PRISONERS' RIGHTS

Prisoners' Legal Rights Group Bulletin No 53

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PAS PRISONERS' ADVICE SERVICE

The Prisoners' Advice Service (PAS) is a charity that provides free legal advice and information to people in prison in England and Wales. We produce this bulletin, setting out case law, Ombudsman's decisions and legislative and policy changes relevant to people in prison. The PLRG is free to serving prisoners.

Update on legal aid for disciplinary hearings

PAS has received clarification from the Legal Services Commission that legal aid is available for determinate sentence prisoners for disciplinary hearings in front of prison governors.

This availability is dependent upon the Interests of Justice test:
1 / The matter may involve consideration of a substantial question of law;
2 / The client may be unable to understand the proceedings or state his own case;
3 / The proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual;
4 / There would be a negative impact on a subsequent parole review or categorisation decision.

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CASE REPORTS

CATEGORISATION

R (Jones) v Parole Board [2010] EWHC 2462 (Admin)

A post-tariff Imprisonment for Public Protection (IPP) prisoner challenged the decision to refuse recategorisation from C to D on the basis that undue weight was placed on the evidence of one witness. The Offender Manager was unable to attend the hearing and a Senior Probation Officer attended in his place. She gave evidence that the Claimant had serious alcohol problems which had not been addressed.

This evidence was in stark contrast to the written reports and contained a factual error over the courses the Claimant was required to complete. The factual error was noted by the Parole Board and the Claimant was offered an adjournment to respond to the unexpected oral evidence. The Claimant stated he wished the hearing to proceed and the board refused to re-categorise him. The decision was challenged on the basis that it was irrational for the Parole Board to rely on the Senior Probation Officer's evidence, which contained a serious factual error and conflicted with other evidence.

HELD: The challenge failed. The error was noted by the Board before making their decision and could not be regarded as the foundation for the Probation Officer's opinion to the extent that no further weight could be placed on it. The Parole Board considered all the information in the dossier. Even disregarding the Probation Officer's evidence the decision could not be challenged as irrational.

R (Craig) v Governor of Albany Prison [2010] EWHC 2303 (Admin)

Judicial Review proceedings were brought to challenge a decision not to re-categorise from B to C. The Claimant was serving an 11-year sentence for sex offences. He maintained his innocence and was therefore unable to complete the Sex Offender Treatment Programme (SOTP) course. These facts alone were given on the RC1 form as reasons for refusing recategorisation.

The Claimant challenged the decision not to recategorise on the basis that it was based entirely on his denial of guilt and inability to complete the SOTP course, and that reasons for the decision were not recorded adequately. It was accepted that a decision based solely on denial of guilt and failure to complete Offending Behaviour Courses (OBCs) would be unlawful. However, there were references in the Offender Assessment System (OASys) report that the Claimant had made a statement to a prison officer threatening his victim and had attempted to make enquiries with the UK Border Agency about his victims' immigration status. The governor argued that these matters had formed the basis of the decision even though they were not referred to on the RC1 form.

HELD: Application dismissed. The failure to record the intelligence relied on beyond denial of guilt was concerning, and might suggest after-the-event justification rather than reflecting the actual decision made. However, in fact the governor did take other factors into account. The failure to record these additional reasons leaves the decision vulnerable to Judicial Review, but even if the decision was struck down on this basis the granting of relief would be academic since a properly recorded de-

Obiter: when prisoners maintaining innocence are unable to complete OBCs, it is vital that alternative work is done, which can address specific identified risks so far as is practicable.

RECALL

R (Howden) v SSJ [2010] EWHC 2521 (Admin)

The Claimant sought Judicial Review of his recall to prison on the basis of unverified police intelligence. The Claimant was convicted of violent offences and had been released on licence with the standard condition to be well behaved, not commit any offence and not do anything which could undermine the purposes of his supervision. He was recalled following police intelligence which suggested that he was involved in the supply of cocaine and had assaulted and threatened to shoot someone. The police informed probation that the information came from two sources, but that it was not sufficient to found a prosecution. At a meeting with probation the Claimant admitted that he had been associating with drug dealers, but did not admit any offending. His probation record was otherwise good. The Probation Officer requested recall for breach of the condition of good behaviour on the basis of the police intelligence. The Defendant made a decision to recall on the same day.

HELD: Claim dismissed. The test for ordering recall is ‘evidence on which Probation could reasonably conclude that there had been a breach’. There is a spectrum of cases from where the evidence is conclusive to those where findings could be challenged. In the opinion of the police, the sources were credible and there was no obligation on probation to make further enquiries of the police. Therefore the test was met.

DEATH IN CUSTODY

R (Morgan) v (1) Ministry of Justice (2) The Crown [2010] Morgan v Ministry of Justice [2010]

A prisoner committed suicide while in the Custody of HMYOI Stoke Heath. The court was asked to determine preliminary issues in a claim brought by the first and second Claimants (the fiancée and child of the prisoner) in negligence and under the Human Rights Act 1988 against the Defendants.

The Claimants considered that the assessments of the deceased prisoner's risk of suicide carried out by medical staff at the hospital had been inadequate. A claim was brought against the ministry, as the government department responsible for prisons, for negligence and against the Crown as a public authority liable for the acts of its agents (the Primary Care Trust). The issues for determination were (i) whether the ministry owed L a non-delegable duty of care in relation to the alleged failings of the medical staff; (ii) whether the Crown was a public authority and so could be held responsible for the alleged failings; (iii) whether either Claimant had capacity to bring proceedings under the 1998 Act and in particular whether they satisfied the "victim" test.

HELD: The Court ruled:

(1) The Ministry of Justice had not owed a direct, non-delegable duty of care to the deceased at common law to ensure that reasonable care was taken by any servant, agent or other person or entity in the discharge of their functions, and in connection with the prison and probation systems, and the matters complained of.

(2) The Crown was capable of being a public authority within the meaning of

Section 6 of the 1998 Act, but it could not be held liable under Sections 6 to 8 for the acts or omissions of any servant, agent or other person or entity empowered to exercise public function.

(3) If the first Claimant was the fiancée of the deceased she was capable of bringing proceedings in her own right and of satisfying the "victim" test in Section 7 of the 1998 Act, for the purposes of such a claim. If she was merely in a relationship with the deceased, whether she would satisfy the test would depend, in particular, on the nature and length of the relationship. If the second Claimant was the deceased's biological daughter, then acting by her mother and litigation friend, she was capable of bringing proceedings against, and recovering damages from, the first defendant in respect of the matters alleged and, in particular, satisfying the "victim" test for the purposes of such a claim. If she was not biologically the deceased's daughter, but she had been brought up on the understanding that she was, then on the facts of this case it was unlikely that she would satisfy the "victim" test for the purposes of such a claim; however, whether she was capable of satisfying the test could not be finally determined on the evidence.

RELEASE ON TEMPORARY LICENCE

R (Chater) v Secretary of State for Justice [2010] EWHC 2257 (Admin) August

The Claimant issued a judicial review of a decision by the Parole Board refusing to direct his release on licence. He had been convicted of sexual offences against children and was sentenced to imprisonment with an extended licence period. He was released on extended licence after serving part of his sentence. He was recalled following allegations that he had breached his licence conditions by failing to leave a public library when a child sat next to him.

At an oral hearing, the Parole Board concluded that the Claimant's recall had been inappropriate as it had been based on an inaccurate police report. However the Parole Board refused to direct his release as it found that he remained a high risk to the public, particularly to children, and could not be effectively managed in the community. The Parole Board's decision remained unchanged in two subsequent reviews.

In the third review the Parole Board considered additional documents including evidence from the offender manager, the offender supervisor, the prison psychologist and an independent psychologist. The Claimant did not apply for judicial review of the Parole Board's earlier decisions, but sought to challenge the Parole Board's conclusion upon its third review. The Claimant argued he had been wrongfully recalled and there was no evidence that he posed any greater risk than when he was released on licence, therefore it was wrong to continue to detain him.

HELD: The application was refused. Where a prisoner on extended licence has been recalled to prison inappropriately, a Parole Board is entitled to refuse to direct his release on the basis that he is a high-risk sexual offender who cannot be safely managed in the community. In reaching a decision the Parole Board ought to adopt a two-stage process; first asking whether a recall was appropriate and second whether the prisoner ought to be released.

The latter decision was made by reference not merely to the circumstances of

recall but also to any assessment of the risk to the public posed by the prisoner's re-release on the basis of all the material available to the board at the time of its decision. The default position favoured liberty over detention, but it was highly unlikely that cases would turn solely upon presumptions of that sort.

PAROLE AND REVIEW

R (Rawnsley) v The Parole Board for England and Wales [2010] EWHC 2689 (Admin) October

The Claimant was an IPP prisoner held in Category C. A Parole Board declined either to direct release or to recommend transfer to an open prison. The Claimant challenged the decision, amongst other things, as irrational on the facts presented.

HELD: The court confirmed that the Parole Board is under a duty to give reasons for its decisions. It does not have to "set out its thought processes in detail" but it should convey clearly to the prisoner who is not going to be released on licence the reason why release is not directed. In this case the decision making was irrational. The Board had found that immediate release to the parental home was not possible as the home conditions had not been investigated, and because the Board had reservations that for the Claimant to reside there might "prove less than helpful."

There was, however, no proper consideration of the question of whether the Claimant and his risk could be managed in approved premises. Because the Board did not properly consider this option as it ought to have done, they proceeded straight from the unsuitability of the parental home to the conclusion that the Claimant should remain in prison.

This was deemed to be irrational. The Parole Board's decision was therefore quashed, and it was ordered that a new, differently-constituted Board ought to be convened.

R (NW & YW) v SSHD [2010] EWHC 2485 (Admin)

A female prisoner and her seven-month-old daughter sought Judicial Review of the decision to refuse to shorten the 15-month period before the mother's next Parole Board hearing. The mother is a life sentenced prisoner who was recalled when pregnant. After her child was born, she remained with her mother in the Mother and Baby Unit at HMP Holloway. They could only stay there until the child was nine months old, at which point the options were separation or transfer to a prison which could accommodate babies up to 18 months.

The decision to refuse an earlier parole hearing was challenged because (1) there was no justification for the delay (breach of Article 5 (4) of the ECHR); and (2) an earlier review would give a greater chance of mother and daughter remaining together (breach of Article 5 (4) read with Article 8).

HELD: Application refused. (1) Article 5 (4) requires parole reviews take place at reasonable intervals. What is reasonable depends on the circumstances; however, there must be a need for monitoring and progress and relevant factors include time to complete Offending Behaviour Courses. Appropriate weight would be given to the view of the Secretary of State in this area. (2) The interests of the child was a factor which should be, and had been, considered. It was not a decisive issue and the proposed timetable was not unreasonable.

SENTENCING

R v Christopher O'Connor Court of Appeal Criminal Division [2010] EWCA Crim 2842 November

The Applicant had pleaded guilty to escaping from lawful custody in 2009 and was sentenced to five months' imprisonment to commence on the expiry of a sentence already being served. He had previously been sentenced in 2006 to 29 months' and 12 months' imprisonment concurrent. After the deadline for leave to appeal against conviction had expired, it came to light that there had been an error by the prison service in calculating the release date on the sentence imposed in 2006

HELD: A prisoner who is held in custody through an error in calculation of the release date is not in lawful custody: the Applicant should have been released on licence at the three-quarter point of his sentence in 2008. He was accordingly not in lawful custody when he absconded from HMP Sudbury in 2009. As the custody was not lawful and the plea of guilty was entered into on a false basis in ignorance of the true release date, the conviction was quashed and set aside as unsafe.

ADJUDICATIONS

R (Shepherd) v Governor of Whatton Prison [2010] EWHC 2474 (Admin)

The Claimant brought judicial review proceedings against the finding of guilt for disobeying a rule or regulation under Rule 51 (23) and for failure to consider a defence raised and failure to give adequate reasons. The Claimant was a life-sentenced prisoner subject to child protection measures and signed a form stating that prior to written notification of approval he was not allowed contact with any child. He later applied to have his daughter's mobile phone number added to his PINphone account, which was approved, and he had several conversations with her.

The Claimant was adjudicated and found guilty as a result of this telephone contact. He challenged the decision on the basis that a reasonable belief that telephone contact was allowed would constitute a defence to the charge, and there was no evidence in the adjudication record that this defence had been considered by the governor.

HELD: The Claimant's challenge was upheld and the finding of guilt was quashed. A reasonable and honest belief on the Claimant's part that his conduct was permitted would be a defence. The prison governor made no written record of this defence, and it is not possible to infer from other questions asked that he considered and rejected the defence. The reasons for a decision must be intelligible and accurate, and when a defence is raised the recorded reasons must clearly address and deal with the issue.

Obiter: when the governor sent the adjudication transcript for appeal he included written comments which were not disclosed to the prisoner. Fairness demands that if the prison governor is going to provide material on appeal that the prisoner has never previously seen, then it should be shown to him and he should be allowed to comment on it.

R. (on the application of King) v Secretary of State for Justice [2010] EWHC 2522 (Admin)

The Claimant held in a YOI, sought judicial review of a finding of guilt at a governor's adjudication for which he had been punished with 3 days' cellular confinement. It was clear that adjudications

where additional days were not a possible punishment were not 'criminal' proceedings for the purposes of Article 6 of the ECHR. However, the Claimant argued that Article 6 applied in its civil aspect because the punishment interfered with his 'civil right' to association with other prisoners. This civil right arises from common law or under the Young Offender Institution Rules.

Alternatively, a right to association may be derived from Article 8 as a private, and hence civil, right under Section 7 of the Human Rights Act (HRA). The adjudication had therefore breached the requirements of Article 6(1) because the governor was not an independent tribunal and the availability of Judicial Review was not an adequate safeguard.

HELD: Application dismissed. A prisoner does have a right to association subject to the lawful exercise of disciplinary powers, and this is a 'civil right' for the purposes of Article 6. In any event the proceedings as a whole, including the availability of judicial review, were adequate to meet the requirements of Article 6(1). The governor will not have had any personal knowledge of the facts of the case and should try the matter on the evidence before him. The High Court had jurisdiction to review the decision if it were unlawful.

There is a need for the timely and convenient disposal of disciplinary issues in prisons. It would confound reason, common sense and proportionality to require that whenever an inmate disputed a charge of disobedience, and faced a punishment of cellular confinement, a special adjudicator should be appointed to decide the issue.

ARTICLE - GOVERNMENT PLANS FOR SENTENCING CHANGES

As readers of this bulletin will be aware, prisons are endlessly awash with rumours of imminent changes in the law that will result in earlier release and other improvements. Hope springs eternal but unfortunately most of the stories have no foundation. Since the change of government in May 2010, there has been a fresh spate of rumours – mainly along the lines that there are imminent plans to abolish the Indeterminate Sentence for Public Protection (IPP). On 7 December Justice Minister Kenneth Clarke published a Green Paper entitled *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders,* which sets out the coalition government's criminal justice plans. Most of these do not have any bearing on anyone already serving a prison sentence; however a few of the proposals, if implemented, will have an effect on those already sentenced, while others are of general interest to prisoners and those involved with their legal rights. We therefore summarise below the main points of interest. The full document is available on line at http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf

Sentencing and IPPs

The introduction to the Green Paper makes it clear that the previously much touted idea of abolishing the use of all short sentences is now off the political agenda, as is any suggestion of new early release schemes. However, there are plans to stop the use of remand in custody for prisoners who are ultimately unlikely to receive custodial sentences and to improve the lot of recalled prisoners who, it is admitted, currently often

remain in custody until the expiry of their sentence for no good reason, with a detrimental effect on their rehabilitation.

In the longer term, the government says it will overhaul and simplify the whole sentencing framework and repeal unimplemented legislation (presumably such as 'weekend custody' and the extension of the Early Removal Scheme (ERS) to British citizens who intend to reside abroad). It also plans to amend or repeal Schedule 21 of the Criminal Justice Act 2003, which sets out the framework for imposing tariffs on mandatory life sentences for murder, to provide judges with greater discretion, although the Green Paper makes clear that there is 'no intention of abolishing the mandatory life sentence or of prompting any general reduction in minimum terms imposed for murder'.

In the shorter term there are a few significant suggestions in relation to the implementation of IPPs. These are as follows:

- The restriction of IPP sentences to those who would, prior to the implementation of the CJA 2003, have received a determinate sentence of ten years or more. This means that the shortest IPP will be five years. There is no mention of this being retrospectively applied.

- A change to the release test applied by the Parole Board, so that risk assessment is focussed on those 'who clearly pose a very serious risk of future harm'. The Parole Board may resist this suggestion during the consultation process.

- A change in the law to allow foreign national IPP prisoners to be removed at tariff expiry.

Foreign national prisoners

Other measures relating to foreign national prisoners include the suggested use of conditional cautions instead of imprisonment, with the proviso the person leave the country. The Paper also restates the government's support for the EU framework decision on prisoner transfer, which is due to come into force in December 2011, and which will ensure that the majority of EU nationals serve their sentences in their home country.

'Working prisons'

Under the heading 'Punishment and Payback', Clarke promises to introduce 'working prisons' where prisoners are expected to work a full working week (up to 40 hours), and implement the Prisoners' Earnings Act, which was passed in 1996 but not brought into force, due to the complexity of its administration. The Act allows for the remuneration of any work carried out by a prisoner to be subjected to deductions for income tax, national insurance, court order payments and child maintenance, and to levies payable to voluntary organisations concerned with 'crime support and prevention', to the Consolidated Fund to help pay for the cost of prisons, to any of the prisoner's dependants or to an investment account on behalf of the prisoner for their benefit on release. The government plans to commence such deductions in September 2011 and considers that this will generate £1 million per year for victim support organisations.

Although the Green Paper says that it will apply the principle that 'the work proposed does not represent unfair competition and that it does not reduce the number of jobs available for law-abiding citizens', the government is committed to making it easier for

'independent providers' to get 'involved in prison industry [and] to work in partnership with prisons to provide work and training in ways which do not add overall cost'. Crucially there is no commitment to pay prisoners the minimum wage, so it is hard to see how these claims not to compete unfairly with workers outside match up with the commitment to exploit prison labour at minimal cost.

Other measures in brief

- 'Payment by results' for rehabilitation schemes run by charities/NGOs;

- More flexible approach to Probation Officers' discretion regarding how often someone should report or undertake courses;

- Consideration of whether asset seizure should become a punishment in its own right, as opposed to only following imposition of a criminal sentence. This includes the possibility of seizing cars and property and of imposing restrictions on overseas travel and withholding of passports;

- Possible increase in sentencing discount to 50% for those who plead guilty at first opportunity.

- Abolition of the Youth Justice Board.

Next steps

Consultation on the Green Paper will now take place until March 2011, and firmer plans for legislation will be published in May 2011.

OMBUDSMAN'S CASES

Medical Care

Mr A had served several years of a life sentence when he was transferred to a category C prison to prepare for a Parole Board hearing. A year later he was admitted to hospital, where the results of medical investigations indicated that he was terminally ill and had a short life expectancy. An application for compassionate release on medical grounds was started by the lifer manager, who had been told by the hospital doctor that Mr A had only weeks to live. However, another member of staff felt that the seriousness of Mr A's condition was not clear and the application was not pursued. Mr A was transferred to a prison resourced to care for prisoners with terminal illnesses. There the application was completed. It was received by the Public Protection Casework Section of NOMS the day before Mr A died.

Mr A's case showed the difficulties and inconsistencies often present in assessing the life expectancy of someone terminally ill. Cancer develops unpredictably, and medical professionals are often unable or unwilling to predict exactly how fast it will spread. The PSO that sets out tcriteria for release on compassionate grounds requires that death is likely to occur very shortly and offers a guide period of three months. However, such guidance could encourage prison staff to think only in terms of definite time periods rather than looking at each case on its merits. In the investigation report on Mr A, the Ombudsman recommended that the guidance in the PSO on compassionate release on medical grounds should be revised. Either the guide period of three months should be removed, or the guidance make clear that a definitive life expectancy is not required before an application for compassionate release may be made.

Duty of Investigation

Mr B complained that an assault on him had neither been reported to the police nor addressed through the prison's disciplinary procedures. Mr B said he had sustained a broken jaw, and identified his assailant. However, the prison had taken no action. The investigation found that the prison had completed the necessary forms to record the incident. However, the completion of documentation is not the same thing as an investigation, and there was no evidence of any investigation, either simple or formal, as required by PSOs such as PSO 2000.

Although Mr B had identified his assailant, prison staff did nothing to inquire fully into the events and did not charge the alleged perpetrator. It was apparent that prison staff believed only a minor assault had taken place and the seriousness of the assault did not become clear until Mr B was taken to hospital the following day. Nevertheless, when the extent of Mr B's injury was known, the prison failed to take any action. The incident was not reported to police until six days later, after Mr B himself had insisted that the police should be involved. The prison described what had happened as minor, and failed to describe his injury and consequently the police decided to take no action. The investigation found substantial failings on the part of the prison concerned. The prison was asked to apologise to Mr B for its failures. However, as the relevant PSO was about to be updated, there were no other useful recommendations to be made.

Visits

Mr C complained that he had been placed on closed visits because of suspected drug use. He said this was despite the fact that he had not been found in possession of drugs and had produced a negative sample when tested. Mr C also said he had been kept on closed visits for more than eight months until he was transferred to another establishment. The investigation considered NOMS guidance on preventing the smuggling of drugs through visits. The guidance makes it clear that closed visits should be applied proportionately, and only where prisoners are proved to have been involved in drugs smuggling through visits or are viewed as posing a reasonable risk of such involvement.

In Mr C's case the investigation established that the decision was based on an officer's observation that he might have been using cannabis in his cell, and a report that he had asked to be segregated having been threatened by other prisoners over a drug debt. However, the prison had subsequently confirmed that there had been no evidence to indicate that Mr C had been at risk from other prisoners. The information giving rise to the decision fell well short of what was necessary to form a reasonable suspicion that Mr C was abusing the visits system. The investigation found that the decision to impose closed visits was disproportionate to any risk he might have posed. The prison agreed to issue a formal apology to Mr C and to review its local policy.

Conditions

Mr D, an elderly prisoner, complained that he had been required to pay television rental fees when other pensioner prisoners had their fees refunded. Mr D said he understood that Prison Service guidelines indicated that no pensioner should have to pay for television rental. Mr D was partially mistaken. The guidelines state that all prisoners are required to pay a weekly television rental fee of £1, regardless of age.

However, the investigation found that the prison in question had in fact refunded other prisoners' rental fees in error. As a result of the investigation, the prison issued an apology to Mr D for the misunderstanding. It also reviewed its policy and issued a notice to prisoners, making it clear that in future anyone, whatever their age, who had an in-cell television would be required to pay the weekly rental fee.

Mr E complained that security information about him relating to extremist activities had been inappropriately disclosed around the prison. He said this had resulted in verbal and written threats that led him to fear for his safety. The prison readily accepted that security information about Mr E and a number of other prisoners had been inappropriately printed by a staff member with the intention of assisting other staff responsible for allocating accommodation. The prison had taken action to prevent similar breaches occurring by recording such information in a format that could not be printed. The prison had also offered Mr E protection immediately after the inappropriate disclosure came to light. It was clear that the prison was at fault in allowing the sensitive information to be printed, and the error was compounded when the information was left openly on view to other prisoners. There could have been serious implications for the safety of Mr E and the other prisoners involved.

Mr F complained that the in-cell electricity at the prison was switched off during working hours. Mr F said this was spiteful and unfair, denying prisoners their earned privileges such as in-cell television and deterring them from undertaking in-cell education. He was also concerned that the electricity was not turned back on before the afternoon lock-up. The policy of switching off in-cell electricity had been implemented about a year before Mr F complained and a notice had been issued to prisoners. This said that sockets for using televisions, kettles and music systems would be turned off to coincide with times that prisoners attended work or education classes. The electricity was not turned off on Friday afternoons or at weekends when work and education were not available. The intention was to deter prisoners from remaining in their cells and to encourage them to participate in the prison regime.

Self-evidently, prisoners are dependent on the supply of electricity to benefit from privileges that they have earned, such as in-cell television. Nevertheless, the decision to encourage prisoners to participate in regime activities while saving electricity was not deemed unreasonable. The electricity was controlled by timers and turned off only at times when the majority of prisoners were out of their cells. In these circumstances, the Ombudsman did not uphold Mr F's complaint, although in different circumstances and where a majority of prisoners might have been affected the decision would presumably have been different.

Complaints

Mr G complained to the Ombudsman about the lack of clarification in PSO 2510 relating to the request and complaints procedure. Mr G had complained that the prison had rejected his stage 2 and 3 complaint appeals as being outside the seven day time limit. Mr G said the seven day period should start when he received the response to the previous stage and not when the response was written as argued by the prison. The Ombudsman referred to PSO 2510 and in particular paragraph 8.4.1 which states that an appeal from a stage 1 complaint should normally be made 'within seven calendar days of the

prisoner's having received the initial response' and paragraph 8.5.1 where a prisoner who remains dissatisfied after stage 2 may make a final appeal to the governing governor normally within the same time frame namely seven calendar days of receiving the stage 2 response.

The Ombudsman therefore upheld the complaint, the PSO was quite clear on the timescale and when this ran and the complaints clerk had been incorrect in calculating the seven day period as starting from when it was written rather than when it was received.

MAPPA (Multi-Agency Public Protection Arrangements)

Mr H, a former police officer, complained about the MAPPA process and the manner it which it was applied by probation. He argued that from the updates about his MAPPA meetings he received from his Offender Manager (OM), he was not satisfied he was receiving a fair hearing. Mr H had asked for copies of the minutes of the meetings, but these were refused. He had also requested a change of probation area, which had been refused on the basis that his case could only be transferred with the agreement of the probation area to which he was going to be locate at an approved hostel and no decision on this had yet been made.

Mr H argued that MAPPA performance was unmonitored and not assessed by any independent authority ,and that in the circumstances of his particular case it was impossible for the police, who Mr H said had a controlling influence over meetings, to behave in an impartial and independent manner, given that the chairperson worked in the same office in which Mr H had previously worked. He also said the timing of his first MAPPA meeting had not taken pace until after his parole eligibility date (PED). Finally, Mr H complained that an exclusion area had been added to his proposed licence conditions after he had made a complaint about Probation.

The MAPPA coordinator replied that the minutes were never disclosed to the subject and the OM provided updates. MAPPA were closed under the Freedom of Information Act 2000 under one or more of the following headings; investigations and proceedings by Public authorities (Section 30 (1) (B)), Health and Safety (Section 38), personal information (Section 40), Information provided in confidence (Section 41).

Probation circular PC 52/2004 deals with formal transfers between probation areas:

"Where offenders subject to MAPPA are being managed at either level 2 or 3, any request for permission to change address must be considered through MAPPA procedures, with a multi-agency risk assessment made. Transfer will only be acceptable if the assessment concludes that the risk management plan already in place is not jeopardised by the proposed move."

and:

"Probation Areas should be participating in local multi agency arrangements for managing Public Protection Offenders (PPOs). Any request for permission to change address by an identified PPO managed by probation must be considered through locally established offender management procedures and effective arrangements for their management and supervision must be agreed with their new area, based on assessed risk against priorities in their new area."

PC 54/2004 outlines the MAPPA guid-

ance and says that to identify MAPPA:

"Effective multi-agency public protection starts with the efficient identification of relevant offenders. Prompt and accurate identification will allow agencies to gather and share relevant information and enable them to choose the appropriate risk management strategies. Without this initial accuracy there are real dangers that important information is not gathered and shared or shared inappropriately, and the energy of agencies diverted from those offenders posing the highest risk of serious harm."

Regarding disclosure of minutes from MAPPA PC 54/2004:

"Instead of the presumption of secrecy and the retention of all level 2/3 (MAPPA) notes as confidential, these notes should be seen as open documents for the offender unless there are specific elements that should be protected (for example, to protect a vulnerable victim, the sensitive source of information or covert policing methods that are designed to detect or reduce serious offending) …It is clearly important that the se notes indicate explicitly what information is NOT discloseable …and the reasons why such disclosure is restricted. In a small number of cases it is anticipated that disclosure of any nature would be properly resisted on the basis that it would heighten the risk of serious harm to others or self."

PC 25/2007 (Section 5.2.10) says that for any case assessed as a high or very high risk of serious harm, then transfer must be agreed at senior management level between the two areas before the process of transfer can take place and within the MAPPA framework.
In this case Mr H's MAPPA category was level 1, but because of potential media interest in Mr H the meetings were level 3.

The PPO investigator reviewed the minutes of the meetings and found no evidence of unfair influence being used by the police, or that they were the obvious lead in any decision making. The initial refusal to disclose the minutes of the meetings was not in accordance with PC 54/2004; however, this was rectified by probation arranging for a copy of the executive summary to be issued to Mr H, and as the Chief Officer of Probation had also endorsed the updates to Mr H sent out in respect of MAPPA. In respect of transfer, it was reasonable for the current probation department to retain Mr H's case until a final decision was made about release arrangement and the location-approved premises. There were reasons for the timing of the addition of the exclusion zone; there was nothing to suggest it was made as a result of his complaint. However, the PPO investigator did uphold the complaint that the MAPPA meting should have taken place before Mr H's PED, given that PC 54/2004 makes it clear that the efficient use of MAPPA begins with the identification of suitable cases.

UPDATES ON PRISON SERVICE INSTRUCTIONS

PSI 44/2010 Catering - Meals for Prisoners replaces PSO 5000; it sets out the minimum practices and procedures that must take place in order to provide safe, acceptable meals for prisoners. Prison governors must ensure that all meals and the food service provided for prisoners are undertaken in accordance with this PSI, current legislation regarding food handling, storage, cooking/ service and the Catering Specification, which is attached to the PSI at Annex A. Section one provides a brief introduction on the responsibility involved in providing meals for prisoners; section two outlines food safety, management and

security and the standards that must be met by prisons. Section three outlines menu planning and meal provision, together with the considerations in drawing up menus. It includes the requirement that drinking water is available to all prisoners at all times. Finally, section four relates to food times and the management of the point of food service. It includes the stipulation that prisoners received into the establishment after the serving of the last meal will receive a hot meal.

PSI 45/2010 Integrated Drug Treatment System sets out the mandatory requirements for prisons to support and facilitate the delivery of the Integrated Drug Treatment System (IDTS). IDTS is a joint service of the Home Office, Department of Health, Ministry of Justice and the National Offender Management Service, and the PSI does not apply to prisons in Wales. The stated aim of IDTS is to increase the volume and quality of substance misuse treatment available to prisoners, with particular emphasis on interventions early in the custodial sentence (in particular the first 28 days), improved integration between clinical and CARAT services (Counselling, Assessment, Referral, Advice and Throughcare) and reinforcement of continuity of care from the community into prison, between prisons, and on release into the community.

PSIs 48-51/2010 all relate to **Function 3 (Searching)** of the **National Security Framework (NSF).** Although available on the Prison Service's internal intranet, the NSF has never been published on the Prison Service website. These PSIs therefore provide a welcome increase in transparency.

PSI 48/2010 - Searching of the Person covers a number of areas including searching of male prisoners, female prisoners, transsexuals, prisoners' property and reception visitors, staff, and babies in mother and baby units. The instruction also deals with search procedures, the use of machines (such as X-ray machines and the 'BOSS chair'), religious issues related to search procedures and use of dogs for searching.

PSI 49/2010 – Cell, Area and Vehicle Searching sets out the procedures for searching various parts of prisons and for searching vehicles. It includes cell search procedures, for which there has long been a lack of detailed published guidance available to prisoners and practitioners.

PSI 50/2010 - Covert Testing deals with unannounced testing of security processes, procedures and equipment.

Finally, **PSI 51/2010 - Dealing with Evidence** sets out procedures for dealing with illicit items recovered during cell searches (including phones which have been 'plugged'!). It clearly states that there is no power to destroy a prisoner's property unless the item is illegal in itself (ie controlled drugs), dangerous (explosives) or a health hazard. Confiscated items should therefore be retained and returned upon release.

PSI 52/2010 Early Days in Custody – Reception In, First Night In Custody and Induction to Custody sets out detailed guidance on how prison staff should deal with prisoners in their first reception into prison, the first night spent in prison custody, and induction into both prison life generally and the establishment where they are located. This instruction only applies to prisoners aged over 18.

PSI 53/2010 Discharge replaces PSO 6400, Standard 9. It supports the Early Days and Discharge Specification and sets out the procedures that that is followed to discharge a prisoner from re-

ception. Discharges that are not from reception (i.e. from court) and preparation for release are not dealt with under this PSI. This instruction deals with various types of discharges including; discharge at the end of sentence; discharge to court; transfers; release on Temporary Licence; and discharge of foreign nationals. It also deals with other discharges such as bail, discontinuance of case, payment of fines, productions. This PSI focuses on the procedures involved in discharging a prisoner. Such procedures includes making sure that prisoners are discharged at the correct time, date and place ensuring that prisoners are aware of and understand their community arrangements, reporting instructions, licence conditions, and/or MAPPA arrangements to which they will be subject to. This PSI provides that where applicable, a prisoner should be made aware of the need to attend the police station regarding the sex offenders' register. In applicable circumstances, prisoners may be required to sign the F2050F Firearms Certificate to confirm their understanding that possession of firearms is not permitted after release**.** The PSI also deals with other areas that relates to discharge, including transportation and search before release.

PSI 55/2010 Sentence Calculation and Home Detention Curfew (HDC) makes amendments to PSO 6650, PSI 13/2005, PSI 17/2009, PSO 6700, PSI 31/2006, and PSO 6000. On 30 June 2010, the Supreme Court issued judgment in the case of Noone (see Autumn 2010 PLRG). This fundamentally changed how the legislation must be applied to those prisoners who are serving determinate sentences comprising mixtures of Acts (i.e. the Criminal Justice Act 1991 and Criminal Justice Act 2003) that are either concurrent or consecutive to one another. This means that the HDC eligibility period in such cases (and, similarly, the Early Removal Scheme (ERS) date) should now be calculated on the aggregate of the sentences. This will result in a longer eligibility period than when it was based only on the last of the sentences handed down by the court. The order of the sentences is no longer relevant for the purpose of calculating HDC or ERS eligibility dates.

PSI 58/2010 The Prison and Probation Ombudsman sets out the most recent Terms of Reference for the Ombudsman and gives guidance to prisons on prisoners' access to the Ombudsman, disclosure to the Ombudsman for inquiries and other related matters.

PSI 61/2010 Handling Of Sensitive Information Provided By Criminal Justice Agencies sets out new arrangements for the handling of 'sensitive material', where it is deemed to be necessary to apply to the Parole Board to withhold the material from the prisoner. This instruction replaces PSO 6000 Chapter 5 section 5.16 and PC 26/2007. It also makes amendments to PC 11/2008 (Victim Policy Guidance Manual Section 5.3) and PI 8/2009 (Victim Representation at Parole Board Hearings - Paragraph 2.17). Section 2 of this PSI sets out the background to disclosing and withholding material from the Parole Board during its process of making a decision whether to release on licence or re-release following recall of prisoners. Section 3 of this Instruction explains the arrangements for withholding sensitive information; and section 4 provides guidance on the handling of specific types of sensitive information.

PRISONERS' LEGAL RIGHTS GROUP
MEMBERSHIP APPLICATION FORM

Please complete this form in block capitals and send it to PAS at the address below:

PAS
PRISONERS' ADVICE SERVICE

Name: ____________________

Company: ____________________

Address: ____________________

____________________ Postcode: ____________

Telephone: ____________ Fax: ____________

Email: ____________ Website: ____________

IS THIS A RENEWAL? (Please circle) Yes / No

PLEASE TICK THE TYPE OF MEMBERSHIP REQUIRED:

( ) Prisoners	Free	
( ) Professionals/Other	£50pa	(please make cheques payable to
( ) Voluntary Organisations	£30pa	'Prisoners' Advice Service')
( ) Academic Institutions	£50pa	
( ) Prison Libraries	£30pa	
( ) Solicitors and Barristers	£50pa	
( ) Back Copies	£5.00 each	
( ) Ex-prisoners	£10pa	

( ) I would like to sponsor a prisoner PLRG member for one year £10

What issues/themes would you like to see covered in future issues?:

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