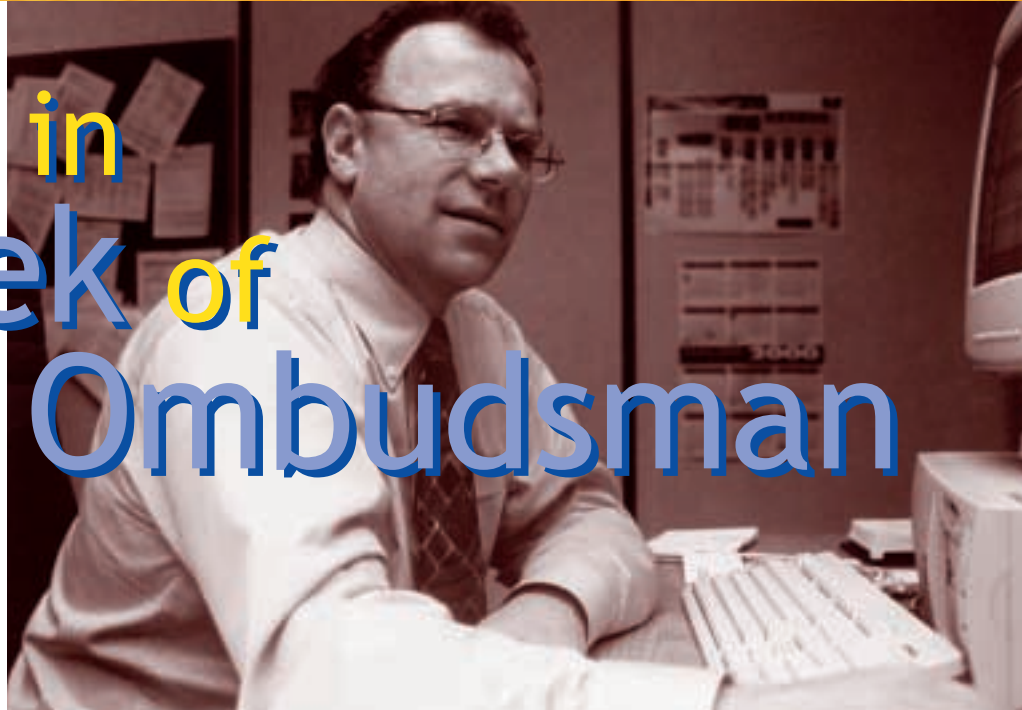


A Life in the Week of the Ombudsman



Careers advice has doubtless come on a bit since my time at school. In those days, you had a ten-minute session once a year with a teacher you hardly knew. I used to say I wanted to go into publishing, safe in the knowledge that the physics master (for it was he) knew even less about that profession than I did.

The first Ombudsman in Britain (the Parliamentary Commissioner for Administration) was appointed at about the same time in the late 1960s as my schoolboy antics. Then, as now, I doubt that young people aspired to a career as an Ombudsman. Ombuds-what? And what exactly is it we do? Here for the benefit of readers is a run-down of an average week.

The heart of the task remains the casework. The increase in volumes means I can no longer review every case personally. But I do see every probation case, and every prison case where we are making a formal recommendation to the Director General.

No-one could survive in the Ombudsman's office if they did not love the thrill of the investigative chase, and the opportunity of

sorting out a problem for individual complainants. But the relentless nature of casework takes some getting used to. Just when you thought you could not bear another property claim, another three come along at once. Along with dipping into cases I have not reviewed, dealing with feedback, and offering leads to cases under investigation, this represents well over half my working week.

Running an office which will soon have 45 staff also takes up quite a bit of my time. Although we encourage a relaxed environment in which people can have fun while doing their jobs, there is a strong performance culture too. Productivity targets are necessarily demanding, and we have to ensure consistency both in the quality of investigation and in outcomes.

This Ombudsman takes his representational role seriously too. I have regular meetings with fellow Ombudsmen and with colleagues in the Prison Service and National Probation Service.

I also like to visit a prison no less frequently than once a fortnight.

In the modern world, no organisation thrives if it stands still. Quite a bit of my time is devoted to the future direction of the office – whether it be in terms of the service we offer women and young offenders, or the need to deliver on a diversity agenda, or the assessment of our performance against the European Excellence Model. I am currently engaged in helping make a reality of the proposals to establish the Ombudsman's office in statute and extend our remit to the investigation of deaths in custody.

Add in the odd speech or two, articles for journals, meetings with visitors, plus responding to the flood of e-mails which seem to be the lot of everyone these days, and there you have the job. Not quite what I imagined when I was at school, but a lot more exciting than publishing, I suspect.

Stephen Shaw



Fast-track appeals the way forward for cellular confinement

How a convoluted case involving cellular confinement (CC) has created a more effective appeals procedure

Mr C, a lifer appealing against a CC punishment, complained that his right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR) had been breached. His complaint centred on three grounds. That lifer prisoners received punishments of CC, fines and loss of privileges rather than the added days imposed on determinate prisoners. That CC (unlike extra days) was by its nature unremittable. And that appeals procedures were too slow to allow lifers time to appeal against CC before it had been completed. These problems would of course apply to all prisoners serving cellular confinement, not just lifers.

Essentially, Mr C's grievance was that no appeal a lifer could make could reverse a punishment of CC before it was completed. He was also concerned that lifers' adjudications – with no remission possible on CC – would be taken into account by the Parole Board and other bodies; this was in contrast to determinate prisoners whose appeal records could show remittance of added days.

Mr C invoked the recent European Court of

Human Rights (ECtHR) decision that disciplinary proceedings had been criminal in the light of the punishment of added days imposed, and that as such Article 6(3)(c) (the right to defend oneself against the charge of a criminal offence) of the ECHR applied. Because of this ruling, all added days punishments since the Human Rights Act came into force have been remitted.

Asked to investigate, the Ombudsman took independent legal advice, satisfying himself that the decision was not authority for saying that disciplinary proceedings where punishments other than added days are imposed are in breach of Article 6.

Mr C's complaint did, however, highlight another important matter: that where CC is imposed, it is unlikely that any resulting appeal would be considered before the expiry of the CC period. The Ombudsman also found another ECtHR decision relevant, in a case which identified a breach of Articles 3 (the prohibition of inhuman and degrading treatment) and 13 (the right to an effective

remedy) of the ECHR. Commenting on the potentially adverse effect of even short periods of cellular confinement, and the absence of any remedy capable of challenging the punishment within the given period, the Court had noted the unacceptably lengthy time-scales for either judicial review or Prison Service complaints procedures. It had also identified a need for automatic reviews in certain circumstances.

The Ombudsman found himself unable to recommend that Mr C's punishment should be set aside. He considered, however, that the Prison Service might have urgently examined procedures for reviewing findings involving cellular confinement.

Upholding Mr C's complaint in relation to effective avenues of appeal, the Ombudsman recommended a fast-track appeals procedure against cellular confinement. As a result of the investigation, Area Managers are taking steps to remind governors about all appeal procedures including the need to fast-track when necessary.

Changes to the disciplinary system: New rules and new adjudication

New rules on prison discipline have recently been issued by the Prison Service. They increase by one week the period of cellular confinement (CC) which can be ordered, double the period over which loss of earnings can be ordered and introduce a new penalty (new for adults) of removal from the wing.

In addition, the Lord Chancellors' Department has agreed that a maximum of ten District Judges will assist the Prison Service by conducting adjudications at which added days can be imposed. The District Judges will not be acting as judges per se but as adjudicators with an inquisitorial brief as at present.

Personal responsibility: an important issue that starts (very) early and doesn't end when the key turns

Mr H contacted the Ombudsman's office complaining about the shortness of time allowed him for the collection of breakfast on weekdays. Not having been issued an alarm clock, the prisoner was reliant on prison staff to wake him each morning; this occurred at 8.00am when his cell was unlocked. Mr H protested that he was forced to dress and make his bed in a rush if he wanted breakfast, as the servery closed seven or eight minutes later. He considered this unreasonable, as he was unable to wash, shave and clean his teeth in the time available.

The initial response to Mr H's grievance had unfortunately failed to address the issue, as it referred only to the prison's weekend routine. Appealing, the prisoner reiterated his complaints, adding that he made no attempt at personal hygiene when waking for fear of missing breakfast. A further reply stated that the servery was open at 8.00am weekday mornings



for 10 to 15 minutes, and that personal hygiene should be attended to before unlock time.

Appealing again, the prisoner disputed the 10-15 minute opening period and called for an earlier waking time – a request dismissed in the prison governor's reply, which stressed the need for personal responsibility and suggested an earlier bedtime. The Ombudsman then became involved.

Mr H stated in his letter to our office that sleeping and hence waking earlier could mean

hours of morning hunger pains. He asked to be issued with an alarm clock (believing it unfair to ask prisoners to purchase their own) in order to wake himself before the 8.00am unlock.

After deliberation, the Ombudsman could find no evidence that Mr H had been treated unfairly, and was unable to uphold his complaint. The Ombudsman agreed with the prison governor's view that it is reasonable to expect prisoners to take some personal responsibility in relation to such matters.

How the Assessment & Implementation (A & I) Team assesses the eligibility of complaints

The A&I Team consists of six team members and their manager, Nicola Jeffrey. As their name implies one of their main functions is to assess the eligibility of the many complaints that the Ombudsman receives. Some 2,825 complaints were received in 2001-02 and over 3,000 are expected in 2002-03.

Jeanette and Raj are responsible for starting the assessment process by checking whether mail refers to a new, current or previous complaint. They then enter details onto our computer system, allocating a specific case number and preparing an individual case file. Jeanette is also responsible for the Probation Database.

With the exception of complaints against the National Probation Service, which go directly to the head of the Probation team, all

case files are then examined by Nicola before being allocated to one of four Assessment Officers (Claire, Elizabeth, Helena and Tracy) who then assesses the eligibility of the complaint. Some complaints are via application form, others by letter and a handful arrive electronically. The Ombudsman initially only requires brief details of the complaint (long letters are simply not necessary!) and contacts complainants if he requires more information.

The team takes telephone enquiries from prisoners and the public and offers advice to other Government offices, solicitors and prison staff. It also obtains relevant information from Prison Service Headquarters, Boards of Visitors, solicitors, the Prison Service's Lifer Unit and prisons themselves. Eligible complaints are those

that have exhausted the internal complaints procedures and are within the Ombudsman's terms of reference (some actions and decisions are outside the Ombudsman's remit, for instance issues concerning conviction and sentencing).

The Home Office Business Plan requires the team to determine eligibility in 70% of cases within 10 days; the team currently attains a figure of 80%. Cases are dealt with in date order, but occasionally a case will receive priority. When a decision is made on the eligibility of a grievance, an Assessment Officer will write to the complainant confirming this. If the complaint is ineligible they will explain why and offer advice about a possible next course of action. Once the process of assessment is completed, eligible complaints are then passed to an Investigator.

Out Tray

- ▶ **Mr B** made a complaint relating to the issue of prisoner privacy and dignity; specifically, that a female officer entered his cell without prior warning (it was lock-up time but Mr B was urinating). Mr B's point was that male prisoners should have the same privacy as females, whom he claimed received a warning. The officer had likened Mr B's behaviour to that of some vulnerable prisoners (VPs) who she felt purposely used the toilet during unlock in order to embarrass female staff. Further investigation revealed an absence of national policy on this matter. The Ombudsman directed the prison governor's attention to an earlier (unconnected) case elsewhere, where staff were reminded of the importance of prisoner privacy. Decency cuts both ways, however; prisoners should also exercise care. The Ombudsman partly upheld Mr B's complaint and reiterated the importance of prisoner privacy in both policy and practice.
- ▶ **Mr K**, a Category B prisoner, was anxious to do the Sex Offender Treatment Programme (SOTP). He needed a transfer to another prison to do it, and there was a long waiting list. He had confirmation he had been

allocated a transfer, but no date had been given and he was currently confined to his cell 23 hours a day, unable to participate in offending-behaviour work. He contacted the Ombudsman, who discovered that no record of Mr K's transfer application could be found and took immediate steps to arrange transfer at the earliest opportunity, spaces on SOTP being available.

- ▶ A prison-kitchen work party member, **Mr S**, considered he had been unfairly dismissed from his job following the discovery of 50 litres of hooch. One of four work party members fired for the offence, he disclaimed all knowledge of the liquor saying that another member had admitted to being responsible. Prison staff and a Headquarters caseworker did not accept that Mr S had not been involved; when a group of prisoners had been accused, it was not uncommon to elect one to take the blame. The Ombudsman too found it hard to understand how the work party could fail to have known about such a large quantity of hooch. The incident was viewed as serious as health, safety and security were at risk, so Mr S's complaint was not upheld.

- ▶ **Mr W** was upset that he had not been allowed to receive payment for a play he had written which was broadcast. An anomaly centred on whether prisoners were paid to produce work as opposed to winning prize-money. He cited instances of prisoners being paid for other activities. Investigating, the Ombudsman identified conflicting Standing Orders. The Ombudsman recommended urgent review and reconciliation of the rules and upheld Mr W's complaint.

- ▶ **Mr H**, serving 12 years for sexual offences, was concerned about an interview and paperwork prepared by his Probation Officer. He felt his initial interview had been unacceptably intrusive and insensitive and he was dissatisfied with aspects of his report relating to risk assessment. There was also confusion about the correct complaints procedure Mr H should have followed, causing delays and inefficiencies. An appeal to the Probation Board was rejected and Mr H referred the matter to the Ombudsman. The Ombudsman upheld an aspect of the complaint and recommended a local review of national complaints procedures implementation, urging also an agreed protocol between the National Probation Directorate and the Prison Service over complaints involving both organisations.

Which Investigator?

Please use our general phone-number (020) 7035 2876 if you need assistance on the progress of any of our cases.

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wanted

Contributions, comments and suggestions for future issues are always welcome. If you have any that you would like us to consider before the next issue please write by the middle of March, marking your envelope 'On The Case' to Nick Woodhead (editor) at:

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