

## Investigations

### 'R' Us

The idea of an Ombudsman to investigate complaints from citizens has now spread all round the world. But just like languages, when institutions spread from one country to another they develop and take on a new form. It is no surprise, therefore, that the range of responsibilities and ways of working differ markedly from one Ombudsman's office to the next.

At international gatherings of Ombudsmen, the protection of human rights and issues concerned with the fight against corruption by public officials now feature as prominently as the traditional complaints handling role. Some Ombudsmen can enforce their decisions; some hold public hearings; in Sweden the Ombudsman can even act as a prosecutor.

In this country, we have seen the growth of private sector Ombudsmen schemes alongside those in the public sector. The largest private scheme, the Financial Services Ombudsman, employs no fewer than 900 staff. At the same time, there have been moves to encourage greater integration of the public sector Ombudsmen - meaning in effect, the Parliamentary Ombudsman and the three Local Government Ombudsmen. (The PPO office has always been excluded from this process on the sensible grounds that we occupy a 'niche' position.)

A recent Cabinet Office consultation document has fleshed out proposals for joint working between the Parliamentary Ombudsman and the Local Government Ombudsmen. One of the specific ideas to catch my eye was the suggestion to extend to the Local Government Ombudsmen a power already enjoyed by the Parliamentary Ombudsman and Health Service Commissioner to conduct some investigations before internal remedies have been exhausted. The power to conduct such investigations is only intended to be used in exceptional circumstances. But I can quite see why it might be helpful (say if the complainant has learning difficulties or if he or she falls ill).

No Ombudsman should embark on 'fishing expeditions', seeking out problems where no complaint exists. (In any case, the PPO office has more than enough work to keep us busy, thank you very much.) The idea here is simply to provide a more friendly and appropriate service for potential complainants who might otherwise be excluded.

All Ombudsmen should try to learn from the breadth of experience and remit now represented in so many different administrations around the globe. A power for the PPO office to launch some investigations when internal remedies have not been exhausted would bring us into line with our major public sector colleagues in this country. It would also be a good thing in itself.

**Stephen Shaw**



The Prisons and Probation Ombudsman's mission is to contribute to just and humane prison and probation services, by undertaking independent investigations into complaints by prisoners and those under community supervision and into deaths in prison custody, at Probation approved premises and of residents of immigration detention centres.

# Garden security investigation didn't dig deep enough

Mr M initially complained to the prison that he had been sacked from the garden party as he was suspected of doing something wrong. However, it had not been explained what he was suspected of doing.

The prison replied that Mr M had been unsupervised in an unauthorised area of the prison grounds. They explained that, while Mr M had not been placed on report, this was the reason for his removal from the work party. Mr M denied he had been out of bounds, explaining that the officer in charge of the work party had given everyone permission to be in an area that had not been identified as out of bounds and that the officer in charge had been supervising him from a distance.

A governor replied to Mr M, explaining that their decision would stand as all members of the work party had previously been told that the area in question was out of bounds.

Mr M wrote and explained that the work party had not been informed that the area was

out of bounds and that 'out of bounds' signs had now been erected. The Ombudsman's Investigator contacted the Security Department and the officer in charge of the garden party. They also examined the security intelligence report on the incident and the compact that Mr M had signed prior to beginning work.

The Security Department rightly identified the area close to the perimeter wall as a security risk, although the compact Mr M signed did not explain this. The SIR identified Mr M in the area together with other prisoners whilst unsupervised and the Security Department ordered Mr M to be sacked from the job. They did not contact the officer in charge to confirm that Mr M had been unsupervised.

The Ombudsman agreed that the area concerned was out of bounds and that prisoners needed supervision. Mr M believed he had been supervised, but the prison did not establish whether this was the case. The Ombudsman felt that the prison's decision was an unreasonable one and upheld Mr M's complaint. The prison was asked to re-instate Mr M to the garden party when a vacancy arose.

The Ombudsman will, wherever possible, try to reach an amicable agreement between the complainant and the prison. This is easily the quickest route in solving a prisoner's complaint.

Mr F complained about the difficulties he was experiencing as a disabled prisoner. Mr F explained that he had difficulty transporting his meal to his cell, that there was a lack of privacy in the showers and the prison had not supplied him with suitable warm clothing. Mr F explained he would like a transfer to another prison which he believed cared for disabled prisoners better.

The Ombudsman's Investigator contacted the prison. It was evident that there was a difference of opinion over Mr F's

## When mediation replaces investigation

manoeuvrability following his stroke, although Mr F declined the opportunity for a further assessment. As the Ombudsman's staff are not medically trained, we restricted our consideration to whether the prison had reacted adequately in the light of the Disability Discrimination Act.

The Investigator spoke with the prison's Disability Liaison Officer. The prison agreed with the Investigator that it was not suitable for Mr F to hold a tray of hot food and wheel his chair back to his cell. The prison agreed to provide Mr F with a special tray for his chair.

The Investigator agreed a compromise over the shower. It was not possible, for security reasons, for the shower to have curtains attached. However, the prison agreed to erect a sign indicating that the shower was for

authorised users only and that Mr F could use the shower during the day when there were less people around.

The prison agreed to supply Mr F with a special wet weather cape for his chair, but the Ombudsman felt that they need not provide any additional clothing other than what they supplied to all prisoners.

The Investigator also looked into the possibility of a transfer to the requested prison. However, as the prison was not suitable for wheelchair access, it was felt that the refusal to move Mr F was a reasonable one – although it was agreed that, upon completion of his current sentence-plan objective, a possible move to a different prison would be considered.

# Publication of the Ombudsman's

## Annual Report 2005-2006

The Prisons and Probation Ombudsman's Annual Report 2005-2006 was presented to Parliament on 18 July.

The report can be viewed on our website [www.ppo.co.uk](http://www.ppo.co.uk) by clicking on 'publications' (on the left of the screen) and then 'annual reports' (on the right of the screen).

Or, printed copies of the report are available free of charge by sending a large self-addressed

envelope to Samantha Torrington, Prisons and Probation Ombudsman's Office, 3rd Floor, Ashley House, 2 Monck Street, London SW1P 2BQ.



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 end of August 2006 – marking your envelope 'On The Case' – to Geoff Hubbard (Editor) or Kevin Stroud (Assistant Editor) at:

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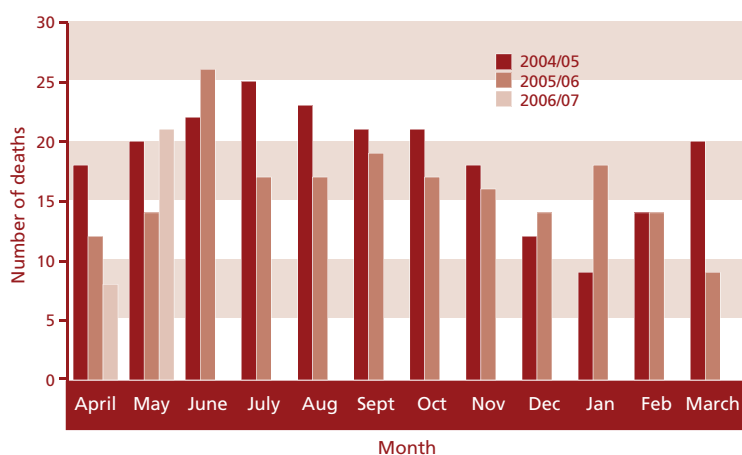
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wanted

## Fatal incidents

### Month on month summary



### Month on month by type of death

□ 2004/05    ■ 2005/06    ■ 2006/07

	SID*	SID*	SID*	Natural	Natural	Natural	Substance	Substance	Substance	Homicide	Homicide	Homicide	Unclass	Unclass	Unclass
April	7	5	5	8	5	4	1	1	0	2	1	0	0	0	0
May	8	4	8	9	9	8	3	1	3	0	0	1	0	0	1
June	6	19		14	7		1	0		0	0		1	0	
July	10	10		11	6		3	1		0	0		1	0	
Aug	16	8		7	7		0	2		0	0		0	0	
Sept	10	8		10	9		0	1		0	1		1	0	
Oct	11	2		8	12		0	2		1	0		1	1	
Nov	6	4		11	9		0	1		0	1		1	1	
Dec	3	6		8	8		0	0		0	0		1	0	
Jan	4	7		4	9		0	0		0	0		1	2	
Feb	8	6		6	8		0	0		0	0		0	0	
March	8	4		10	5		0	0		0	0		2	0	
	97	83	13	106	94	12	8	9	3	3	3	1	9	4	1

\* = Self Inflicted Death

## Correction

Contrary to what might have been understood from an article in issue 18 of *On the Case*, in privately-managed prisons the decisions about HDC are made by the Controller and not by the Director. However, the Director and other staff are involved in the process before the final decision is taken.

# Out Tray

- Mr C wrote that, following his recent transfer, he was not present when his property bags had been opened. He said that his bags had contained legal documents and confidentiality rules had not been observed. The prison said that staff would not open or look at any papers identified as legal documents. However, normal policy was for two officers to open the property as this ensured that the prisoner received his property at reception without delay. Prison Service Headquarters stated to our Investigator that a prisoner should normally be present when his bags were opened. The Ombudsman upheld Mr C's complaint, as there was no guarantee that it would always be possible to identify a bag containing legal paperwork. A blanket policy could not be justified as it also left staff open to accusation when property was mislaid or stolen. The Ombudsman recommended the prison changed their policy.
- Mr J stated that his appeal against a recent adjudication decision had been unsuccessful, but the Prison Service had been unable to tell him of the reasons for their decision as they had mislaid the paperwork. The Ombudsman's Investigator was also unable to track down the missing paperwork and the Ombudsman decided that, without access to these papers, the office would be unable to investigate the adjudication. However, the Ombudsman also thought that the loss of the papers had, through no fault of his own, placed Mr J at a

distinct disadvantage. Prison Service Headquarters were contacted and we asked that the adjudication be quashed and the punishment remitted. The adjudication has subsequently been deleted from Mr J's records.

- Mr B wrote that he had been placed on closed visits and his girlfriend had been banned from visiting him following an adjudication. The prison explained to Mr B that their decision was based on security intelligence relating to drug smuggling into the prison, together with the adjudication. During our office's investigation, Prison Service Headquarters decided to quash the adjudication, believing that Mr B's guilt had not been proved beyond a reasonable doubt. However, Mr B was kept on closed visits and the ban remained in place. Our investigation showed that Prison Service guidelines allow a prisoner to be placed on closed visits, and a visitor banned, if intelligence suggested that the prisoner was involved in the smuggling of drugs into prison. The Ombudsman's Investigator had sight of numerous intelligence reports to this effect. The Ombudsman considered that, while the adjudication had been quashed, the other evidence still remained and the prison's decision was reasonable. He did not uphold Mr B's complaint.
- Mr L complained that two letters from his solicitor had been delayed by the prison. He explained the letters were post-dated five days

prior to him receiving them and he asked for confirmation of when they arrived in the prison. The prison told the Ombudsman's Investigator that they only recorded when special delivery letters arrived into the prison. Staff would distribute post on the day it arrived – unless it was rule 39 post which was retained for checking by a drugs dog. The Ombudsman was unable to establish when the letters had arrived in the prison, but accepted that this would have been earlier than when Mr L received them and that the delay was caused by routine security checks, so it was not deliberate. While the Ombudsman did not uphold the complaint, he was concerned about how the prison had explained the situation to Mr L and he wrote asking the Governor to avoid this in the future.

- Mr A asked the Ombudsman to look into the refusal of his re-categorisation to category D. His parole reports had started and he thought his chances would increase if he was category D. Our investigation showed that the risk assessment contained incorrect information about Mr A, and the recategorisation was based on it. The prison, when replying to Mr A's complaint forms, had not checked the original information and had made an unreasonable assessment of Mr A. During our investigation, Mr A was granted parole and subsequently released from prison. The Ombudsman's Investigator spoke to the Governor and learnt that a new re-categorisation system was now in place. The Governor accepted that the complaint should be upheld and our recommendation to remind all staff of the correct procedures when considering re-categorisation paperwork and when replying to complaint forms.

## Which Investigator?

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

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\*FII = Fatal Incidents Investigation