

PRISONERS' RIGHTS

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PRISONERS'

A D V I C E

S E R V I C E

JUSTICE BEHIND BARS

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 PLRB is free to serving prisoners.

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CASE REPORTS

SMOKING ON PRISON PREMISES

Black v SSJ [2016] EWCA Civ 125

The SSJ had appealed against a decision that the Health Act 2006 Part 1 applied to Crown premises. Part 1 related to the implementation of prohibiting smoking on certain premises. Prisons had been listed under smoke-free exemptions, implying that the Act would not be applicable. However, Part 3 of the Act lists the Crown to be bound by the provisions pertaining to the supervision of management and use of controlled drugs. The claimant said Part 1 and 3 were intrinsically linked; arguing that the application in Part 3 inferred that the Crown is bound under Part 1 as well, meaning that prison premises are bound. The court found in favour of this interpretation, which the SSJ subsequently appealed.

Upon appeal, the SSJ countered that the court should have correctly adopted the age old principle that Acts of Parliament cannot impose obligations or restraints upon the Crown, unless the Crown is expressly named, or by necessary implication the Crown has agreed to be bound.

HELD: Appeal allowed. Parliament could not have intended for the Crown to be bound by Chapter 1 Part 1 on the following basis. Firstly, the Crown had not been expressly stated in Part 1 and secondly, it could not be inferred that since the Crown has been expressly stated in Part 3 that it was transferrable to Part 1. The Crown immunity question has had much precedence set throughout the years and the same judgments continue to be delivered; necessary implication is a strict test and its stringency is 'illustrated by the repeated refusal of the courts to accept

the argument that the Crown is bound by a statute because it is not included in a statutory list of exempt bodies.'

Ultimately, this means that prisons are not covered under Part 1 of the Health Act 2006, thereby meaning that smoking on site is lawful.

RE-RELEASE OF DETERMINATE PRISONERS

King v Parole Board [2016] EWCA Civ 51

The case concerned the lawfulness of PB directions issued in December 2013 in relation to the test applied when considering the re-release of determinate sentence prisoners. The PB has to be satisfied that it is no longer necessary for the prisoner to be detained in order to protect the public from serious harm (to life and limb).' The PB is not permitted to balance the risk of reoffending against the benefits of release. The appellants claimed that the guidance notes improperly direct the PB to apply the 'public protection test' and in addition, the PB should be obliged to conclude that significant risk of harm to the public, by reason of a prisoner's early release, is outweighed by the benefits of such release.

The court established that the public protection test can be applied in cases brought before the PB, as it was Parliament's intention. Once this had been determined, the main issue up for discussion was the proper interpretation of the public protection test; whether the words 'necessary for the protection of the public' permitted the PB to balance the risk of offending against the advantages of re-release. Lord Tomlinson, however, concluded that the phrasing did not infer a balancing exercise but the concept of safeguarding the public

from the danger posed by the prisoner. He compared the previous directions from May 2004 to the present instructions; the wording had differed dramatically as the balancing exercise had been completely omitted from the December 2013 directions to the PB. From this, he stated that clearly Parliament had acted deliberately in removing the application.

HELD: Appeal dismissed. The public protection test did not permit the PB to balance a risk of harm to the public against other matters, meaning that the December 2013 directions were correct and lawful. Lord Sales further commented it was absolutely a question of interpretation and mentioned that the public protection test was in need of reform. For example, there can still be a significant risk to the public irrespective of there being no threat to life or limb i.e. fraudulent crimes.

POST-SENTENCE TARIFF REDUCTION

R v ZTR [2015] EWCA Crim 1427

The Court of Appeal (CoA) looked at the circumstances in which a tariff reduction for a mandatory life sentence imposed for murder could be reduced on appeal to take into account assistance given to the authorities after the sentence had been imposed.

The applicant had been convicted of murder several years ago, and after the enactment of CJA 2003. Several years later, he was contacted by the police for assistance with matters that occurred after the conviction. He provided the assistance requested of him, and it was considered to be significant. In the intervening period, ss.73-75 SOCPA 2005 came into force, establishing a statutory scheme under which a defendant who

pleaded guilty entered into a written agreement with a specified prosecutor under which he assisted law enforcement authorities and could have that fact taken into account on sentencing.

Whilst ss.73-75 did not expressly permit a sentence to be reduced for assistance given after sentencing, the statutory scheme did not apply to the applicant as his sentence was fixed by law and he had not pleaded guilty. The CoA therefore had to apply common law principles to the application, namely that following conviction at a contested trial and sentence without having given assistance to the authorities, the defendant would not normally have their sentence reduced at a later date for assistance given subsequently.

The CoA saw no reason to depart from the pre-existing common law position. The court focussed on two main considerations when coming to this decision: firstly, concern that it should not be acting to reward behaviour in custody, but as a reviewing court; secondly, concern that a departure from the pre-existing position may encourage prisoners to manufacture assistance in order to try and obtain a reduction in their tariff.

The court acknowledged that given its conclusion, and the fact that the PB has no power to reduce the minimum term, the applicant was limited in his ability to seek a reduction in his minimum term. Here, despite no explicit reference, the CoA was alluding to the fact that prisoners sentenced for murder prior to the enactment of the CJA 2003 can apply for a reduction in sentence based on post-conviction 'exceptional progress' but prisoners sentenced after 18 December 2003, when the current sentencing provisions were enacted, do not have any mechanism for such a review to take place (*R v Gill, Abu-Neigh, Eccles* [2012] EWCA Crim 2795).

The court commented that in appropriate circumstances an application could be made to the Home Secretary to exercise discretion under s.30 Crime (Sentences) Act 1997 to grant early release on compassionate grounds. However, the court did not express a view as to whether the circumstances arising on the facts of this application were such as to entitle the SSJ to exercise his power under s.30. It must be remembered that despite the court's suggestion here, this executive power to grant early release on compassionate grounds is entirely distinct from the judicial power to reduce the minimum term to be served before release can be considered.

AUTOMATIC DEPORTATION OF FOREIGN NATIONAL PRISONERS

SSHD (appellant) v OLO, BDO, BEO and AOO (Respondents) [2016] UKUT 56 (IAC)

The respondents are citizens of Nigeria. The first respondent is the mother of the remaining respondents. The appeal was mounted by the Secretary of State for the Home Department (SSHD).

The SSHD came before the Tribunal because of the first respondent's convictions for two offences in connection with possession of false documents with intent. She was convicted on 20 January 2010. The CoA reduced her sentence from 20 months' imprisonment to 12 months, consisting of two consecutive sentences of six months.

A decision was made to deport the first respondent, and the remaining respondents as her family members, on 17 June 2014. The decision was made under s.3(5)(a) of the Immigration Act 1971, on the basis that the first respondent's de-

portation was conducive to the public good because of her offending.

On appeal, the First Tier Tribunal concluded that because the decision did not consider paragraphs 398 and 399 of the Immigration Rules, the decision was not in accordance with the law. The matter was 'remitted' to the SSHD for fresh decisions to be made.

The SSHD argued that the First-tier Tribunal erred in law because in actual fact paragraphs 398 and 399 did not apply as the position is that a person sentenced to a period of imprisonment of exactly 12 months is liable to automatic deportation under s.32(2) of the UK Borders Act 2007, even if the sentence of exactly 12 months is made up of two or more consecutive sentences. The SSHD asserted that the first respondent falls outside the scope of those paragraphs because they are concerned with a single period of imprisonment and the appellant's sentence consisted of two consecutive periods of six months' imprisonment.

The Upper Tribunal found that a person sentenced to a term of 12 months imprisonment made up of consecutive terms is not a 'foreign criminal' within the meaning of the deportation provisions of the Immigration Rules and is not therefore subject to paragraph 398 of those Rules. The Upper Tribunal held that the decision of the First-tier Tribunal involved the making of an error on a point of law and therefore set aside its decision and remitted it back to the First-tier Tribunal for a hearing before a differently constituted panel, or by a single judge.

PRISON ADJUDICATIONS - AVAILABILITY OF DEFENCE OF DURESS

Wilson v Independent Adjudicator, SSJ [2016] EWHC 176 (Admin)

The claimant was serving a sentence in a Young Offenders Institution. In 2014 he was subject to disciplinary proceedings under the YOI Rules 2000 for unauthorised possession of alcohol. He claimed he had been threatened with a knife to make him store the alcohol and sought to rely on the common law defence of duress. The Independent Adjudicator (IA) held that the claimant had been threatened but that, as a matter of law, the defence of duress was not available because prison disciplinary proceedings differed from criminal proceedings and allowing duress as a defence would create difficulty in maintaining prison discipline, particularly given that limited penalties were available in a YOI. The IA treated the claimant as effectively pleading guilty, with the duress taken into account as a mitigating factor, and gave him 10 additional days punishment, suspended for four months.

The claimant appealed, submitting that the charge would be characterised as criminal for the purposes of Article 6 ECHR which provides that in determination 'of any criminal charge against him' a person is entitled to various rights which enable a fair trial.

HELD: Appeal dismissed. The criminal law defence of duress was not available as a defence to offences under the YOI or Prison Rules. Article 6 did not assist the claimant. Just because a disciplinary charge might also be a criminal charge for the purposes of applying the Article 6 safeguards did not mean that it became a criminal charge for other domestic purposes. Article 6 could not impel the adoption of otherwise inapplica-

ble domestic criminal law.

The court referred to a number of features of the YOI Rules and Prison Rules in reaching the conclusion that they should be treated as separate non-criminal disciplinary codes for the purpose of the application of the common law defence of duress. The Rules had been made for the purpose of prison order and discipline and were not intended to be a set of bespoke or special criminal offences (applying *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] 1 All ER 701). The list of disciplinary offences under the Rules had clearly been devised for the circumstances of a custodial institution. The disciplinary offences are not criminal offences under the general criminal law for the most part (and especially not in these circumstances) and even where they are coincident, they should be treated as part of a special non-criminal disciplinary code. In addition, the procedure and evidential provisions in the Rules, while Article 6 compliant, are deliberately quicker, and more informal than a domestic criminal trial. Treating duress as a mitigating factor rather than as a defence leaves much more to the experience and judgment of the governor or IA and is therefore a more suitable mechanism when determining punishment for offences under the Rules.

PRISON VISITS BY DISABLED FAMILY MEMBERS

Hawke v SSJ [2015] EWHC 3599 (Admin)

The claimants, a vulnerable and long-term prisoner detained at a Category B training prison (HMP Isle of Wight), and his wife, a seriously disabled person who could not realistically and at proportionate cost visit the prisoner at his place of detention, argued that the de-

fendant had acted unlawfully by not detaining him in a local prison, HMP Exeter, closer to his wife's home.

The claimants argued that the defendant's decision not to relocate the prisoner was irrational, in breach of public law duties, in breach of equality duties, and involved adherence to a policy (the rigid categorisation of Category B prisons into 'local' and 'training' prisons) which was unlawful, since it did not contain appropriate adjustments for the prisoner's wife's disability. The claimants also argued that the defendant was in breach of the public sector equality duty (PSED) under section 149 of the Equality Act 2010.

The defendant owes a duty not only to the prisoner, but also to his family under Rule 4 of the Prison Rules 1999/728 when assisting prisoners to maintain relationships with their families. Prison Rule 35 specifies that a prisoner is ordinarily entitled to receive a visit twice in every four-week period. The defendant had been providing Accumulated Visits for the claimants, by transferring the prisoner to HMP Exeter temporarily to enable his wife to benefit from a concentrated period of visits, arguing that this constituted reasonable adjustments for his wife's disability under the Equality Act.

The defendant set out general and specific reasons as to why the prisoner could not be transferred long-term to HMP Exeter. These included the different functions of training and local prisons (the former to provide rehabilitation and training, the latter to serve the courts, receive newly sentenced prisoners and those remanded into custody) rendering long-term accommodation in a short term prison unsuitable for the prisoner (given that HMP Exeter would be less able to cater to his Vulnerable Person status, and unable to provide

necessary courses, learning and training for his rehabilitation), alongside great pressure on beds in local prisons which would make accommodation of long-term prisoners in short-term prisons detrimental to the needs (including rehabilitative) of prisoners who require access to short-term prisons.

HELD: The defendant had not breached the prisoner's entitlement to receive two visits in every four-week period under Prison Rule 35. The court emphasised that Prison Rule 35 concerned the entitlement of the prisoner and not of any notional visitor (i.e. it was the prisoner's right to receive such visits from any visitor, and not his wife's right to visit twice in every four-week period).

The court held that the defendant had not breached its duties under the Equality Act not to discriminate and to make reasonable adjustments for disabled persons. The defendant's policy of subdividing Category B prisons into 'training' and 'local' did place the prisoner's wife, due to her disability, under a substantial disadvantage when visiting her husband. However, the defendant had made reasonable adjustments by providing Accumulated Visits to remedy this disadvantage. The claimants' proposed solution of transferring the prisoner to HMP Exeter would not have been a reasonable adjustment given the general and specific reasons provided by the defendant.

The court initially found that the defendant had breached the PSED to eliminate discrimination and advance equality of opportunity, since there was little evidence to show that the defendant had actively and positively demonstrated real regard to the PSED when formulating relevant policies and making decisions in relation to the prisoner. This resulted in the court ordering a declaration noting the defendant's

breach. However, after the impact of section 31(2A) of the Senior Courts Act 1981 was subsequently considered, which provides that the court must refuse to grant relief on a judicial review application where it appears highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred, the court decided against granting such a declaration. Given that the outcome for the claimants would have been the same if the defendant's failure to have due regard to the PSED had not occurred, and no exceptional public interest had been demonstrated in order to disregard section 31(2A), the court could not make a declaration that the defendant had breached the PSED. The claim was dismissed in its entirety. Nevertheless, the court emphasised as a sort of 'declaratory judgment' that the defendant had not given positive due regard to the PSED, and on the facts the defendant had failed to discharge its duties under section 149.

PAROLE BOARD DELAY

Hussain v Parole Board [2016] EWHC 288

The claimant is serving a sentence of detention at Her Majesty's Pleasure with a 12-year tariff, which expires in August 2017. In April 2014 the SSJ referred the claimant's case to the PB for a pre tariff review, seeking advice on whether he was ready to be moved to open conditions. The target month for the panel hearing was set as November 2014. The first listing exercise took place in September 2014 for the calendar month of December. The case however was not listed then. The next listing exercise took place in February 2015 for the month of May and the hearing was listed for May 2015. The reason for the delay was due to a lack of panel capacity to hear the cases that

were ready to list. Following the hearing in May the Parole Board recommended the claimant's transfer to open conditions.

The claim focussed exclusively on the delay between September 2014 (when the case was ready for oral hearing) and February/March 2015 (when it was listed): a period of 5/6 months, meaning the claimant's transfer to open conditions was delayed by a similar period. The judge in the case ruled that both the public law duty as set out in the case of *R (James, Lee and Wells) v SSJ [2009] UKHL 22* as well as the ancillary duty of Article 5 of the European Convention on Human Rights had been breached. Both the public law duty as set out in *James* as well as the Article 5 ancillary duty require the state to afford prisoners serving indeterminate sentences a reasonable opportunity to demonstrate to the Board, at tariff, that the risk they pose to the public is at no more than an acceptable level. The judge found a breach of both duties and allowed the judicial review. The judge accepted the claimant's entitlement to some form of damages but stressed this would be of a modest amount.

RECALL

Stellato v Parole Board [2016] EWHC 354 (Admin)

Mr Stellato was recalled following his release on licence after being arrested and charged for threat to destroy property. Mr Stellato has 160 recorded offences, including arson with intent to endanger life, and his current sentence is for possession of drugs with intent to supply. He was recalled for allegedly sending threatening texts to three persons who owed him £300. The charges were subsequently dropped due to lack of evidence and non-attendance of the

witnesses at court. Despite the charges being dropped, the PB decided to uphold the recall decision and recommended that Mr Stellato should not be re-released on licence. This decision was made after an oral hearing where Mr Stellato had the opportunity to challenge evidence against him.

Mr Stellato sought judicial review of the PB's decision on the grounds that the Board had applied the wrong test, and since the decision to recall was in itself unlawful – he asserted he had not breached the terms of his licence – the decision was fatally flawed. He further argued that in coming to the view that it did, the Board effectively made a finding of guilt on the charges against him and did so without a proper hearing, breaching his Article 6 rights. Finally he challenged the admissibility and relevance of the evidence relied on by the PB in coming to its decision, and submitted that there was no proper evidence it could have lawfully relied on.

HELD: Claim dismissed. The court reminded the claimant that there is no statutory test for the PB to apply when considering the maintaining of the recall decision. The PB must not release a prisoner unless it is satisfied that it is not necessary for the protection of the public that he remains in prison. The role of the PB is thus not simply to review the reasons for the recall, but to look at the wider picture and decide for itself whether the recall should be maintained. The weight given to the various considerations relevant to risk (absent irrationality which the court considered not to apply in this case) is a matter for the PB and not for the court.

Regarding Mr Stellato's submission that the PB breached his Article 6 rights, the court noted that the PB was not in fact finding Mr Stellato guilty of a criminal offence; rather it was merely making

legitimate findings in evaluating risks, which does not give rise to an Article 6 claim.

CELL SHARING: PARTNERS

Hopkins v Sodexo (HMP Bronzefield) and SSJ [2016] EWHC 606 (Admin)

Michelle Hopkins and her partner were prisoners at HMP Bronzefield. In 2012, Ms Hopkins was left paralysed from the waist down, but eventually regained feeling in her lower body. She experiences severe pains in her middle and lower back for which she has been prescribed strong painkillers. She also suffers from mental health problems, as does her partner, and prior to being sent to prison, they were carers for each other.

When they first arrived in HMP Bronzefield in November 2014, they were allowed to share a cell on condition that they would not engage in sexual relationships. Although they did not breach that condition, in February 2015, the prison decided they would no longer be allowed to share a cell, in line with their Decency/Managing Relationships policy which states that prisoners in a relationship cannot share a cell.

The Head of Residence at HMP Bronzefield called a multi-disciplinary meeting to assess the prisoners care needs. It was decided that Ms Hopkins would be assessed by a GP and, at a further meeting, it was reported that she did not need a carer. The decision to separate them was then made and Ms Hopkins' partner was subsequently moved to another cell.

Ms Hopkins submitted that the Decency/Managing Relationships policy was unlawful as it was inflexible and was not made in a statutory instrument as re-

quired by the Prison Act 1952. She added that this decision infringed her rights under Article 3 and Article 8 of the ECHR, and was in breach of the Equality Act 2010 as she is disabled. Under Article 3, she claimed the conditions of her treatment amounted to degrading treatment as she was not able to go to the bathroom or wash without added unnecessary difficulty. Under Article 8, she claimed that the intimate relationship restriction constitutes a very significant limitation which has been imposed on the contact permitted between her and her partner, which was all the more important as they were carers for each other. Under the Equality Act 2010, she claimed that the prison had not made reasonable adjustment regarding her disability, i.e. allowing her to have a carer.

The prison responded that the policy was in fact made in a statutory instrument. Indeed Rule 6(1) of the Prison Rules 1999 provides that order and discipline shall be maintained in prison, and the restriction on couples sharing cell is put in place for the maintaining of good order and discipline. The prison added that they were still on the same wing so that, apart from during lock up times, her partner was still able to assist and care for Ms Hopkins. Finally they argued that there were no violations of Article 3 and Article 8 as they were not even engaged in this particular case, and that there was no breach of its obligations under the Equality Act 2010 as Ms Hopkins was not disabled within the meaning of the Act.

Regarding the lawfulness of the policy, the court found in favour of the prison. It accepted the argument that restrictions on cell-sharing for couples falls within the scope of maintaining good order and discipline. The argument that the policy is not flexible was also not accepted. The court found no breach of

Article 3, Article 8, or the Equality Act 2010 and noted that in taking its decision, the prison tried to adequately consider and improve the health and well-being of Ms Hopkins. Indeed, the prison took significant steps to ascertain her need for a carer; it commissioned an Occupational Therapy report and arranged an assessment with the healthcare department, among other things. The court also noted that any custodial order inevitably curtails the enjoyment of rights enjoyed by other citizens: a prisoner cannot move freely or choose his/her associates as they are entitled to.

The court found that the minimum severity requirement to engage Article 3 was not met, and that Ms Hopkins' Article 8 rights were not engaged. Finally, while the court disagreed with the prison on their claim that Ms Hopkins was not disabled, it still did not find a breach of the Equality Act 2010. As mentioned above, the court is satisfied that the prison 'took such steps as it is reasonable to have to take to avoid the disadvantage' (s 20 Equality Act 2010).

For all these reasons, the court dismissed the application.

ARTICLE 5: UNLAWFUL DETENTION - EXPIRED IPP TARIFF

Kaiyam, Massey, Robinson v UK (Application no. 28160/15)

The case appeared before the ECtHR following the Supreme Court (SC)'s decision to reject claims that delays in access to rehabilitative courses did not constitute a violation of Article 5.(1) ECHR. All three claimants were serving IPP sentences that had since expired. The claimants alleged that the SC had erred in interpreting and correctly applying the precedent from *James, Lee and*

Wells v United Kingdom (2012) 56 EHRR 399. James had ruled that indeterminate prisoners should be given a 'real opportunity for rehabilitation during the tariff period itself.' Essentially, this means that prisons should be providing indeterminate prisoners with 'reasonable opportunities' to undertake rehabilitative courses to reduce their risk of reoffending.

The ECtHR made it apparent that their sole purpose in this case was to determine whether 'delays in the provision of rehabilitative courses to the present applicants were such, as to introduce a degree of disproportionality, leading to arbitrariness.' The ECtHR also reminded the claimants that there is no absolute right for indeterminate prisoners to have immediate access to such courses and that any delays, as a result from the prison service's lack of resources, still must be reasonable in all of the circumstances. The ECtHR noted that most cases heard before the SC, regarding unlawful detention under Article 5(1) were rarely successful. Also, the ECtHR stated that they were not to second-guess the UK's national authorities and neither would they begin to impose timetables on such authorities.

HELD: Appeal rejected. The fact that a delay occurred is not sufficient to meet the threshold required to establish that the State has acted arbitrarily under Article 5 (1). All claims were held to be inadmissible for the following reasons:

Kaiyam: The court found that restrictions on Kaiyam's undertaking of other work were mainly as a direct result of his established history of violence. The court found that the prison had taken prompt steps to initiate Kaiyam's progression, however the delay in Kaiyam addressing his behavioural issues had evidently resulted in a setback. The court was ultimately satisfied

that he had been given ample opportunity for rehabilitation and that there was no violation of Article 5(1).

Robinson: The only significant delay for Robinson concerned the arrangement of a prison transfer, to allow him to complete the Extended SOTP. The court determined that the delay was not unreasonable, especially when compared against the gravity of his index offence and the extensive rehabilitative work that was required. Also, the prison service had found alternative courses for Robinson to enrol upon during this period. There was no appearance that Article 5(1) had been violated.

Massey: The court had to establish whether the five years after his tariff had expired could constitute as unlawful detention. The court noted that Massey had only completed four courses throughout this duration. The delay in Massey's access to the Extended SOTP 'cannot be said to have deprived [him] of a real opportunity for rehabilitation through the provision of reasonable opportunities to undertake courses aimed at helping him to address his offending behaviour.' Therefore, there was no breach of Article 5 (1).

UPDATES ON PRISON SERVICE INSTRUCTIONS

PSI 36/2015 – Health and Safety Arrangements for Workplace Inspection

This Instruction sets out national policy for the routine inspection of workplaces with a view to providing a safe working environment. It is part of a number of PSIs which form part of NOMS health and safety arrangements.

The aim is to reduce and control work-

related injury and ill-health amongst staff, prisoners, contractors and visitors. It requires that:

All establishments operate a robust, demonstrable workplace inspection system.

The approach to inspecting workplaces is consistent across the estate, but flexible enough that where current systems are in place, they can be incorporated.

Governors, managers and staff are aware of the benefits to be gained from implementing an efficient system of workplace inspection and the place of such a system within good overall management of the OHSF risk.

It is one of a series of new PSIs on Health and Safety, with 37/2015, 38/2015 and 02/2016 setting out further points regarding H&S risk assessment, performance monitoring and accident reporting.

PSI 01/2016 - Preventing and managing staff corruption

This PSI replaces PSO 1215 Professional Standards – Preventing and Handling Staff Wrongdoing. There are two versions of this PSI, one of which is publicly available and a second which is only available to governors, deputy governors and certain other officials. The stated aims of the new PSI are to ensure that there is:

- a) A clearer understanding of what corruption is, how to report it and how to support those who report, as well as those who are vulnerable to corruption
- b) Greater public confidence as a result of staff corruption being tackled robustly
- c) An improvement in gathering and developing intelligence about staff corruption
- d) An improved ability to identify the extent of corruption

e) Common standards across the NOMS estate

f) More effective working with the police and other agencies

g) A culture in which corruption is never tolerated

h) Clarity as to the exact role and remit of the Corruption Prevention Unit (CPU) and Regional and Local Corruption Prevention Managers

i) A clear understanding of where tactical advice to Corruption Prevention Managers can be sought.

Corruption is defined as follows: 'Corruption occurs when a person in a position of authority or trust abuses their position for their or another person's benefit or gain. In NOMS, this would include the misuse of their role in order to plan or commit a criminal act, or a deliberate failure to act to prevent criminal behaviour'.

This is then further defined to include actual or attempted conveying of restricted items into prisons, aiding escape, unauthorised disclosure of information, accepting or seeking bribes, inappropriate relationships, blackmail, taking or seeking money or other favours for commercial purposes, for moving or reclassifying prisoners, or theft of prisoner's money or property. The PSI states that the element of 'benefit' or 'gain' must be interpreted widely and can include financial, emotional, sexual or other personal and/or work related reasons. Interestingly it also specifically includes 'instances where an employee believes that they have a moral obligation or entitlement to "ignore or break the rules" for the greater good...known as "noble cause" corruption'.

The PSI describes 'an increased risk of corruption where inappropriate relationships are formed between staff and prisoners and/or their family or friends'

and consequently says that ‘Staff must bring any potential conflicts of interest to the attention of their line manager and submit a potential conflict of interest declaration’.

The Corruption Prevention Operating Framework has three levels; national, regional and local, with the Corruption Prevention Unit in NOMS Security Group responsible for ‘assess[ing] the risks posed by staff corruption... at a national operational level. At the prison level, every prison (public or private sector) will have an allocated Regional Corruption Prevention Manager, and must also appoint a Local Corruption Prevention Manager (LCPM), whose job entails: ‘ensuring that staff know who the LCPM is, ensuring staff know what behaviours constitute corruption, promoting a culture that encourages the reporting of corruption, ensuring that all staff and visitors report corruption promptly and processes are in place to remind them of this regularly throughout the year, ensuring that the systems in place are operated with integrity and ensuring good working relationships with the local police force.

PSI 03/2016 - Adult social care

This PSI provides details of NOMS’ responsibilities in relation to social care across England and Wales, as promulgated in the Care Act 2014 and Social Services and Wellbeing (Wales) Act 2014. These Acts each purport to ensure that social care for adults in prisons and approved premises, and for those in bail accommodation, is provided on an equivalent basis to people living in the community. The PSI replaces PSI 15/2015 - Adult Social Care.

The PSI prioritises the establishment and maintenance of partnerships between prisons, probation services and local authorities, for example, by mandating prisons to appoint a local lead for

Adult Social Care who is responsible for liaising with local authorities and their providers and by requiring probation services to establish partnership arrangements to address the care and support needs of former prisoners in the community.

The PSI further mandates the clear communication to prisoners of their entitlements under the relevant Acts, in particular by requiring prisons to make available to prisoners information from the relevant local authority in respect of needs assessments and care and support to meet eligible needs. The PSI notes that local authorities have discretion as to whether to charge for the care and support they provide/arrange and prisoners may be subject to a financial assessment to determine how much, if anything, they are required to pay (as would be the case in the community).

The role of prisons in the arrangement and review of needs assessments and care and support plans for prisoners is set out in some detail by the PSI, which includes requirements for prisons to:

- assist in identifying and referring prisoners who may have care and support needs, or who may require an independent advocate to assist in care and support assessments or the planning/review process; and
- facilitate the provision of relevant care and support by the local authority.

Prisons are also required to inform local authorities and their providers of care of decisions to transfer or discharge prisoners, so that continuity of care can be ensured.

The PSI stipulates that prisons must make reasonable adaptations and adjustments to buildings to ensure prison-

ers are enabled to live with decency and as independently as possible.

PSI 04/2016 - The Interception of Communications in Prisons and Security Measures

This PSI gathers together the legislative framework, guidance and procedure for interception of communications in prison and sets out detailed operational guidance on recording, monitoring and retention of communications. As such, other than one PSI on Call Enabling, it does not cancel out any previous PSIs but relates further to a long list of them, including PSI 49/2011 on Prisoner Communications.

The PSI introduces two new communications compacts, to be given to all prisoners – one on induction, the other within a month of reception. It also contains sections on a very wide range of matters related to communication by post and telephone, including: contact with victims (no contact other than where it is established that this is in the best interest of the victim and there is prior agreement), content and language of phone calls (other than for high/exceptional risk Category A and E-list prisoners, calls can be conducted in any language) and call diversion.

PSI 05/2016 - Faith and Pastoral Care for Prisoners

This PSI affirms that the Prison Service recognises and respects the right of prisoners to practice their religion and it provides instructions and guidance for prisons to enable the religious practice of prisoners and for the provision of pastoral care through Chaplaincy teams. It supports the Specification: Faith and Pastoral Care for Prisoners in setting out procedures that should be followed in the delivery of that Specification.

It replaces PSI 51/2011 – Faith and Pastoral Care for Prisoners but makes only small changes to that PSI, including provisions relating to:

- numerically smaller faith groups or where a Chaplain is not present, which provide more detail on when a prisoner may lead prayers, worship or meditation; and
- specific religious and cultural requirements that apply for funerals (e.g. funerals taking place within short time periods or in two equally significant parts in different locations).

PPO & ICO Cases

ICO Cases

Access to Personal Records

Mr Y complained that after making numerous requests for copies of personal data, he had to complete a Subject Access Request (SAR). HMP Parkhurst was adamant that this was the correct process, despite the material being requested having no reference to third parties or private matters. Mr Y argued in particular that C-Nomis entries were incorrectly classified as ‘closed’ documents, given that such entries were routinely relied on everyday business and prisoners should not be expected to apply through SAR for these every time.

The ICO found that it was the belief of the MoJ (HMPS) that each of Mr Y’s requests were categorised as ‘closed’ documents, when in reality the vast majority should have been classed as ‘open’. In its report, the ICO refers to Notice To Prisoners 099-2013 which expands on the local authority’s policy on data protection. It establishes that ‘open documents’ are deemed to be

normal business, whereas 'closed documents' specifically require a SAR to be taken out. As a result, it was the opinion of the ICO that it was unlikely the MoJ had complied with data protection law, due to its belief that Mr Y's requests referred to 'closed' matters.

The ICO recommended that staff at HMP Parkhurst should be reminded of the DPA 1998 and its precedence over internal business procedures. The investigation specifically highlighted Section 7(8) of the DPA and that the MoJ should respond within the time frame of 40 days. The ICO also reiterated that in instances where 'open documents' are concerned, prisons should make a conscious effort to aid prisoners in receiving the requested information, as opposed to referring them to undergo the time-consuming process of a SAR. *However the ICO concurred that C-Nomis entries were correctly classified as 'closed' documents.*

PPO Decisions

Category A inter-prison visits/ telephone calls

Following a catalogue of errors and delays at HMP Woodhill, Wakefield and Full Sutton, Mr Z complained regarding difficulties with inter-prison phone calls and visits with his brother. Mr Z and his brother are both Category A prisoners and Mr Z is also in the Close Supervision Centre (CSC) system.

On two occasions at Woodhill, Mr Z requested inter-prison phone calls but was passed back and forth between officers. He also requested an inter-prison visit. It took five months before an inter-prison telephone call was finally arranged.

The PPO found that a lack of communi-

cation and adherence to protocol had resulted in 'long and unacceptable delays in securing meaningful contact with his brother.' The PPO referred to the PSI on visits, stating that although policy states Mr Z 'may' be entitled to one inter-prison visit every three months, in total it took five months to arrange. The PPO also agreed with Mr Z's claims that the severe delays had hampered his relationship with his brother.

At Full Sutton, when Mr Z requested an inter-prison visit and telephone call, he was informed that specific forms were required, yet officers were never forthcoming with such forms. The PPO was 'unimpressed' with this and even more concerned about how the inter-prison telephone call was conducted; numerous officers in riot gear were present and recording him. The PPO said that more personal space and privacy should have been offered to Mr Z.

At Wakefield, Mr Y was only offered an inter-prison visit via video-link. The PPO found that there were no grounds for this, either for security or logistical reasons. The PPO determined that HMP Wakefield had adopted an incorrect approach and that a video-link should not be offered at first instance every time, but in those circumstances where a face to face visit may not be manageable or there could be considerable delays.

Evidently, Mr Z 'experienced difficulties in securing personal contact with his brother, within a reasonable timescale.' The PPO recommended that the Director of High Security should share this report to all governors of High Security prisons. Also, if Mr Z requests any more inter-prison visits or calls, they should be dealt with as soon as practicable. The PPO further recommended that the CSC Management Committee should issue notices to all High Security

prisons to ensure staff fully understand the instructions regarding this matter in the CSC Operating Manual.

IT use at HMP Rye Hill

Mr A had been prohibited from using IT at HMP Rye Hill. He complained to the PPO on the basis that accessing IT would have a positive influence on his rehabilitation. He also mentioned that he had been allowed to use computers in his previous prison.

The PPO considered the risk assessment for activity allocation carried out on Mr A, together with his OASys assessment and the Public Protection Manual.

The PPO found that Rye Hill's restriction was not unreasonable or excessive, in view of Mr A's offending history which had involved extensive use of computers and the internet.

In deciding not to uphold Mr A's complaint, the PPO placed particular weight on the duty created by Chapter 9 of the Public Protection Manual, 'Risk of Harm', to ensure that the public is protected from 'general offending' and 'serious harm'. The PPO considered that Mr A's IT ban was proportionate to the potential risk to the public.

OTHER NEWS

Queen's speech announces creation of 'reform prisons'

The government used the 18 May Queen's Speech to announce the start of what it terms 'the biggest shake-up of the prisons system since the Victorian era begins', to be brought in via a Prison and Courts Reform Bill (England and Wales) 2016.

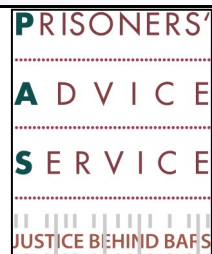
The 'shake-up' centres on the creation of so-called 'reform prisons' in which the governors will be given 'unprecedented freedoms... including financial and legal freedoms, such as how the prison budget is spent and whether to opt-out of national contracts; and operational freedoms over education, the prison regime, family visits, and partnerships to provide prison work and rehabilitation services'.

The first six 'trailblazer sites' as the MOJ announcement describes them, are Wandsworth, Holme House, Kirklevington Grange, Coldingley, High Down and Ranby. Nine new prisons to be built at a cost of £1.3 billion will operate along similar lines and more existing prisons will become 'autonomous' at an unspecified date 'later this Parliament'.

What any of this means in practice for prisoners and their legal rights within prison remains to be seen.

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