PRISONERS' RIGHTS

Prisoners' Legal Rights Group Bulletin No 56

Autumn 2011

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.

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CASE REPORTS

SENTENCING

R. v Smith (Nicholas) [2011] UKSC 37

The Defendant, released in 2004 on licence from a sentence of life imprisonment, was recalled to prison in January 2008 following his arrest for robbery and firearm offences. In September 2008 the Defendant pleaded guilty to these offences. He was sentenced to imprisonment and an IPP (Indeterminate Sentence for Public Protection) with a tariff of six months, after it was concluded that he posed a significant risk to the public.

He appealed on the grounds that it was unlawful to impose an IPP sentence given that he was already serving a life sentence, arguing that the requirement of "significant risk" under Section 225(1)(b) of the Criminal Justice Act 2003 was not satisfied. Alternatively, he argued that the sentence was wrong in principle, because it achieved no additional benefit, and that, a determinate sentence should have been imposed instead.

The court in dismissing the appeal and upholding the IPP sentence, said it was not unlawful to impose a sentence of imprisonment for public protection on someone who was already serving a life sentence. Although the court accepted that it was not sensible to impose such a sentence where it would achieve no benefit, in this particular case it enabled the sentencing judge to express his finding that, at the time of sentence, the Defendant did in fact satisfy the dangerousness provisions of the 2003 Act. This was particularly relevant as a parole board had previously released the Defendant on licence after being persuaded that he no longer posed a risk of serious harm to the public. The sentence reflected the fact that the judge felt that the Defendant in contrast, did actually pose a risk to the public.

R. (on the application of Lewis) v Secretary of State for Justice [2011] EWHC 1926 (Admin)

In 2003, the Applicant was sentenced to 16 years imprisonment in respect of 3 offences. The sentences for the second and third offences were ordered to run concurrently with each other and consecutively with the first sentence. Due to the timing of the sentence, the Applicant came under Section 33(2) of the Criminal Justice Act (CJA) 1991. This provides that the Secretary of State for Justice (SSJ) is under a duty to release short-term prisoners as soon as they have served one half of their sentence, and long-term prisoners as soon as they have served two-thirds. The 1991 Act was amended as from 9 June 2008. Section 33 (1A) now provides that it is the duty of the SSJ to release long-term prisoners, on licence, once they have served one-half of their sentence. Section 33(1B), provides that Section 33 (1A) will not apply to a long-term prisoner "if the offence, or one of the offences in respect of which he is serving the sentence is specified in schedule 15 to the Criminal Justice Act 2003".

One of the offences for which the Applicant was convicted was specified in Schedule 15. However, the Applicant argued that he was not "serving" the sentence specified in Schedule 15 on 9 June 2008 (when the amendment came into force) as the sentence was imposed concurrently. The Applicant brought a claim for judicial review after the Secretary of State of Justice (SSJ) refused to release him when he passed the halfway point of his sentence. The Applicant argued that due to the time spent on remand, he had served the

Section 51(2) of the Criminal Justice Act 1991, the sentences, added together, should be treated as a "single term" because they were passed on the same occasion.

The court in dismissing the Applicant's claim, said that Parliament's intention was to bring "some parity" between prisoners sentenced prior to the Criminal Justice Act 2003 and those sentenced after the 2003 Act. Although those "shown to present no significant risk" after being sentenced for a schedule 15 offence are released after serving half of their sentence, the decision not to release the Applicant was legitimate. This was because the parole board found that he "continued to present a significant risk of violence".

PAROLE BOARD

Henry v Parole Board [2011] EWHC 2081 (Admin)

The Appellant in this case had stood trial for three counts of rape committed whilst on licence. The jury convicted on counts two and three, but were unable to agree on the first count. The Parole Board ('the Board') then considered the Appellant's case for release. In refusing release on licence, the Board said in the decision letter, that the Appellant still posed a risk and that he was withholding some information as to the circumstances of the rape. The Board also made numerous references to the circumstances surrounding the first count. The Appellant argued that the Board had proceeded on the basis of a "mistake of fact" by taking the surrounding facts of the first count, for which he was not convicted, into consideration.

The court accepted that it was a mistake for the Board to make reference, and to consider specific matters around the first count, and for which the Appellant had not been convicted. Although the Board were "entitled to explore background matters to some extent", this should not lead to a "mistaken backdrop" for which there was no evidence. The mistake was clearly material to the Board's decision and therefore the decision was quashed. The Board would have to reconsider the Appellant's parole.

R (Andersson) v Parole Board [2011] EWHC 1049 (Admin)

The Claimant sought a declaration that the Parole Board had a general power to adjourn an oral hearing when considering the re-release of recalled determinate sentenced prisoners. The Respondent (Parole Board) held that Section 256/256A of the CJA 2003 limited the Board's powers to ordering immediate release, release at a fixed date or making no recommendation as to release.

The court in granting the claim said the exclusion of a power to adjourn would require clear statutory provision. Section 256/256A did not specify the process to be taken by the Board in reaching their decision but certainly did not exclude a power to adjourn. Moreover, natural justice favours a power to adjourn in appropriate circumstances and therefore the Board did have this power and should have considered exercising it in this particular case.

R (on the application of Smith) v Secretary of State for Justice [2011] EWHC 81 (Admin)

The Claimant sought judicial review of the decision by the Secretary of State for Justice (SSJ) to order his standard recall to prison and not to deduct the time Mr S spent unlawfully at large, through no fault of his own, from his sentence.

The Claimant had been recalled to prison following offences committed whilst on licence. His probation officer had recommended that he be recalled on a fixed period, however the SSJ re-called him for the standard period meaning that he would have to serve the rest of his initial sentence. The Claimant was not recalled immediately due to an administrative error. He therefore spent thee months unlawfully at large through no fault of his own. The SSJ did not deduct those three months from the sentence he was required to serve.

The court considered that the SSJ had acted lawfully, both in declining to follow the probation officer's recommendation and in refusing to deduct the 3 months spent at large from the Claimant's sentence. The court held that the SSJ had come to the conclusion that the Claimant posed a risk of harm to members of the public if released early and therefore had not acted unreasonably in ordering the Claimant to be recalled to serve the remainder of his sentence. The SSJ had also not acted unreasonably in deciding not to remit the three months spent unlawfully at large from the Claimant's sentence, as he had followed the relevant guidance. Therefore, the decisions made were within the range of decisions a reasonable SSJ could have made and as such could not have been said to be unlawful.

CATEGORY A

R. (on the application of Flinders) v Director of High Security [2011] EWHC 1630 (Admin)

On 19 May 2003 the Claimant was sentenced to life imprisonment for manslaughter after the prosecution accepted a plea to manslaughter on the basis of diminished responsibility. His minimum term expired in 2007. The Claimant had remained a category A prisoner throughout his imprisonment.

The Claimant applied for judicial review of (i) the Director of High Security's decision to maintain his Cat A status, on the basis that he had erred in law in failing to hold an oral hearing to determine his re-categorisation; (ii) the Secretary of State for Justice's (SSJ) unlawful failure both to provide the Parole Board with relevant and current material, and to update reports which would have enabled it to conduct their hearing and (iii) the Parole Board's delay in convening hearings from November 2007 to December 2009, which he argued constituted a breach of his Article 5(4) rights, such that he was entitled to damages.

The application was granted in part. The decision not to re-categorise was quashed on the basis that the Director of High Security did err in law in failing to hold an oral hearing to determine the Claimant's re-categorisation on the basis that it could not be said that the failure to hold the hearing would have made no difference to the decision. While the question as to whether an oral hearing is required is fact specific, in this case there was a reasonable prospect that information would have come to light during the hearing which would have convinced the Director to re-categorise. The factors considered relevant in this regard were that (i) The Claimant had remained at Category A for a very lengthy period (ii) he had served more than 3 years over his tariff (iii) his mental illness was controlled (iv) he was an exemplary prisoner (v) there was psychological evidence as to reduction in risk.

However, the court rejected the argument that the SSJ had unlawfully failed to provide the Board with relevant material, noting that the Board itself made no complaint about the material nor did

they request additional updated material. The court went on to say [paragraph 93] "In any event, care should be taken when interpreting a word such as "current" in the context of the Parole Rules. In my judgment, the word should not be given an inflexible meaning. It does not mean, for example, that there must necessarily be a very close connection in time between the compilation of the reports required by paragraph 3 and the date of the oral hearing. A report can be a current report within the paragraph even if made some time before the hearing provided it still provides a proper and reasonable appraisal of the prisoner's risk factors, reduction in risk and performance and behaviour in prison as at the time of the hearing".

Finally in respect of the third limb of the claim, the Board conceded that the delay amounted to a breach of Article 5(4) but submitted that no relief should be granted. In refusing to grant damages the court said the Claimant could not establish that an earlier oral hearing would have led to his release. Nor was there any evidence that any distress and frustration had occurred as a result of the delay, which was sufficient to reach a level of intensity so as to justify an award of damages.

ADJUDICATIONS

R. (Bashir) v Independent Adjudicator [2011] EWHC 1108 (Admin);

This case concerned a prisoner failing to provide an MDT (Mandatory Drug Test) sample and placing reliance on his Article 9 ECHR rights, specifically that he should not have been found guilty of a disciplinary offence if in all the circumstances the request was disproportionate.

The prisoner was serving a term of 15 years imprisonment. In January 2010 he was required to provide a urine sample for drugs testing under PSO 3601 (Mandatory Drug Testing). The test had been authorised on the basis of a reasonable suspicion that the prisoner had taken controlled substances. The prisoner attempted to, but failed, to provide a sufficiently large sample of urine at 10.05am, 11.05am, 12.05pm and 13.05pm. He was offered water after each attempt but refused on the basis that he was a devout Muslim who was on a fast and as a result, he was unable to provide a sufficiently large urine sample. He was told that if he did not provide the required sample he would commit an offence under the Prison Rules. Following the failures he was found guilty and a penalty of 14 days additional detention was imposed on him. The prisoner argued that the finding of guilt breached Article 9 of the ECHR.

The court considered that on the evidence before the adjudicator, the prisoner had attended the prison's mandatory drug testing suite as required; He had tried to provide a sample on three occasions; had informed the prison officer of his fasting when summoned to provide a sample; he was a devout Muslim and there were many individual voluntary fasts outside of Ramadan. Further the prisoner's subjective belief that he could not break a fast once it had started had not been challenged. To be convicted of the offence the court held that the Adjudicator had to be satisfied to the criminal standard that the prisoner had intended to commit the offence and also that the order he disobeyed was lawful. It was open to the Adjudicator to infer intent to the necessary standard from a refusal to drink water when it is offered to enable a sample to be taken. However, it was the requirement of lawfulness that allowed the court to distinguish between cases

where a prisoner is on hunger strike for reasons outside Article 9 and those within.

The right to manifest one's religion was a qualified right and therefore the key issue was whether, if there had been any interference on the facts, it been necessary and proportionate? The evidence was that the prisoners fast would have ended at 4.30pm and there was no evidence that a sample taken then would have been materially of less forensic value than one provided at the last attempt (13.05pm), or that to provide for this later opportunity would have been disproportionately expensive or inconvenient. Accordingly, the interference was disproportionate and the adjudication was quashed. The court held that none of the findings in this particular case were intended to indicate that the Mandatory Drug Testing procedure was, of itself, unlawful in any way.

CONDITIONS

In the Petition of Robert Green and Ors, Court of Session (Outer House) [2011] CSOH 79, 12 May 2011

The petitioners were three prisoners (X, Y and Z) imprisoned in Peterhead Prison, Scotland. They lodged a petition for judicial review against the prison governor and Scottish Prison Service (S) based on the conditions within the prison. The complaint related to the toilet and sanitary conditions within the prison, which they argued amounted to inhuman or degrading treatment, contrary to art. 3 and art. 8 of the ECHR respectively.

The petitioners submitted that (1) requiring a prisoner to use any receptacle other than a screened and flushing toilet itself constituted a breach of art.3; (2) the conditions of detention as a whole constituted such a breach, including the practice of "bombing" by which prisoners defecated into newspapers or other items, or urinated into jars, before throwing the end product; (3) the conditions of their detention caused them to suffer feelings of low self esteem, inferiority, humiliation and mental anguish, which exposed them to distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in a sentence of imprisonment. Reliance was placed on the cases of *Malechkov v Bulgaria* (Application No.57830/00) and *Radkov v Bulgaria* (Application No.18382/05) which established that single cell slopping was sufficient to constitute a breach of art.3; and *Napier v Scottish Ministers 2005 1 S.C. 307*, in which the court recognised a breach of a prisoner's art.3 rights with reference to slopping out.

The court said that access to a screened and flushing lavatory was not a basic human right, and to require the use by prisoners of a chemical toilet in a single cell did not involve an interference with the respect for a prisoner's private life under Article 8 ECHR. However, where individuals were forced to queue with their receptacles and to empty them in the presence of others, then that constituted an infringement of Article 8. The court was not satisfied that there had been a violation of Article 3 and that requiring a prisoner to use any receptacle other than a screened and flushing toilet did not of itself amount to inhuman or degrading treatment. The case of *Napier* was distinguished because in that case not only did it involve the use of a chamber pot, but the decision was based on the "triple vices of overcrowding, slopping out and an impoverished régime". The court noted that difficulties might arise in differentiating the conditions which might fail under Article 3 yet succeed under Article 8, but a lower threshold applied in relation to the latter.

Hassan v Secretary of State for Justice [2011] EWHC 1359 (Admin) 27 May 2011

This case concerned the circumstances in which the segregation of a prisoner is justified, and the principles to be followed in deciding when the period of segregation goes beyond that which is necessary.

The prisoner suffered from moderate post traumatic stress disorder (PTSD) following the murder of his family in Iraq. He was serving a sentence for attempted murder. Whilst detained in prison there had been a number of adjudications concerning threats and assaults on prison staff. In February 2010 it was alleged that he had assaulted a fellow prisoner and was therefore segregated for "good order or discipline". He argued that his segregation was unlawful on the basis that it was unjustified under the Prison Rules and PSO 1700 (Segregation) because procedural safeguards to protect his mental health, contained within PSO 1700, had not been observed and these failures went to the lawfulness of the segregation. He also argued that the omissions gave rise to breaches of Articles 3 and 8. The suggested omissions were that in conducting the segregation health screen, the nurses had not noted in the relevant forms that the prisoner in this case had attempted suicide twice before his imprisonment and had self-harmed prior to and during his imprisonment. Following a review, the segregation board authorised his continued segregation for the same reasons as the initial confinement.

The court in considering the claim said that given his violent and disruptive behaviour in prison there was no doubt that segregation was justified. The Prison Rules and PSO 1700 had been followed and applied. The only issue in this case was whether the segregation had been for the shortest period possible given the evidence contained within the PSO around the effect of segregation on mental health. The court took the view that in deciding whether the period of segregation went beyond that which was necessary, the court would do so on *Wednesbury* principles of reasonableness.

Considering all the evidence of his disruptive behaviour in segregation, assaults on staff and the incident in February 2010, it was in the interest of other prisoners, safety of staff, and good order and discipline, that the prisoner should continue to be segregated. The duration of the period of compliance, and sufficient change in behaviour necessary by the prisoner, was a matter of judgment for the governor and the segregation board. On the facts before the court there was no evidence at any time during and after, that the segregation was having an effect on the prisoner's mental health. There was nothing to suggest that the regime applied in segregation breached Articles 3 & 8 of the ECHR. He showered and exercised regularly, was fed and clothed and he could purchase goods weekly and take out books from the library. Therefore no procedural safeguards had been breached.

HOME DETENTION CURFEW

R (Francis) v Secretary of State for Justice [2011] EWHC 1271 (Admin)

The Claimant, C, a Jamaican citizen, was liable to deportation following a 2 year sentence for drugs offences. She argued that her eligibility for early release under the Home Detention Curfew (HDC) scheme had not been properly considered because of an error in PSO 4630 which meant, that the prison had proceeded under the mistaken be-

lief that where a form IS 91 (a detention authority form) had been served on a foreign prisoner, that this made the prisoner statutorily ineligible for HDC.

The Court said, the paragraph describing the service of an IS 91 as a statutory bar to release on HDC and contained in paragraph 11 of PSO 4630, was wrong in law. However, although the prison had initially misinterpreted paragraph 11 of PSO 4630, they had corrected their mistake when they looked at the issue again. From then on, the reason for refusal was based on the service of an IS 91 form from the Home Office. Although service of an IS 91 was not a statutory bar for refusing release under the HDC scheme, it was still a proper reason for refusal. Therefore, the initial error of the prison authorities was immaterial.

LICENCE CONDITIONS

R (MA) v National Probation Service and the Secretary of State for Justice EWHC 1332 (Admin) 27 May 2011

This case concerned the use of judicial review as an Article 6 ECHR compliant mechanism in respect of challenging licence conditions.

The Claimant had been sentenced to nine years' imprisonment for kidnapping, falsely imprisoning and raping his estranged wife. Although an Indeterminate Sentence for Public Protection (IPP) was considered by the judge following conviction, it was deemed inappropriate given the Claimant's previous good character. By the time of his release at the half way stage, his wife had initiated divorce proceedings which the Claimant was contesting. That detail, in addition to a lack of remorse and the fact he was considered to bear a significant degree of animosity towards her, were felt to be significant factors when assessing his risk of serious harm under an OASys report completed shortly after his release on licence. As a result, in addition to the standard conditions, his licence conditions included an exclusion zone around the area where his wife or her family lived; not contacting her or her family and notifying his supervisor of "any developing personal relationships with women". He also had to remain at a probation hostel and report to staff every two hours from 8am to 10pm in addition to a night time curfew from 10pm to 8am.The Claimant argued that the conditions imposed on his release on licence were so onerous as to amount to a deprivation of liberty under Article 5 of the ECHR and a disproportionate interference with his private life under Article 8. Finally, it was suggested that the unavailability of a dedicated mechanism for challenging licence conditions before the Parole Board infringed Article 6 of the ECHR.

The Court in considering the claim held that the conditions fell some way short of amounting to a breach of Article 5 (both in terms of length of time and the practical effect of the conditions) both in light of UK and ECHR jurisprudence. It held that if the Claimant had been more forthcoming with the Probation Service, his reporting conditions may have been relaxed earlier than they were. He was not prevented from working in the family business so as to breach Article 8: at most he was inconvenienced. The availability of judicial review as a means of potential challenge meant that Article 6 of the ECHR did not require a dedicated mechanism. This was not a case where the reviewing court needed to conduct a fact-finding exercise. It was clear that some conditions needed to be imposed on the Claimant and a challenge on any conditions imposed by judicial review was Article 6 compliant.

CROSS BORDER

Hull v Regina [2011] EWCA Crim 1261 19 May 2011

This case concerned a prisoner transferred to the United Kingdom (UK) under the Convention on Transfer of Sentenced Persons 1983. The prisoner was a mandatory life prisoner convicted of murder in the Republic of Ireland. He was later transferred to the UK to serve the remainder of his sentence.

In the Republic of Ireland no minimum term to be served is set by the sentencing court where the term is life imprisonment. The prisoner sought to challenge the minimum term of 18 years which had been set by the High Court in September 2010 and following his transfer. The term was based on what he would have been sentenced to had he been convicted of a similar offence in the UK and at the time the offence was committed.

The issue for the Court was first, whether it had jurisdiction to hear appeals by transferred life prisoners against the setting of a minimum term by the High Court and secondly, the principles by which they could do so. The Court confirmed that although the UK was a signatory to the Convention on the Transfer of Sentenced Persons 1983, it had not signed up to Article 9(1)(b) of the Convention which provided that on a transfer, an administering State should convert the sentence through a judicial or administrative procedure into a sanction prescribed by the law of the administering State for the same offence. However, under Section 3(1)(c) Repatriation of Prisoners Act 1984, it was provided that the detention of a prisoner in the UK would be in accordance with the provisions contained in the warrant of transfer. In this particular case, the warrant provision was that the prisoner was to serve a term of life imprisonment. Since the provision could have been made by the criminal jurisdiction of a court in England and Wales, the effect was that on a transfer, a life prisoner would be treated as if the term had in fact been imposed in England and Wales except that there would no appeal against sentence.

The court considered that had this particular term been made in England and Wales, a minimum term would have been set by the High Court from which there would have been a right of appeal under s.9 of the Criminal Appeal Act 1968 and the Court of Appeal could have exercised its power to substitute a minimum term under section 11. Accordingly, the Court had the power to quash any order made on a reference under Section 273 of the 2003 Act (life prisoner transferred to England and Wales) and substitute its own order. On the basis that this approach was correct, that meant that Schedule 22 of the transitional provisions would also apply (minimum term to reflect the practice of the Secretary of State at the time the offence was committed). The High Court judge in this case had been unaware of the application of Articles 9(1)(a) and 10 of the Convention. The effect of those Articles was that the administering State could adapt the sanction to the nearest equivalent under its own laws as long as this did not result in a more severe punishment or longer detention than under the laws of the transferring state. Thus Article 9(1)(a) involved adapting a sentence, whilst Article 9(1)(b), which did not apply, was focused on converting a sentence. The High Court judge had converted the prisoner's sentence as opposed to adapting it. However, because the Irish Ministry for Justice could not provide any detailed information on its sentencing principles, the judge was entitled to rely on Section 269 of the CJA 2003

(determination of minimum sentence in relation to a mandatory life sentence) in arriving at a minimum term of 18 years. As a result, the appeal was dismissed.

UPDATES ON PRISON SERVICE INSTRUCTIONS

PSI 42/2011 – End of Polygraph Pilot

This PSI effectively cancels the requirement to include a polygraph condition in the licence of all male adult sex offenders released to the East and West Midland regions. This requirement had been set out in PSO 4/2009, but came to an end on 30 June 2011 as a result of this PSI. From Friday 1 July 2011, sex offenders in the East and West Midlands regions will therefore no longer be required to undergo testing and polygraph conditions should not be included in licences.

It should be noted that prisoners released before 1 July 2011 and were already subject to a polygraph licence condition will continue to be subject to the condition until 31 October 2011.

PSI 38/2011 – Public Protection Manual: chapter 12

This instruction adds a new chapter (chapter 12) to the Public Protection Manual (PPM). Chapter 12 provides information on how establishments *must* manage prisoners identified as being subject to terrorist notification requirements. The chapter includes information from Part 4 of the Counter-Terrorism Act 2008, which came into force on 1 October 2009.

Section 2.1 of the PPM outlines a list of those who will be subject to the notification requirement. Section 2.3 of the chapter provides that after 1 October 2009 people subject to the notification requirements will be informed of these requirements by the court during sentencing, but those convicted before 1 October 2009 and serving a custodial sentence will be informed through a legal visit by Counter Terrorism/Special Branch personnel.

Prisoners subject to the notification requirements are required to register in person at a police station in the area where they live, within three days of release. They must provide relevant personal details, including name, address, date of birth and National Insurance number. They need to submit to being photographed and fingerprinted. Any changes to their details must be sent by them to the police within three days. If the person subject to notification has stayed for longer than seven days (within a 12-month period) at an address not previously notified to the police then the police must be notified in person within three days. Finally, any intended foreign travel of three days or more requires the police to be notified at least seven days prior to departure.

PSI 37/2011 – Transfer of the Parole Board of functions under the Criminal Justice Act 1991: Release of long-term prisoners

This reflects statutory amendments made to the Criminal Justice Act (CJA) 1991, in particular Section 145 Criminal Justice Act 2009 which came into force on 2 August 2010. Following this amendment, the Secretary of State no longer has the power to make parole release decisions in respect of prisoners serving a minimum of 15 years and who are subject to CJA 1991. Such prisoners will now be dealt with in the same way as other categories of prisoners who are subject to the parole process. The Parole Board's recommendation will therefore now be sufficient.

PSI 35/2011 - Prisoner Participation in Public Consultation Exercises

From 26th April 2011, where a public consultation takes place, prisoners should be informed of the consultation and given an opportunity to respond. This consultation requirement is limited to matters which have a specific impact on the rights, health and interests of prisoners, as distinct from the general public as a whole.

Prison Governors and Directors have the responsibility of ensuring that prisoners are made aware of any public consultation affecting them and *must* ensure that prisoners are able to access the relevant consultation documents and to respond.

PSI 34/2011- Licences and Licence Conditions

This PSI provides updates for the application of standard and additional licence conditions for determinate and indeterminate sentence prisoners being released on licence. This instruction replaces Chapter 14 of PSO 6000. Additional licence conditions may be used where Offender Managers determine that standard licence conditions are "not sufficient" to assist the prisoner in successfully integrating into the community, prevent re-offending or to protect the public. Details of the additional licence conditions are set out at Annex A and B of the instruction.

In addition where long-term "non-converted" prisoners, subject to Criminal Justice Act 1991, are released at their Non-Parole Date, Governors now have the responsibility for setting the licence conditions, on behalf of the Secretary of State. It will therefore no longer be the responsibility of the Parole Board.

PSI 32/2011 - Ensuring Equality

PSI 32/2011 sets out the equality framework within prison establishments, including equality issues on race, disability, gender reassignment, age etc, as well as issues around harassment and victimisation. This PSI is focused on protecting the legal equality rights of prisoners. Equality for prison employees is separately covered in PSI 33/2011.

OMBUDSMAN CASES

Categorisation

Mr A submitted an appeal against a decision by HMP Dovegate not to re-categorise him from category B to C. Subsequently he was transferred to HMP Gartree and was told by HMP Dovegate in response to the request/ complaint that his appeal would now be dealt with by HMP Gartree. HMP Gartree said they would consider the appeal and undertake a fresh re-categorisation review, but in subsequent correspondence said any appeal in respect of the original decision should be carried about by HMP Dovegate as the decision making establishment. Mr A argued that this left him without a route of appeal.

The Ombudsman, in upholding the complaint, said HMP Dovegate's failure to consider an appeal against their decision was a clear breach of section 2.4.2 of PSO 0900. A subsequent sentence plan review held at HMP Gartree did not remedy the errors and failures which Mr A said were evident in the original decision from HMP Dovegate. The other concern highlighted by the Ombudsman was that the Director at HMP Dovegate had made the final decision on the categorisation review. This left Mr A with no avenue of appeal, as any appeal had to be made to the line manager of the as-

sessor or categorisation Board chair. The recommendation was therefore made that final decisions on re-categorisation reviews should be made below Director (or Number 1 Governor) so that prisoners have an avenue of appeal in line with PSO 0900.

Property

Mr E complained that items of his clothing had gone missing from the prison laundry on a day when he had been moved from his cell to the segregation unit. Mr E acknowledged that he had signed a property disclaimer and had used the laundry at his own risk. However, he said he was not in a position to collect his clothes due to a cell move that he had not anticipated. The investigation ascertained that the laundry was the only place in which prisoners could wash their clothes, and there were no written procedures governing its use. In addition, there was no audit trail to indicate who handed in laundry, and it was left unsecured awaiting collection.

As a consequence, although prisoners retained responsibility for their in-possession clothing, it was unreasonable to hold them responsible after items had been handed in to the laundry. It was accepted that there was no evidence to confirm that Mr E's items were received by the laundry orderly but this was due to the system in operation rather than any omission on the part of Mr E. There was no dispute that Mr E had been in possession of the lost items as they were recorded on his property card. However, the prison was unable to establish who had collected his laundry. In light of this the prison accepted that Mr E could not be held responsible for the loss and agreed to compensate him.

Conditions

Mr I complained about conditions in the segregation unit at HMP Frankland. Mr I said he had been taken to the segregation unit for adjudication on a bank holiday. He was strip searched on arrival, the cell had no vent or toilet seat, the window did not open, the furniture was made of broken cardboard and there were no sheets on the bed. Mr I said he was the only prisoner brought to segregation that day for adjudication and that strip searching in such circumstances amounted to bullying. He was held there for an hour and questioned why he was adjudicated on a bank holiday.

In response to a complaint, the Prison Service said the issue of the level of search was dependant on an assessment of risk, there was no sheet on the bed because Mr I was not being permanently detained there, the window could not be opened but the cell had ventilation panels, and the segregation unit was used in order to avoid disrupting association and because of staff availability that particular day. Finally they argued that, save for Christmas Day, Boxing Day and Good Friday, adjudications could be carried out on bank holidays. The Investigator found that there were other adjudications that day and it was normal practice for adjudications to take place on bank holidays. All prisoners were searched on arrival at the segregation unit (the local policy was considered as well as PSO 1700).

PSO 1700 says, in respect of segregation under Prison Rule 53(4), that whilst waiting for an adjudication to start 'the term segregation is not applied if a prisoner is held prior to and on the same day as an adjudication. However, if the prisoner is held for longer than four hours, this is segregation under rule 53 and an initial segregation Health Screen must be completed'. The Investigator

examined 32 Security Intelligence Reports in this case and concluded that the risks highlighted meant it was reasonable for a full strip search to have been conducted. Given the limited period that it was expected Mr I would be in the holding cell for, and the period he was actually in the cell for, and the fact that no complaint had been made to staff at the time as to the state of the cell, his complaint was rejected.

OTHER NEWS

Prisoner voting remains unresolved: Most recent developments

On 18 February 2011 the High Court (*Tovey and Another v Ministry of Justice (2011) EWHC 271 QB*) ruled that compensation claims from prisoners who were unable to vote in the 2010 general election would not succeed. The Court was told that claims have been launched in county courts nationwide by 585 serving prisoners, with a further 1,000 potential cases pending. Mr Justice Langstaff said:

'I hold that there are no reasonable grounds in domestic law for bringing a claim for damages or a declaration for being disenfranchised whilst a prisoner. Statute precludes it. Case law is against it. European authority is against the payment of compensatory damages in respect of it. A claim for a declaration is not hopeless, but difficult. '

A footnote to the judgment noted that the case was heard a day before Parliament debated the ban on voting by prisoners on 10 February 2011:

'Though the subject matter of each is the same – the enfranchisement of prisoners – the role of the courts and of the legislature are distinct. It is no part of the court's function to express any view as to the nature of legislative change, if any: merely to rule on that which the laws as currently enacted by Parliament require. This judgment is to the effect that, applying those laws, including the Human Rights Act 1998, a prisoner will not succeed before a court in England and Wales in any claim for damages or a declaration based on his disenfranchisement while serving his sentence. '

The House of Commons subsequently supported the continuation of the current ban, by a margin of 234 to 22 votes.

On 1 March 2011 the Government referred the latest ECHR ruling on the issue, the *Greens and MT (2010 ECHR 1826)* judgement, to the Grand Chamber of the European Court of Human Rights; this in effect appealed the Court's decision of 23rd November 2010 that the UK had six months to introduce legislation to lift the blanket ban. On 11 April 2011 the request for an appeal hearing was dismissed and the Court gave the UK government six months from this date to introduce legislative proposals to bring the disputed law/s in line with Convention.

The Government response to the Court's rulings

The *Hirst 2* ruling *(74025/01 2004 ECHR 122 30 March 2004)* says the UK's action in respect of prisoner voting should be "as it considers appropriate". This does not mean that doing nothing would be an appropriate option, but neither does it necessarily mean the Government must extend the right to vote to everyone. The UK is obliged to address it in some way however whilst the UK remains a member of the Council of Europe and a State Party to the European Convention.

The Government's initial plan to give

prisoners serving a sentence of less than four years, or less than one year, the right to vote would almost certainly remain incompatible with the European Convention because it would still be seen as a blanket ban.

This much appears to be clear from the judgment in *Frodl v Austria (Application no 20201/04 judgment 8 April 2010 ECtHR*). Following on from this judgment (and *Scoppola Nos 3 v Italy (Application nos 126/05 18 January 2011)* it seems the ECHR would allow some prisoners to be deprived of the vote in 'some' circumstances, particularly when it was an individual decision about an individual prisoner, related to their crime.

Deaths in custody provisions in corporate manslaughter law come into force

In March 2011 the government announced that the custody provisions of the Corporate Manslaughter and Corporate Homicide Act 2007 would be brought into force, and the Act now covers persons detained in Ministry of Defence service custody premises and in UK Border Agency (UKBA) facilities. The Statutory Instruments to bring the custody provisions into force and to extend the provisions takes effect from 1 September 2011.

There are currently serious gaps in accountability following a death in custody. Existing mechanisms for investigating deaths such as the Independent Police Complaints Commission, the Prisons and Probation Ombudsman and the inquest system are not concerned with determining liability. Investigations and inquest findings are not routinely monitored or published publicly and there is no statutory requirement for public bodies to act on the findings of these investigations. The current gap in accountability is exemplified by the fact that of the 12 unlawful killing verdicts returned by juries at inquests into deaths in custody since 1990, to date, none have led to a successful criminal prosecution.

INQUEST wrote to the government Minister to clarify the scope of the Extension Order and to check that UKBA subcontractors would be covered by the legislation (i.e. private companies like G4S or Reliance). In August, the Minister replied:

'…the Act will cover people detained at immigration detention facilities (described in the Act as a removal centre or a short-term holding facility), and persons being transported in a vehicle or being held in any premises in pursuance of immigration escort arrangements as defined by the Act. Those providing the escort arrangements, including private sector companies contracted to do so, will in principle be covered by the Act.'

Prisons Inspectorate report criticises 'demeaning' and 'unsafe conditions in Wandsworth prison

A report of an unannounced inspection of Wandsworth prison by HM Inspectorate of Prisons has criticised the "treatment and conditions of simply too many prisoners" as "demeaning, unsafe and ... below what could be classed as decent". According to the report, "the safety of prisoners held in Wandsworth is now a matter of serious concern"; it highlights that levels of self-harm and self-inflicted deaths are high, with about 32 incidents of self-harm each month and 11 deaths in custody between January 2010 and the time of the inspection (28 February-4 March 2011), four of which were apparently self-inflicted.

It also highlights that prisoners with mobility difficulties were being located on residential landings which did not allow them access to showers, with one prisoner with a disability who had been remanded for more than three months telling the inspection that he had not had a shower in that time; that "there was no strategy to meet the needs of foreign national prisoners", and that many foreign national prisoners were held beyond the end of their sentence, in one case for three years; that most cells were shared and had inadequately screened toilets; that at best, prisoners were locked in their cells for 16.5 hours a day, and at worst, were out of their cells for just two hours a day; and that black and minority ethnic prisoners were disadvantaged in significant areas of the prison, and "this needed to be addressed as a matter of urgency".

There have been reports that have been similarly damning of other prisons in England and Wales. A recently published report by the Inspectorate on the detainee unit at Long Lartin prison voiced concerns at its finding that "the detainees were no longer able to mix with the wider prison population", highlighting that "the risks to the mental and physical health of detainees of such lengthy, ill-defined and isolated confinement are significant".

New free phone support service for asylum seekers and refugees

From Monday 20 June 2011, the Refugee Council will start operating the free and confidential own-language telephone advice service for people seeking asylum and refugees. The helpline can help with information about:

- Asylum Support, Sections 95/98
- Section 4 support
- Accommodation and support issues
- ARC and Azure card queries
- Health, education, integration information

The number is 0800 808 2255 and is **free,** so you can call even if you have no credit on your phone. The service operates 9.30am-5pm on weekdays, except Wednesday when it closes at 1pm. For people with a hearing impairment, a minicom / textphone service is available on 0800 808 2259**.** So far, the following languages are covered: Kurdish Sorani, Farsi, Mandarin, Pashtu, Arabic, Tigrinya and English.

Prisoners' Advice Service: Legal Aid Lawyer of the Year award

The Prisoners' Advice Service has won the award for Best Legal Aid Firm/Not For Profit Organisation at the Legal Aid Lawyer of the Year Awards. These awards are non-profit-making, and are in celebration of the work of lawyers at the legal aid coalface. PAS was supported in its nomination by former service users, and amongst others Deborah Coles from INQUEST, Erwin James and Eric Allison from the *Guardian* as well as Hugh Southey QC and Judith Farbey QC.

PAS's nomination read: "The Prisoners' Advice Service is praised for combining technical legal skills with tremendously valuable outreach work, and the organisation has been at the heart of the development of prisoners' rights in this country. As well as undertaking groundbreaking litigation, it has also served to promote high standards among other lawyers doing the work, such as by providing regular legal updates. Former clients of the service say that it provided them with a lifeline while they were incarcerated".

PRISONERS' LEGAL RIGHTS GROUP MEMBERSHIP APPLICATION FORM

PRISONERS' ADVICE SERVICE

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

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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