of the most difficult to investigate. Often it is simply not possible to establish at what point something got lost or damaged, or who was responsible.

Yet, too often, I find the Prison Service simply has not bothered to investigate. Frequently it hides behind its mantra that in-possession property is held at the prisoner's own risk, and stonewalls appeals from prisoners.

Mr F (11613/02) complained that his cell had been wrecked and some of his property damaged while he was at work. He said practice at the prison was to open cells shortly before prisoners were due to arrive back from work. He thought that the damage was probably done at that time. In answer to his complaint, Mr F was assured that officers patrolled the landing after the cells were opened to ensure that no-one entered his cell. Mr F maintained that staff did not actually patrol and that his cell was not visible from where they normally sat.

When my Investigator enquired into the matter, he too was told that staff patrolled the areas they had unlocked. As it happened, I was due to visit the prison. I visited the wing at the relevant time. I found that it was exactly as Mr F had described. In some cases, prisoners did not return for 15 minutes or more after their cells were unlocked. I did not see staff patrolling the landings. The two officers on duty sat at a desk near the centre of the wing, distributing mail and newspapers to prisoners. I also observed that, from where the officers were sitting, it was impossible to observe every cell door. I concluded that it would be difficult for them to be sure that prisoners did not enter each other's cells.

I understood why staff unlocked doors before prisoners actually returned to the wing. However, when cells are unlocked in the absence of the prisoner, the Prison Service is running a risk with any property in the cell. Based on my own observations, I could not be certain that steps were taken to safeguard the contents of unlocked cells. I upheld Mr F's complaint and recommended he be compensated for his damaged property. I also recommended that a costed plan and timetable be prepared to extend the use of privacy locks to all wings in the prison.

Sometimes, a case seems clear-cut, but is not.

Mr G (10172/03) complained that, when he was transferred from one prison to another, his watch had been confiscated by the sending prison as there was no record of it on his property cards. Mr G pointed out that a receipt issued by the police while he was in their custody immediately before going into prison clearly showed that he had the watch at that time. Mr G said there was no doubt, therefore, that the confiscated watch was his.

Unfortunately, there was no record of Mr G having the watch when he entered prison and the prison had no record of having confiscated anything from him when he left. Despite the police receipt, there was nothing I could do.

Sometimes the Prison Service acts generously.

Ms H (10036/03) complained that a hand-held television which she had been allowed in possession was subsequently taken away from her. She said she had ordered the television, with the approval of prison staff, after the item appeared on the facilities list.

My Investigator found out that hand-held televisions had provisionally been included in a draft revision of the facilities list. However, it was then decided that the matter would need to be reviewed from an IEPS perspective. At that stage, it was realised that the draft list had already been issued. It was immediately withdrawn. I accepted this explanation, and, in the circumstances, did not find the prison had been unreasonable in removing the television to Ms H's stored property. Happily, however, the prison offered to buy the television off her. I considered this to be a more than reasonable outcome to her complaint.

But sometimes, the Prison Service is plainly unreasonable.

Mr J (12281/02) complained that his trainers had gone missing from the rest room while he was working in the kitchens. The prison said that property in-possession was his own responsibility and refused to compensate him. Mr J's argument, however, was that he was required to remove his footwear before commencing work, but there was nowhere safe to put it, and the rest room was left unlocked.

I upheld Mr J's complaint unreservedly. If the prison required him to remove his trainers, it had an obligation to provide somewhere secure for them while they were out of Mr J's control. Although the case was, for me, clear cut, the prison rejected my Investigator's attempts to resolve the matter locally. They continued to refuse compensation on the grounds that Mr J was responsible for his own property and refused to provide lockers on the grounds it would set a precedent. I was therefore obliged to issue a formal report with recommendations. I did not view this as best use of my time nor of those at Prison Service HQ who then had to consider my findings.

Mr K (12487/02) complained that items of personal clothing had been damaged at work.

I found that Mr K had signed for receipt of 'work-trousers' and two T-shirts were issued specifically for work. I was satisfied that, although Mr K had not received all the clothing to which he was entitled, he did receive work clothes. I did not uphold his complaint.

Sometimes liability is not disputed but difficulties arise over agreeing compensation.

Mr L (13075/02) complained that, although the prison accepted liability for the loss of his bracelet, they refused to offer more than £60 compensation. Mr L said he had no proof of the value of the bracelet, but had seen similar ones in the Netherlands retailing for about £500. His family had confirmed that this was how much his sister had paid for it. Mr L noted that staff had originally refused to allow him to keep the bracelet in his possession because it was too valuable.

Mr L was unable to supply my Investigator with anything – a receipt, credit card bill or jeweller's record of sale – to indicate the value of the bracelet. The prison which placed Mr L's bracelet in

his stored property was unable to say how much an item would have to be considered to be worth in order for them to refuse to allow it in possession. It was a matter for the judgement of the officer on duty. My Investigator was told that, when Mr L first discovered the bracelet was missing, he had described it as small and thin and of sentimental value. I had no grounds on which to recommend more compensation be offered. However, I noted the extreme difficulties of valuing jewellery once it had gone missing. I therefore recommended that the Prison Service considered whether a valuation could be agreed and recorded upon first receipt.

In another case, neither liability nor the amount of compensation due was at issue. It was a question of who paid.

Mr M's (10750/02) audio cassette tapes went missing during transfer. Neither the prison nor the escort would accept responsibility, however, and as a result the Prison Service declined to offer any compensation.

I found it frustrating that there was clear acknowledgement that Mr M's property had been lost while he was not responsible for it, but he had been offered nothing. This

was unacceptable. In the event, we arranged for the prison to pay, as they had signed for receipt of Mr M's property, thereby becoming liable for it.

It is an unfortunate fact of prison life that prisoners must suffer the invasion of having their property searched regularly. When this happens, it is vital that prisoners and their property are treated with respect and that their rights are observed. Where the property concerned is legal documentation, this requirement becomes even more critical.

Mr N (11386/02) complained that, on 21 August 2001, his cell had been searched and his legal mail had been left strewn across his bed. He pointed out that a ruling in the House of Lords in May 2001 (the Daly judgement) said that a prisoner must normally be present when his legal mail was examined by staff. Mr N did not accept the prison's explanation that the Security Manual had not been updated to reflect the judgement until 27 August and changes to the prison's searching policy were made and communicated to staff on 28 August. His cell had been searched almost one month after Governors had been informed of the amendments to the Security Manual.

The Daly judgement made it clear that the Prison Service's policy of not allowing prisoners to be present while their legal documentation was searched was unlawful. I accepted that it was necessary for staff at Prison Service HQ to consider the full implications of this judgement. However, I was surprised that, in the first instance, Governors were advised to continue to follow a practice which had been deemed unlawful and that it took the Prison Service almost two months to issue revised guidance. I was equally surprised and concerned that, even though this guidance was apparently received at the prison on 24 July, it was not implemented until 28 August. The note to Governors was quite clear that the new policy had to be implemented immediately. I recommended that the Governor formally apologise to Mr N.

There was an element of déjà vu when we investigated the first eligible complaint about the National Probation Service.

Mr P (36/01) complained that the Probation Service had destroyed property which they took responsibility for following his imprisonment and failed to offer him adequate recompense. He estimated the value of his property at £2,370. The Probation Service had not accepted liability but had offered compensation 'without prejudice' of £100.

I found that, despite a copious amount of correspondence on the matter, there had been no agreement about the terms under which the Probation Service took responsibility for Mr P's property, nor the amount of time for which it could be held. No consistent message was given to him about what might happen to his property if he did not arrange to take it, and there was certainly no clear statement that it would be destroyed. I was not sure that it had been wise of the Probation Service to assume responsibility for Mr P's property, but concluded that, once it had

done so, it had a duty of care to safeguard it. I had no way of knowing the true value of Mr P's property, but recommended he be offered £500 compensation and an apology.

Certain Knowledge

Decisions based on security intelligence or where an assessment of risk needs to be made are a major cause of frustration for prisoners. There is inevitably a sense of loss of control and a suspicion that decisions may be taken arbitrarily or out of malice. Such complaints cause problems for investigation too. Quite often I can arrive at no firm view of whether the prisoner has done something he or she is alleged or suspected to have done, or whether the risks are such as to warrant a particular course of action. My role is to determine whether the Prison Service has handled information sensibly and responsibly and evaluated it carefully.

Mr Q (13140/02) complained about being refused Home Detention Curfew (HDC). He said he did not live in the same town as his victims, and that wing staff, prison probation officers and his local probation officer supported his application. He added that he was on the enhanced regime, had never been charged with any offences against discipline and had completed all the work in his sentence plan.

There was much in Mr Q's favour on the HDC form. However, his offence was of cruelty to his two sons. Mr Q's most recent sentence plan referred to a serious risk of his re-offending. Information had also been received that he and his partner might take the children. The Controller had sought further information from the police and Social Services. They both had concerns about him. While there is a presumption in favour of granting HDC, a number of specific offences are excluded from the presumption. One of these is cruelty to or neglect of children. Taking into account all the information available, I could not find that the HDC Board had acted unreasonably in denying Mr Q release on HDC.

Sometimes, however, I cannot find decisions reasonable.

Mr R (12333/02) complained about the decision to re-categorise and transfer him. He said that, following a visit, he had been taken to the segregation unit and told that he had been observed receiving an unauthorised article from his visitor. He said the allegation was unsubstantiated and the subsequent charge brought against him dismissed. Nevertheless, he had been re-categorised.

The prison said it had reviewed Mr R's behaviour and it was found that he was a major player in the drugs scene. He was also involved in the bullying and taxing of other prisoners. On checking, my Investigator found there was no security information about Mr R, and nothing connecting him with the drugs trade.

The lack of documentary evidence meant I could not be satisfied that the decision

to re-categorise Mr R was reasonable. I therefore upheld his complaint and recommended that his security category be reviewed urgently. I also recommended that the Governor remind his staff of the importance of recording and retaining details of all security information.

Occasionally, one incident or change of policy will result in a number of complaints to my office. The fact that the same incident prompted the complaint, however, does not mean that the outcome of my deliberations will be the same. Following a protest at one prison during November 2001, a number of prisoners were transferred out:

Mr S (11004/02) denied being involved in any incident which could justify transferring him. He said he stayed inside his cell for the duration of the protest.

I saw an Incident Report which identified Mr S as one of 21 involved in a sit down protest. One of my Assistant Ombudsmen spoke to the author of the report. She had been informed by the wing manager and a governor grade who was present at the time that Mr S had been actively participating in the protest. He had been antagonising and "quite vocal." Mr S's account of his part in the protest was clearly at odds with that of staff. I had no way of knowing with certainty what had taken place. In the circumstances, I was unable to uphold his complaint.

Mr T's case (10677/02) was a little different, however. He also denied that he was involved in the protest. When he complained, the Director told him that he had been a bullying and abusive prisoner and that he was responsible for the position in which he found himself. Mr T said he had remained adjudication free for all his five years inside and all his wing reports were excellent.

My Investigator found out that, in the event, 52 (not just 21) prisoners had been transferred out. The Director said he had felt he was losing control of the entire establishment. Staff regarded Mr T as being among the powerful prisoners, inciting others to intimidate them about a decision to change access to the gym. The Director said he regarded Mr T's behaviour as "pretty typical, good interpretation skills and hence no Security Intelligence Reports, but challenging and subversive behind the scenes." My Investigator was told there was no security intelligence on Mr T relating to the protest. I commented that if the prison was to make allegations of bullying and serious disorder, they should record the incidents which had led them to these conclusions. In the absence of one scrap of written intelligence to support the allegations about Mr T, I upheld his complaint.

Mr V (10009/03) complained that he was not being allowed to progress through the prison system because he was an appellant.

Prison Service guidance is that prisoners must be categorised objectively according to the likelihood they will seek to escape and the risk they would pose should they do so. It must assume that the prisoner has been correctly convicted. Whether or not suitable courses have been successfully completed rightly helps to inform consideration of whether the risk to the public has reduced sufficiently to warrant downgrading. Re-categorisation should be based on a clear change in risk factors. In the absence of evidence that Mr W was willing to work to reduce his risk factors, I could not find the Prison Service had acted unreasonably in declining to downgrade him.

Mr W (12854/02) complained about the decision to refuse him category D status. He said he had applied for the Reasoning and Rehabilitation course, but the waiting list was lengthy. He was on the enhanced regime and had no adjudications. He had been category D on a previous sentence and had never absconded or breached his licence and had always returned from town visits.

On examination of Mr W's re-categorisation form, it was evident that his good custodial behaviour had been acknowledged. In addition, two contributors considered Mr W was a low risk to the public. It was also noted, however, that he had breached a probation order in 1986 and his licence in December 2001. He had completed three of his four sentence plan goals but had yet to complete the Enhanced Thinking Skills course. I noted that Mr W had not as yet been able to complete his offending behaviour work, and explained to him that the decision not to re-categorise him was not a judgement on him for not having done the work. It simply reflected the fact that, for whatever reasons, he had not been able to address his offending behaviour. In other words, the likelihood of his re-offending remained the same as it was when he was categorised C. I did not uphold Mr W's complaint.

Just occasionally, the issue is cut and dried.

Ms X (13130/02) complained about being refused HDC. She said she had previously been successfully released on HDC.

My Investigator confirmed that Ms X had successfully completed a period of HDC in February 2002. However, he also established that, in March 2001, Ms X had been recalled to prison under Section 40 of the Criminal Justice Act (CJA) 1991. Section 34A of the CJA says that any prisoner who at any time has been returned to prison under section 40 of the CJA is not eligible for HDC. Ms X should therefore not have been granted HDC in February 2002 and the later decision not to grant HDC was not only right, but the only option lawfully possible.

Crime and Punishment

Despite the fact that District Judges now hear some adjudications, I have retained my role in considering all appeals.

Mr Y (10061/03) complained about being placed on report after his sample of urine tested positive for opiates. He said he took tablets daily which contained codeine. He had agreed to medical disclosure and asked why his records were not checked before he was charged. He had been taken to the segregation unit to await adjudication and said he felt degraded by the incident.

My Investigator established that prisoners at the prison were routinely placed on report on receipt of a positive screening report. Staff were concerned that, if they awaited confirmation reports, they would not be able to charge within two days of discovery of the alleged offence. The Mandatory Drug Testing Manual, however, states that when a screening test is positive for opiates or amphetamines, medical information is required immediately and before a charge is laid. If this shows that the positive result was almost certainly due to prescribed medication, the prisoner should not be charged. The Manual explains that, where it is decided to obtain a confirmation test, it will not be possible to bring a charge within 48 hours. This was permissible. I upheld Mr Y's complaint and recommended the Governor apologise. I was pleased to note that further national guidance was to be issued.

Ms Z (12256/02) complained about an adjudication at which she was found guilty of refusing a lawful order to move cells. She said the order was unreasonable as she had been told by doctors not to mount stairs.

The adjudicator had called a nurse to give evidence about Ms Z's medical condition, and was satisfied that there was nothing unreasonable in the order to move. However, Ms Z had asked at the outset to call two doctors who she said would testify to her medical condition at the time of the alleged offence. She said her Inmate Medical Record (IMR) (which formed the basis of the nurse's evidence) did not tell the full story.

The Prison Discipline Manual says that an adjudicator may accept written evidence but, if the accused denies or contests it, its reliability may be put in doubt. I considered the failure to call any of the witnesses requested by Ms Z and the reliance instead upon the material in her IMR, which she contested, constituted a fatal flaw.

Mr A (11932/02) complained that his adjudication for possession of hooch was flawed, conducted unfairly and possibly corruptly. He said the outcome was pre-determined. Mr A said he knew nothing about hooch being found in his cell until he was charged the following day. A hearing had been postponed, but at 9:15 that evening he was ordered to the segregation unit. He was told he had been found guilty that morning and was to be transferred the next day. The following morning, Mr A was told to attend a hearing. He complained that he had not been given his charge sheet, all his paperwork had been bagged and tagged and he had no writing materials.His papers were brought and Mr A was given a further 20 minutes to prepare. In the event, he managed to

delay matters for 50 minutes. The adjudicator declined to hear Mr A's statement, saying he would tell Mr A when he could read it out. He then dismissed Mr A's defence, which related to the legality of the cell search, and refused him further time to re-consider his defence. Part way through, the adjudicator refused to allow Mr A to ask any further questions. Mr A said he was rail-roaded because it had already been arranged to transfer him that day.

Regrettably, I found much of substance in Mr A's complaint. Taken together, the failure immediately to inform Mr A that hooch had been found, the decision to transfer him "following an adjudication for possession of a fermenting liquid," the short notice he was given to prepare for the final hearing, and the fact that his written statement was not considered created an overwhelming impression of unfairness. I could quite see why Mr A considered he was rail-roaded and that he had been found guilty before he even attended. I upheld his complaint.

Most adjudications are quashed as the result of technicalities or procedural flaws. In order for me to uphold a prisoner's complaint, however, I must be persuaded not only that there was a flaw in the proceedings but that that flaw led, or might have led, to some injustice. I was not so persuaded in the case of Mr B.

Mr B complained that the prison number recorded on the adjudication papers was not his. He argued that, given the importance attached to prison numbers for the correct identification of prisoners, the error must render his adjudication unsafe.

I did not agree. There was no doubt that Mr B was the person identified by the Reporting Officer, who attended the adjudication and who had known him over a significant period of time. I was satisfied that no injustice had occurred as a result of the typographical error.

Mr C (12957/02 and 12988/02) complained about the punishment he received following a finding of guilt for a charge of possessing six unauthorised phonecards and a screwdriver. He had been given 5 days cellular confinement, 14 days forfeiture of privileges and publications and 14 days stoppage of earnings at 70 per cent. Mr C said his IEPS level was reviewed as a result of the adjudication. He retained his enhanced status but was not allowed community visits for one month and would lose his 10-hour community visits for three months. His solicitors argued that taken together the punishment was excessive.

My Investigator discovered that the Governor had issued a notice to prisoners about the consequences of being caught in possession of excess phonecards. This had been prompted by an increase in this type of misbehaviour and concerns about bullying. The notice said prisoners could expect a minimum of 14 added days if found guilty. I agreed that prisons were entitled to take a serious view of this offence and noted that prisoners had been warned about the consequences. I also accepted that a screwdriver could be used as a weapon in the wrong hands. Taken together I did not consider the punishment had been disproportionate.

My Investigator found that privilege levels were automatically reviewed as a result of an adjudication. Prison Service HQ advised that, where privileges were taken away as a result of an adjudication, it should happen at the adjudication and not at a separate review. In addition, privilege levels should only be reviewed as a result of a change in pattern of behaviour or a serious one off incident.

I did not consider suspending Mr C's privileges would have been disproportionate to his offence had it been done at adjudication. But it was not. Mr C's behaviour had been described as exemplary in his conduct report and I did not consider the offence was so serious as to warrant an IEPS review. Accordingly I upheld Mr C's complaint as it related to the loss of privileges.

I was concerned about the apparent operation of a blanket policy whereby an adjudication triggered a review of privilege level. I was also concerned by the prison's policy of automatically regressing the IEPS status of every prisoner found guilty of specific offences at adjudication. In

common with all blanket policies, this did not allow for individual circumstances to be taken into consideration. I was pleased to note, therefore, that the policy was to be independently reviewed.

Existing systems for reviewing adjudications result in significant time lapses between the adjudication and the appeal being considered. This means that, with the exception of added days, the punishment will have been served long before the appeal process is even begun. In some cases, such as loss of earnings, there is redress. In others, such as loss of privileges or association, or cellular confinement, there is none.

Mr D (11950/02) complained that he had no meaningful right of appeal against a punishment of cellular confinement. He noted that, as a life sentence prisoner, it was not open to adjudicators to impose added days upon him as a punishment and that he was therefore given cellular confinement as an alternative. Mr D argued that this meant that, even though his adjudications did not involve added days, they were covered by the European Court ruling on adjudications (Ezeh and Connors v UK (July 2002)). In addition, he said cellular confinement could not be justified as a replacement for added days as it could not be 'given back' to a prisoner who was successful on appeal.

The Prison Service has taken the view that Article 6(3) of the ECHR only applies to adjudications at which added days are imposed. Having obtained legal advice, I am satisfied that this is reasonable. I did not, therefore, uphold this element of Mr D's complaint, although I observed that this must, ultimately, be a matter for the Courts to decide.

The other strand of Mr D's complaint, however, caused me concern. The European Court of Human Rights decided in Keenan v UK (April 2001) that the lack of an effective remedy where cellular confinement was imposed was a breach of Article 13 of the ECHR. I would have expected the Prison Service to conduct an urgent review of its appeal procedures where cellular confinement is given as a punishment. I was not aware whether such a review had been conducted or, if it was, what its outcome was. Certainly, I was not aware of any specific guidance being issued.

The current draft version of the Prison Service Discipline Manual refers to the need for a fast track appeal scheme for urgent cases. However, it was not clear when this Manual would be issued and, in any event, I did not believe a provision for faxing appeals would in itself be sufficient, given the bureaucratic processes pertaining in most establishments. I said that, where they had been punished with cellular confinement, prisoners must be able appeal immediately. Further systems were required so that the appeal is dealt with as a priority at all stages. I recommended that the Prison Service urgently address the issue.

Mr E (12164/02) wrote on a similar theme. He complained that the Prison Service refused to compensate him for a period of cellular confinement where the finding of guilt was later quashed. He said the cellular confinement must count as unlawful custody and was an infringement of his human rights. He suggested a nominal fee of £10 per day. The Prison Service refused, on the grounds that the adjudicator had acted in good faith. They said a decision to quash should not be misinterpreted as innocence on the part of the prisoner and that a large number of adjudications were quashed because of technical and procedural irregularities.

Arguably, if no redress is offered for punishments of cellular confinement served before an appeal, the right to review is a hollow one. However, I do not consider there is a case for compensation as a matter of routine.

Nevertheless, I have discretion to recommend compensation and I address this question on a case by case basis. Mr E had been charged with attempted assault after he was seen breaking a bottle and charging down the spur in a threatening manner, before trying to gain entry to another prisoner's cell. The finding of guilt was quashed because Mr E's solicitors had not been given sufficient time to consider the adjudication papers. While there were procedural flaws which quite rightly resulted in the quash, I did not believe that justice would be served by granting Mr E

general compensation from the public purse. I did, however, recommend he be compensated for the loss of any earnings incurred as a result of the cellular confinement.

Cellular confinement is not a light punishment. Prisons must be wary of imposing conditions on the cellular confinement, which render it inhumane.

Mr F (11296/02) was found guilty of endangering the health and personal safety of others by climbing the netting from one landing to another. He was punished with seven added days and three days cellular confinement. He was also deprived of canteen, association, tobacco, publications, radio and occupations and possessions in cell for three days.

My principal concern was that Mr F was deprived of all means of occupying himself for three days. He was not even allowed a radio in possession. The sheer boredom must have been hard to bear. Unfortunately, there was no redress for Mr F, but I recommended the Governor review the matter and issue instructions to adjudicators.

To add insult to injury, the finding of guilt was unsafe. The adjudicator was required to establish that there was a definite and serious risk of harm to the health and safety of others. It was not sufficient that Mr F's actions might have put someone at risk. They actually had to have done so. The adjudicator did not ask any questions to establish whether this was the case. I recommended that the finding of guilt be quashed.

Probationary Year

None of us knew what to expect when we took on complaints from those on probation. I have been intrigued over the course of the year by the qualitative differences between complaints about the Prison Service and those about the National Probation Service. One of the most striking differences, and one which has been keenly felt by my Investigators, is that although the number of complainants has been extremely modest, probation complaints are, in the most part, complex and multi-faceted. Inevitably, therefore, investigation of probation complaints tends to take longer – and particularly so since we are all on a learning curve.

Another striking difference, is that complaints are often more personal. Prisoners occasionally complain about specific officers, but on the whole, their complaints are directed at an impersonal Prison Service. Many probation complaints, however, focus sharply on the individual probation officer.

Mr G (59/2002) complained that his probation officer deceived him about the possibility of his recall to prison. He said he told him recall was unlikely, while in fact writing a report recommending his recall. Mr G also complained that the report submitted by his probation officer to the Scottish Executive contained inaccuracies. These related to the under-reporting of alcohol consumption, an incident where Mr G was intoxicated and looking for a prostitute and the suggestion that Mr G was on the verge of a nervous breakdown.

My investigation revealed that the Scottish Executive had advised Mr G's probation officer that their initial reaction was not to recall Mr G. The probation officer had relayed this information to Mr G. I considered this had been ill-advised and recommended the probation area issue guidelines on information to be given to offenders about their recall. I found clear evidence, however, that Mr G had been under-reporting his drinking. I also found that the probation officer's consideration of the incident where Mr G had been intoxicated and looking for a prostitute was even-handed. Having said that, I was concerned that the incident, which was clearly considered very serious by the police, had not been followed up by the probation officer. I therefore recommended that the probation area review the management process for follow-up issues relating to risk. I was satisfied that there was reason to be concerned about Mr G's mental state and that the probation officer was right to report it. However, I noted that 'nervous breakdown' was a colloquial term with no precise or clinical meaning. I commented that I would prefer that assessments of states of mind be expressed in more neutral descriptive terms based on evidence.

Mr H (52/2002) complained that his probation officer rarely replied to his letters, that her visit to discuss his first parole application lasted only 11⁄2 minutes and that she had 'strongly indicated' to him and told his parents and neighbour that she would support his parole application, but did not do so.

I found no grounds to criticise the probation officer and did not uphold

Mr H's complaint.

However, both Mr G and Mr H had asked for a change of probation officer. Having investigated Mr H's complaint some two years previously, the District Manager said he hoped that Mr H's confidence could be restored. He said he would be prepared to reconsider the allocation of another supervising officer if sufficient progress was not made. Generally speaking, however, the policy of both areas was to resist requests for a change of probation officer as offenders gave innumerable reasons for wishing to change, but there was a limited number of supervising officers to allocate. I accepted that offenders could not be allowed to pick and choose their probation officer. Nevertheless, Mr G and Mr H had pursued their complaints doggedly and the supervisory relationship had broken down. I did not consider it to be in the interests of them, the probation officers or, most importantly, public protection that the relationship continued. I further recommended that the areas formulate a policy to cover requests for change of supervising officer.

I would not like to create the impression that complaining to the Ombudsman necessarily results in a recommendation for a change of supervising officer, however.

Mr J (37/2002) complained that he was not allowed to change his supervising officer or to transfer responsibility for his resettlement to a different area. He complained that one probation officer alleged without good cause that he was a schedule one offender and that she had lied about some diaries he had compiled. Mr J also complained that another probation officer harassed members of his family.

It was clear from my investigations that the probation officer was correct when she described Mr J as a schedule one offender. I could also find no evidence that she had referred in any way to his diaries. My Investigator scrutinised both the complaint file and Mr J's supervision file. He could find no evidence to support Mr J's allegations of harassment against his family – in fact there was evidence to suggest relations were cordial. Finally, I was satisfied that Mr J's request to transfer probation areas had been properly considered and a reasonable decision reached. I did not uphold his complaint. After such a prolonged period without any proper dialogue between Mr J and his probation officer, however, I considered whether a change of supervising officer was warranted nevertheless. On balance, and given that Mr J appeared to have a grievance against the probation area generally, I concluded that it was not.

Mr K (79/2002) also complained that he was not allowed to change his probation officer. He said his probation officer was the personal friend of the arresting officer in his case. He also complained that he had only seen his probation officer for just over two hours since his sentence three years previously. Mr K said his parole report had not been written objectively. Finally, he said his probation officer also acted as liaison with the victim of his offence.

There was no evidence that the probation officer was a friend of the arresting officer, and he had acted in accordance with laid down procedures. I did not uphold Mr K's complaint. But, while recognising the problem of scarce resources, I was concerned about the lack of contact with someone convicted of a serious offence and identified as high risk. I recommended that the probation area review its resettlement policy to ensure contact with high risk offenders in custody was planned and sufficient. In addition, and given the antagonism that existed, I believed it had been unwise to require the probation officer to prepare the Parole Assessment Report. I also commented that decisions about changes of officer should take account of the particular circumstances of each case and not be treated as matters of principle. Finally, I considered the

handling of Mr K's complaint and appeal was overly complex and prolonged. I recommended that staff awareness of the procedure and the effectiveness of its implementation be reviewed.

Mr L (46/2002) complained about two probation officers. He said the first discussed his offence with another offender in his care and that the second threatened him in the supermarket and informed her neighbours about his conviction. He said he had received threats from them as a result.

I had no evidence that the first probation officer had said anything improper or beyond his authority. I was unable to establish what happened in the supermarket – Mr L and the second probation officer gave conflicting accounts and there was no independent witness. The probation officer also denied she had told her neighbours about Mr L's offence but I was disappointed to note that none of them were interviewed in order properly to resolve matters. This would have been as much in the probation officer's interests as Mr L's. I recommended a copy of my report be tabled at an Area Probation Board meeting to ensure lessons were learned for future investigations.

Mr M (99/2002) complained that his probation officer told him to "---- off back to Jamaica," that he used racial stereotypes when talking to him and that his language was dismissive.

The Assistant Chief Officer who interviewed the probation officer found "his use of cultural references was crude and made me wince, without being racist." The Area Board had apologised to Mr M. In light of evidence that the officer's conduct had been addressed, I did not make any recommendations. With regard to the specific comment the probation officer was alleged to have made, I was satisfied that the matter had been investigated thoroughly and that the conclusion that it was not possible to make a finding either way was appropriate.

Mr N (35/2001) complained on Mr P's behalf that his (Mr P's) supervising officer had acted improperly in supplying information to a Clinical Psychologist when compiling a report for his Sex Offender Treatment Programme. Mr N said the information was false and believed that references to 'another offender' involved in Mr P's offence referred to him (Mr N).

The supervising officer said she could not recall mentioning the names of any third parties in her record of a meeting with Mr P. She said that at no time had she completed a report for the SOTP. The psychologist could not remember where she had gathered the information which went towards compiling her report. I did not uphold the complaint.

Mr Q (104/2002) complained that his probation officer intervened inappropriately in an application he had made to a housing association and had also been insulting to his wife. He also complained that the transfer of his licence supervision back to that officer was inappropriate. Finally, Mr Q said the investigation of his complaints had not been impartial as it had been carried out by his probation officer's line manager.

The probation officer had discovered that Mr Q's proposed accommodation was occupied by a number of older people who left their rooms unlocked. He concluded that, in light of Mr Q's index offence, it would not be appropriate for him to live there. I considered this entirely reasonable. As for his supervision, Mr Q had been supervised for a while by a probation service officer. He was transferred back to the probation officer when information had come to light which suggested the risk posed by Mr Q had increased. I considered this too was appropriate. Mr Q's wife told my Investigator that the probation officer had been dismissive and unsupportive when she was distressed. The probation officer denied this was the case. There was no way of getting at the truth and I did not uphold this part of Mr Q's complaint.

Mr R (02/2001) complained about the content of a parole report. He said such reports should be confined to matters that had been proved in court on an evidential basis. He also complained that the report contained opinion rather than confining itself to factual information. Finally, he complained that some of the information was incorrect.

Guidance on the preparation of reports states that patterns of behaviour relevant to risk, but not resulting in convictions, should be included. Assessment and opinion are required, but must be based upon professional judgement and supported by observation and/or information from elsewhere. I was satisfied that the parole report met these requirements. I was also satisfied that the general thrust of the report, if not some of the finer detail, was properly reflective of the state of play.

Mr S (10/2001) complained on behalf of Mr T that a pre-sentence report compiled by his supervising officer was unsympathetic and a deliberate attempt to persuade the court to impose a custodial sentence. Mr S said the supervising officer's report was the result of homophobia.

The supervising officer was certain he had not alleged there was a sexual relationship between Mr S and Mr T. He said his enquiries about their relationship were occasioned by the fact Mr S allowed Mr T to drive his cars and live rent free. I reviewed the pre-sentence report and considered a number of statements that were amongst Mr T's case papers. I was satisfied the pre-sentence report was properly reflective of them. I was also satisfied that the report had been written in line with National Standards.

Mr V (27/2002 & 65/2002) complained that, between them, two probation areas failed to provide a pre-sentence report for him. He said that, as a result, he received a longer sentence than he otherwise would have done.

I only partially upheld Mr V's complaint, but my investigation revealed a sorry story. The handling of Mr V's complaint was unnecessarily drawn out and unhelpful. He was obliged to duplicate his complaint, because it related to two areas. One area diverted Mr V into the 'informal' procedure without his knowledge after he had submitted a written complaint. Assistant Chief Officers in both areas carried out secondary investigations, which added nothing except delay. I criticised the inflexible application of procedures. In one area, Mr V was denied access to an appeal panel. There appeared to be a lack of co-operation between the areas. I recommended that both areas review their application of the national complaints procedure, and that the National Probation Service should consider ways of integrating complaints handling so that complainants need only make their complaints once.

A Duty of Care

A decent and humane prison system must have regard for prisoners' individual needs.

Mr W (12019/02) complained that he had been refused access to education. He said another prisoner on the same course was allowed uninterrupted access to education facilities. Mr W said he felt racially discriminated against.

Mr W had been removed from key skills because the course normally took just 6 months to complete and, after 18 months, Mr W showed no signs of completing it. It had been concluded he did not seriously intend to do so. Given the considerable pressure on prison resources, I could not say the prison was unreasonable in removing Mr W.

Mr X (13059/02) complained about the lack of a suitable diet for diabetics. He said the prison had stopped supplying him with sweeteners in his diabetic pack. He also asked why he was not supplied with a sandwich every night, diabetic jam and squash. He said these items were provided at other prisons.

The Catering Manager told my Investigator he was guided by the Healthcare Centre with regard to diabetic diets. The Healthcare Manager advised my Investigator that Mr X was a Type 2 diabetic, and as such did not need the extra nutrition provided by an evening sandwich. There is no central guidance on diabetic diets and practice varied at other prisons contacted by my Investigator. Diabetes UK advised that Type 2 diabetics would not need the evening sandwich

unless they were on medication for diabetes (Mr X was not). The prison was having difficulty obtaining supplies of diabetic jam, but efforts were ongoing. I did not uphold Mr X's complaint.

Mr Y (13114/02) complained about delays in receiving medical treatment from a Consultant Dermatologist. He saw the dermatologist and had been told to make a list of all the food he ate. He had done so, and now wanted a further appointment. He said he did not believe he should have to wait months to see a specialist, and requested an appointment outside the prison if the dermatologist was unable to visit.

Our investigation revealed that, in three months, Mr Y had been seen nine times by healthcare staff. The doctor had noted that Mr Y did not comply with his treatment. Furthermore, Mr Y refused to see the dermatologist when he visited the prison, requesting instead to be seen at the hospital clinic. My Investigator was told that prisoners had the same access to specialists as they would outside the prison, and were subject to the same waiting lists. Mr Y would not be seen any sooner if he were taken out to see a specialist. I did not consider Mr Y had been treated unfairly.

Mr Z (11708/02) complained about his transfer to another prison following his suspected involvement in consuming alcohol. He was one of several prisoners believed to be intoxicated in a workshop. Mr Z said he had not been drinking but white spirits and spray paints he was using had caused his eyes to become inflamed. An adjudication had been adjourned for production of a witness, but had not been continued with. Instead, Mr Z had been transferred.

The charge against Mr Z had been dismissed and there was little, if any, evidence that he had been drinking. I could not know for certain the truth of the matter, but I concluded that to transfer a prisoner for suspicion of being drunk was excessive, especially as this appeared to have been a one-off incident. I discovered that part of the prison's zero tolerance policy with regard to alcohol was routinely to transfer transgressors, other than in exceptional circumstances. I objected to this blanket policy. I noted that the prison was category B and should be capable of dealing with such problems. I upheld Mr Z's complaint.

Mr A (13046/02) complained that a compact prohibiting him from approaching females was unreasonably restrictive. He said the compact was a farce and asked that it be dropped. He said he had done nothing to justify being on the compact.

Mr A's Inmate Intelligence Card and wing history sheets recorded numerous incidents when his behaviour in relation to women caused concern. A further four entries related to inappropriate behaviour towards women since the compact had been imposed. I also saw letters Mr A had written to an outside acquaintance. The recipient (not surprisingly) considered the contents to be both offensive and an intrusion into her private life. I discovered that the prison used compacts when the only alternative would be to segregate the prisoner. All available information was carefully considered before invoking a contract, the position was regularly reviewed, and the decision of the review was explained to the prisoner.

The contract clearly placed stringent restrictions on Mr A and meant he did not have access to the full range of church services or education. Evidence of Mr A's inappropriate behaviour towards and around women was, however, abundant. I considered that the compact and procedures for review were a reasonable way of containing risk and addressing inappropriate behaviour.

Mr B (11166/02) complained about an assault on him by other prisoners. He was beaten with snooker balls in socks and "some kind of instrument like the leg of a chair" and kicked and punched. As a result, he was in hospital for three days. He questioned why a vulnerable prisoner was placed in a dangerous and life-threatening situation. He asked for compensation for his injuries and for the suffering he had had to endure due to the incident.

Mr B was convicted of the murder of his 13 month old baby, whom he had shaken to death. Although Mr B had been on Rule 45 (Own Protection) for the 13 months prior to transfer, this had not been communicated to the receiving prison either by Lifer Unit or the sending prison. But nor did Mr B advise the receiving prison that he required protection. It may have been that Mr B was

keen to engage in the full range of regime activities so that he could progress through his sentence.

I did not consider it was important whether or not Mr B agreed to go on to main location or not, however. The Prison Service owed Mr B a duty of care to take “reasonable care in the circumstances” to protect him from injury. Prison Service guidance states that staff are liable in law for damages if they fail to take all reasonable precautions to prevent an attack on a prisoner by another prisoner or prisoners.

At the time of his transfer, Mr B was still a Rule 45 prisoner. Guidance states that it is for the Governor of the receiving establishment to decide whether the prisoner should continue to be removed from association. Responsibility for assessing Mr B’s vulnerability therefore lay with the receiving prison. No risk assessment was carried out, however, and there was nothing in Mr B’s history sheets to suggest that staff were exercising special vigilance to prevent an attack from occurring.

I concluded that the Prison Service did not discharge its duty of care towards Mr B.

I could not say for certain that Mr B was assaulted because of his offence, but manifestly there was a possibility. I therefore recommended that the Prison Service pay Mr B compensation for the injuries he sustained.

Mr C (12870/02) complained that he had been downgraded to the standard level of privileges purely on the basis of an adjudication at which he had been found guilty of assaulting an officer. The adjudication had subsequently been quashed and Mr C wanted earnings lost as a result of his downgrading restored to him.

I did not uphold Mr C’s complaint, but my investigation raised another issue which caused me concern. Mr C’s history sheets referred to his “poor attitude” and his “resorting to make it a question of race/colour.” A second entry said he tried “at times to play the race card” and required a firm hand when being dealt with. A third mentioned his “willingness to play the race card.” I deprecate these comments. Allegations of racist abuse or harassment should not be taken lightly. The Prison Service Race Relations Manual states that care should be taken not to be influenced by stereotyped views of the complainant or his or her alleged propensity to complain. I recommended that the local Race Relations Management Team considered whether action needed to be taken. Happily, they responded positively and with alacrity to my recommendation.

Mr D (11048/02) complained that, during a five hour visit on a Muslim family day, he and his son, who suffered profound mental and physical disabilities, were treated less favourably than white prisoners and their able bodied visitors were treated on other occasions. Insufficient seating was provided, which meant that Mr D’s son’s carer had to sit on the floor. His son had to lie on the floor to eat and drink as he had no independent spinal support and needed his carer to support his back. Staff had refused to allow additional chairs on health and safety grounds when asked by both Mr D and the Imam. Mr D subsequently learned that one prisoner was allowed an extra chair for his son for the normal Sunday two-hour visit and that at least two prisoners had been allowed extra chairs during a Christian family day. Neither the Governor nor Prison Service HQ had acknowledged the equal opportunities element of Mr D’s complaint.

I found that the complaint of racial discrimination had not been investigated. I considered that the failure to engage with that aspect of the complaint did a disservice to Prison Service race relations policies and could foster understandable cynicism about them. It was apparent that Mr D was treated differently from some other – white British – prisoners. However, I found no reason to suppose that the different decisions, taken on different days by different officers, in relation to additional seating had anything to do with who requested them. I did, however, take seriously Mr D’s view that ethnic minority prisoners, particularly those for whom English is not a first language, might have more difficulty in getting the system to work to their advantage.

The message which emerged from this case was that good equal opportunities practice means responding to individual needs. Good equal opportunities practice and good management often

amount to the same thing – treating individuals in a way which is seen by all to be impartial, fair and consistent. I was very disappointed that the prison had not taken steps to anticipate the special needs of Mr D's son. That seemed to me to be what humanity and respect called for. I upheld Mr D's complaint and recommended the Governor draw lessons from my investigation. Both common decency and the needs of resettlement require that prisoners should be treated even-handedly.

Spreading our Wings

Although we must not be deflected or distracted from our principal tasks, I am keen that the skills and resources of the office should be available to Ministers and to the Prison Service and National Probation Service where there is a need for a speedy, independent and authoritative investigation into particular events. During 2002–03, I conducted two inquiries on behalf of the Secretary of State outside my normal responsibilities as Ombudsman.

In the first instance, I was asked to inquire into the management by the Prison Service and National Probation Service of a convicted rapist, released on non-parole licence, who committed a further rape within three weeks of his release. My terms of reference required me to consider whether changes needed to be made to the arrangements for managing the post-release supervision and recall of dangerous offenders.

There were weaknesses in the way the case had been handled and information gaps between the Parole Board and the Sentence Enforcement Unit (SEU) of the Prison Service, and between SEU and probation. However, all the crucial decisions were reasonable in the circumstances. The

management of risk in the community is an inexact science and many decisions are necessarily marginal ones. That the management of this rapist proved insufficient to prevent further serious offending was a tragedy for his victim, but not grounds for condemnation of the Prison Service or NPS.

I did, however, make a number of proposals designed to improve public safety. Happily, all were accepted and many have already been implemented. In particular, in the case of registered dangerous offenders, recall now rests with the Assistant Chief Officer in the probation area concerned, not with SEU. (Such recalls will continue to be subject to Parole Board review.) The status of documentation relating to Multi-Agency Public Protection Panels has also been clarified to ensure that the Parole Board is in possession of all relevant information relevant to an assessment of risk (Probation Circular 13/2003).

Two incidental comments may also be of interest. During my inquiry, I was struck by how much, in respect of its resettlement work, the face of probation practice has changed in recent years. All probation areas are now managing people who are potentially highly dangerous. The calibre, commitment and professionalism of probation staff responsible for this work shone through. These characteristics were perhaps most present amongst hostel staff – ironically, some of the most junior and lowest-paid employees within the NPS.

The second thing I noted was how far the management of risk in the community has progressed. In particular, many of my witnesses referred to the close working relationship that probation now enjoys with the police. I doubt this is well known or appreciated by the public at large. The Prison Service too is increasingly involved with its criminal justice partners in public protection work. A culture of risk management is taking hold, involving all the agencies within the criminal justice system. Indeed, successful resettlement and protection of the public are actually two sides of the same coin.

A more detailed statement on this inquiry was presented to Parliament by the Prisons and Probation Minister on 16 December 2002.

The second inquiry concerned the very serious disturbance that occurred at Yarl's Wood Removal Centre in February 2002. I was asked to review progress to date on the "overarching inquiry" into the causes of the disturbance that was announced by the Secretary of State on 25 February 2002. My role was to inject an independent element into that inquiry by assessing the work conducted so far and identifying any additional lines of inquiry. It was not my job to review the events at Yarl's Wood themselves.

Although I offered some observations about the inquiry itself, my main focus was upon the difficulties inherent in the conducting of any inquiries when parallel criminal investigations are under way.

In the case of Yarl's Wood, different inquiries were being conducted by the police, fire service, contractor and local authority. In addition, a huge civil claim had been brought against the police by Group 4's insurers under the Riot Damages Act 1886. The legal environment was further complicated by claims for compensation from both detainees and Group 4 employees. Inevitably, therefore, the interested parties were very guarded about the information they were willing to divulge.

By far the most significant of these various inquiries was the police investigation. The imperative not to impede the criminal investigation or jeopardise the likely success of any prosecutions, however, placed stringent restrictions on the conduct of the overarching inquiry, especially in relation to whom could be interviewed. This called into question whether there was any point trying to conduct an inquiry until the criminal investigation had run its course.

This dilemma is by no means unique to Yarl's Wood. I was interested to learn, therefore, of protocols between the Prison Service and the police and Crown Prosecution Service regarding the Prison Service's inquiry into the serious disturbance that took place at Lincoln prison in 2002.

I commended these protocols and pointed out their relevance to future inquiries into serious events where there is the possibility of criminal charges. I said they should be publicised and escalated to a national level. There is certainly no point in each police force and every leader of an inquiry re-negotiating an understanding each time.

I also concluded that the terms of the Lincoln protocols should be the subject of wider debate. The price of police/CPS primacy is undoubtedly a severe restriction on any other interviews with those who witnessed, or may be thought to have participated in, events giving rise to a criminal investigation. Expectations of other inquiries would be more muted – but much more realistic – if the limited role they can play pending completion of criminal proceedings were better understood.

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 paragraphs 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 [Independent Monitoring Board], 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 Minister and the official advice to Ministers upon which such decisions are based;

• the merits of decisions taken by Ministers, save in cases which have been approved by Ministers for consideration;3

• 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 3 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.

Members of the PPO Office 2002-03

Ombudsman

Stephen Shaw

Senior Personal Secretary

Jennifer Buck

Assistant Ombudsmen

David Barnes

Tony Heal (to 31 December 2002)

Ali McMurray

Olivia Morrison-Lyons

Barbara Stow

Secretary to the Assistants

Olajumoke Amure

Head of Probation and Diversity

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Russ Crooks

Helen Douthwaite

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Karen Foster

Martin Greenway

Stewart Greer (to 14 March 2003)

Helena Hanson

Ann Hosking

Andy King

Lisa Lambert

Kirsty Masterton

Laura McCaughan

Rebecca Mulcahy (to 29 November 2002)

Anita Mulinder

Ifeanyi Ochei

Louise O'Sullivan

Lucy Phelan

Sarah Range

Dean Reeves

Anna Siraut

Anne Tanner

Sarah Taylor

Viv Thompson

Rachel Timson (to 8 November 2002)

Stephen Toyne

Information Manager

John Maggi

Policy and Research Officer

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Nazma Begum

Assessment and Implementation Team

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Elizabeth Buatsi

Jo Howell

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Jason Smith

Matthew Tatton (to 31 May 2002)

Tracy Wright

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