PRISONERS' RIGHTS

Prisoners' Legal Rights Bulletin No 86

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PRISONERS' ADVICE SERVICE
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

STRIP SEARCHES

LW & Others v Sodexo Ltd SSJ [2019] EWHC 367 (Admin)

The claimants, all prisoners at HMP Peterborough brought a judicial review of the SSJ's decision to allow unlawful strip searches. A declaratory order to that effect was sought by the claimants. A claim was also brought against the operator of the prison, Sodexo, for alleged breach of Article 3 (prohibition of torture) and Article 8 (right to private and family life) of the ECHR. Sodexo admitted that it had breached its Article 8 obligations and these claims were settled by way of a consent order with damages to be determined by the County Court. Sodexo denied any breach of its Article 3 obligations.

Background

The prison houses male, female and transgender prisoners. Three of the claimants were women whilst the other was in the process of transitioning from male to female. On 27 July 2017 and 8 September 2017 it was alleged that the claimants had all been subjected to illegal strip searching by Sodexo prison officers.

No reasons were provided for the searches other than that they were based on intelligence. It was held in *LD, RH & BK v SSJ [2014] EWHC 3517* that this level of generalised information was insufficient to constitute a reason to carry out a search.

The searches proceeded straight to Level 2 without a Level 1 search first being carried out. PSI 07/2016 (Searching the Person) sets out a mandatory obligation that:

'Level 2 of the search must only be applied if there is intelligence or suspicion that the woman has concealed in her underwear or if illicit items have been discovered about the women's person during Level 1 of the search.'

Sodexo admitted that it had failed to adequately train its staff in how to conduct strip searches. It admitted that this led to a systemic failure.

The claimants argued that in contracting out the running of the prison to Sodexo, the SSJ had failed to provide adequate supervision or monitoring to ensure that rules in relation to searches were properly followed. They argued that the use of illegal strip searching was not isolated and happened regularly. They argued that the SSJ was aware, or ought to have been aware of this and that procedures were not being followed and that this led to there being a real risk of Articles 3 & 8 being breached.

HELD

The court found that there had been no breach of Article 3, however it did find that there had been a breach of Article 8 due to the strip searches representing a systemic failure. The unlawful searching involved a number of Sodexo's prison officers defaulting to the most intrusive form of search without considering whether it was necessary to do so. No adequate reasons were provided for the searches, no proper records were kept and the frequency of the illegal strip searching almost amounted to the routine searching that PSI 07/2016 had aimed to stop.

The SSJ should have had a framework in place which guarded against systemic breaches of Article 8 and that includes systems in place to ensure that Sodexo was training its staff properly.

DEPORTATION OF IRISH NATIONALS

R (on the application of Foley) v SSHD [2019] EWHC 488

The claimant was an Irish national serving an indeterminate sentence for public protection. He brought a judicial review against the SSJ's decision not to deport him to Ireland upon the expiry of his minimum term in 2014.

Background

In 2010 the Claimant received an IPP sentence for robbery in possession of an imitation firearm. His minimum term was to serve four years. This expired in April 2014. He has remained in custody since then because of the risk he is considered to pose.

The SSJ has the power to order the removal of foreign prisoners after the minimum term of their sentence has expired. This can be done without having to seek the approval of the Parole Board under the Tariff Expired Removal Scheme (TERS). Although this is applied across the board to non-UK nationals, special provisions apply in relation to Irish nationals, who are only deported in particular circumstances.

In April 2012 the claimant received notification that the SSJ was considering deporting him to Ireland. In July the same year the claimant was notified that the decision had been taken not to deport him. In 2016 he requested reconsideration of the decision however was further notified that the decision had been upheld and he would remain in prison. He was advised that 'careful note' had been taken of his behaviour whilst in custody but nevertheless he would not be deported.

The claimant argued that there was an unlawful 'blanket ban' on deporting Irish nationals. The court held that while no Irish nationals had been deported in the previous three years, this did not mean that there was a blanket ban in place. The court advised that deportation would be considered in some circumstances, however consideration had been given to the prisoner's individual circumstances and it had been determined that his case was not an exceptional case justifying deportation. The Home Secretary had decided that there was generally no public benefit in deporting Irish Nationals except in the most exceptional of circumstances, however this did not equate to there being a blanket ban.

HELD

It was held that there had been a proper decision making process and exercise of discretion when the decision was made.

The court held that there had been no interference with the claimant's rights to private and family life under Article 8 of the ECHR.

The claimant had also tried to argue that there was a difference in how foreign nationals from other countries were treated and this amounted to unlawful discrimination in terms of Article 14 of the ECHR (protection from discrimination). The court held that as deportation would not give the claimant a practical benefit and the decision to deport would not have an effect on his return and therefore it could not be discriminatory.

The claim was accordingly refused.

REFUSAL TO ACCEPT PAROLE BOARD RECOMMENDATION

R (Walleed) v SSJ for Justice [2019] EWHC 984 (Admin)

The case concerns a judicial review by Ali Walleed, a prisoner in closed conditions, of the decision of the SSJ to reject the Parole Board's recommendation that he be moved to open conditions.

Background

Mr Walleed was sentenced to serve an IPP with a minimum term of 8 years. That minimum term has now expired. Mr Walleed is liable to deportation. He has a long immigration history, including using a false identity to claim asylum in Ireland and a refused application for asylum in the UK. He was served with a notice of intent to issue a deportation order in March 2015 (before the minimum term of his sentence expired).

In October 2017 the Parole Board gave directions for a forthcoming hearing to determine the claimant's application to be released from prison. It was noted that the claimant was assessed as posing a high risk of harm to the public and victims and a medium risk to staff in the community and prisoners. In advance of the hearing the Parole Board sought clarification from the SSJ on what steps had been taken towards deportation and whether Mr Walleed had applied for asylum. The Parole Board indicated that it would greatly assist if the SSJ was represented at the hearing. The SSJ did not provide representation.

In November 2017 the Parole Board decided it could not order release but recommended Mr Walleed be moved to open conditions. In April 2018 the SSJ rejected that recommendation.

Case

Mr Walleed appealed against the decision of the SSJ on two grounds.

Ground 1 - procedural unfairness/breach of policy. There were two limbs to this argument:

- The decision was procedurally unfair as the SSJ relied on information relating to his immigration status without giving Mr Walleed the opportunity to respond.
- The delay by the SSJ in making a decision was a breach of policy which left the claimant in limbo and amounted to a form of immigration detention.

Ground 2 – The SSJ was in breach of Article 5 of the ECHR.

HELD:

Ground 1: There was no procedural unfairness in respect of the SSJ's decision. Mr Walleed's immigration history was set out in letters sent to the Parole Board. There was no suggestion on the part of the claimant that this was inaccurate. The Parole Board was clearly aware that the risk of him absconding in light of liability for deportation was a significant factor for consideration. The SSJ did not rely on significant material that was not before the Parole Board. The SSJ did not attend the hearing, and there was no obligation to do so, but shared information and provided guidance on the parameters of the recommendation sought in advance of the hearing. That was sufficient to discharge the obligation of co-operation.

The SSJ was in breach of PSI 22/2015 (which sets out parole guidance) by taking 5 months to make a decision instead of the required 28 days. The judge held that such delay used the

custodial system as a form of immigration detention. The judge, however, did not accept that the delay left Mr Walleed in limbo or amounted to a form of immigration detention because:

- His continued detention is based on his risk to the public and is unconnected to his immigration status.

- He is not in limbo regarding his immigration status as a notice that he was liable to deportation was served before the expiry of his tariff. A notice of deportation was served before the before the decision. He made a fresh asylum claim and at the date of the decision was not appeal rights exhausted. The process to finalise the claimant's immigration status is not yet concluded.

- At the time of the SSJ's decision Mr Walleed was a prisoner in closed conditions 'liable to deportation' for the purposes of PSI 37/2014 (which covers matters including eligibility for open conditions). That instruction includes a presumption that prisoners who are liable for deportation will not be suitable for open conditions unless they are assessed as presenting a very low risk of seeking to avoid the intention to deport by absconding.

- The Parole Board considered that the risk of absconding could be managed in open conditions but did not assess the claimant as presenting a low risk of absconding. In making a decision the SSJ was entitled to consider the risk to the public of re-offending, together with the risk of absconding.
- Although he had to wait several months for that decision he has not been deprived of his liberty or deprived of a less restrictive regime for a longer period than would have been the case had the decision been made on time.

Ground 2

For a prisoner's detention to be lawful for the purpose of Article 5(1)(a) of ECHR there must be a causal connection between his conviction by a competent court and the deprivation of liberty, and also a sufficient causal connection between his detention regime and the purpose of such deprivation of liberty. The threshold for establishing a breach of Article 5(1) is very high – it would require exceptional circumstances showing that the continued detention had become arbitrary.

The Parole Board's decision not to release the claimant was based on the risk to the public. There is no arguable issue as to the lawfulness of his detention. As a result there was no breach of Article 5(1). The delay in reaching a decision will have caused disappointment and frustration but was not sufficiently serious to justify an award of damages.

LICENCE REVOCATION AND ALLEGATIONS

R (Delaney) v PB & SSJ [2019] EWHC 779 (Admin)

The claimant brought an action for judicial review following a revocation of his life licence on the basis of allegations he had committed an assault.

Background

The claimant had received a mandatory life sentence in 2006 after he punched a man whilst working as a security guard. The claimant was a former boxer and had punched the man, who fell back-

wards and hit his head on the ground. The man subsequently died. The jury found that the claimant intended serious harm and his minimum term was set at 11 years.

The claimant was released in February 2017, however his licence was revoked by the SSJ after the claimant was arrested in October of the same year on suspicion of a series of domestic assaults which included allegations that he fractured his partner's wrist, perforated her ear drum and urinated on her. The case was then referred to the Parole Board which, after consideration neither directed release nor recommended a transfer to open conditions.

The test applied by the Parole Board when considering whether to release a life sentence prisoner is whether it is necessary for the public's protection that they continue to be detained. In the claimant's case, police arrived at the house and complaints were recorded through body cameras; however no evidence was actually recorded that could be used in court. The police were unable to prove that a crime had been committed and therefore no further action was taken in respect of the allegations. The Parole Board nonetheless decided that he should not be released or transferred to open conditions on the basis of the allegations.

This raised the question of whether prisoners can be recalled on the basis of allegations of further offending which suggests an increased risk to the safety of the public yet which are not actually proven nor fully investigated.

The claimant sought to judicially review this decision on the basis that (i) it was unreasonable not to release him on the basis that he was deemed high risk reoffender on the mere basis of an allegation of another crime; (ii) the reasons given by the Parole Board in reaching its decision were inadequate for the conclusion it reached on the level of risk and; (iii) the Parole Board, on the basis of its conclusion that the claimant should not be re-released, automatically leapt to the same decision on whether he should be released under open conditions.

HELD

It was held that this was a valid challenge and that the decision made by the Parole Board was based on an inadequate set of reasons. The decision of the Parole Board was therefore quashed.

The court held that where allegations of further offending had been made against a released prisoner which resulted in revocation of licence, the Parole Board could not take those allegations (regardless of how serious they were) at face value to then conclude that prisoner would represent a particular degree of risk.

PAROLE BOARD AND LIFERS

R (MacKay) v PB & SSJ [2019] EWHC 1178 (Admin) 1 March 2019

Background

The claimant was convicted in 1989 of the murder of a female sex worker and assaults (sexual and non-sexual) on a second female sex worker who survived his attacks. The claimant was given a life sentence with an initial 30 year tariff, subsequently reduced to 20 years. At the date of the hearing the claimant had served around 29 years and was 69 years old.

On 23 April 2018 a Parole Board hearing took place with attendees including

the claimant's solicitor, a prison psychologist, a psychologist instructed by the claimant, the claimant's offender supervisor and his offender manager.

On 30 April 2018 the Parole Board gave its decision and refused to direct the release of the claimant, or as requested by the claimant's solicitor, recommend the claimant be moved to open conditions as a precursor to his release.

In the conclusion section of the Parole Board's letter, there is specific reference to the testimony of the claimant at the hearing. In particular the letter refers to '*the moment when you threatened the Panel, quite openly, which was quite chilling to behold.*'

The claimant contends that no such threatening behaviour took place at the hearing.

The court reviewed the evidence from the Parole Board hearing which was in the form of a note prepared by the panel chair. This was not a verbatim account of what was said at the hearing. There were no references to threatening behaviour in the note.

The SSJ and the Parole Board did not take part in the proceedings and so did not offer an explanation of the origin of the references to threatening behaviour in the decision letter.

HELD

The court considered the Parole Board decision to be irrational in the absence of any supporting evidence. The decision was therefore quashed and a fresh panel is to be convened.

The judgement states that it would be helpful if all hearings were recorded by electronic means in future, as is now the case.

DETERMINATE SENTENCE RECALL

R (Youngsam) v PB & SSJ [2019] EWCA Civ 229

This was an appeal against an earlier decision in the Administrative Court in which it was concluded that Article 5(4) of the ECHR did not apply to the recall from parole licence of determinate sentence prisoners and that there was no breach of the common law duty of the Parole Board to make decisions concerning the liberty of offenders without undue delay.

Background

In 2002 Mr Youngsam was sentenced to a determinate sentence of 18 years for attempted murder. During his imprisonment, he was twice released on licence and subsequently recalled for breaching his licence conditions. Following his second recall, there was a significant delay in convening a Parole Board hearing to consider his re-release. Mr Youngsam argued this delay was in breach of his rights under Article 5 of the ECHR. The High Court concluded that Article 5(4) of the ECHR did not apply to the recall of determinate sentence prisoners but granted permission to appeal.

The Court of Appeal sought to establish whether Article 5(4) of the ECHR ever applies to recalled determinate sentence prisoners. Mr Youngsam argued that the opinion of the majority of the Supreme Court in *Whiston v SSJ* that Article 5(4) did not apply to the recall of determinate sentence prisoners was *obiter*, meaning that it did not form part of the binding decision and did not have to be followed by lower courts.

HELD: The Court of Appeal concluded that the view of the majority in *Whiston* regarding the scope of Article 5(4) did, in actual fact, form part of the *ratio*

decidendi of the judgment and was, therefore, binding on all lower courts.

The decision confirms that, in the absence of unusual circumstances, Article 5(4) of the ECHR does not apply to the release and recall from prison of prisoners serving fixed term or determinate sentences during that term of imprisonment, including in the period when they are entitled to be released on licence but are recalled for breach of licence conditions.

SEGREGATION

Syed v SSJ [2019] EWCA Civ 367

This was an appeal against a decision of the Administrative Court that transfer to a Managing Challenging Behaviour Unit (MCBU) did not amount to 'removal from association' within the terms of Prison Rule 45. There was also a cross-appeal from the SSJ in relation to the finding that conditions in the MCBU breached Article 8.

Background

On 9 December 2015, Nadir Syed (NS) was convicted of doing an act preparatory to committing an act of terrorism contrary to s.5 of the Terrorism Act 2005. Following conviction, he was placed in segregation at HMP Thameside under Rule 45 of the Prison Rules, from where he was subsequently moved to HMP Whitemoor.

NS remained in segregation for 11 months, until he was moved to the Managing Challenging Behaviour Strategy (MCBS) Unit at HMP Woodhill on 2 November 2016. His segregation was reviewed regularly by the Segregation Review Board and the Deputy Director for Custody in accordance with Rule 45. Justification for placing him in segregation was said to include the fact that the prison feared the claimant was planning to behead prison officers.

On 23 June 2016, he was sentenced to life imprisonment with a minimum term of 15 years.

On 22 September 2016 the relevant committee decided not to transfer NS from segregation to the Close Supervision Centre (CSC) but to transfer him to the MCBS Unit at HMP Woodhill instead. The committee noted that his level of risk could not be accurately determined at that time and therefore a main wing location would not be appropriate. On 21 December 2016, he brought judicial review proceedings in respect of this decision.

NS' first instance hearing took place on 21 March 2017. The judge found that his transfer to the MCBS Unit was not a 'removal from association' within Rule 45, but that the restrictions imposed on him in the MCBS Unit interfered with his Article 8 rights.

The Court of Appeal considered two issues:

1) NS' appeal: did the conditions under which NS was detained in the MCBS Unit at HMP Woodhill amount to 'removal from association' within the meaning of Rule 45?

2) SSJ's cross appeal: did the same conditions amount to an interference with NS' right to respect for private life under Article 8(1) ECHR?

HELD

1) NS' appeal was dismissed. The court

discussed the construction of Rule 45 and preferred SSJ's interpretation. The plain meaning of 'removal from association' means removal from all contact with other prisoners, not a reduction or limitation in association. 'Removal from association' is a synonym for segregation. The MCBS Unit did not involve complete segregation and was considered a step down from the CSC, where complete segregation could occur.

2) The court found in favour of NS. He had been locked in his cell for between 20.75 and 21.5 hours a day for a period of over 4.5 months from 2 November 2016 to the hearing in March 2017. These restrictions did sufficiently interfere with his right to a private life such as to engage Article 8(1). The interference was not justified in accordance with the law due to breaches in applicable policy and NS' inability to make representations prior to the decision being made. The trial judge did however declare that no damages would be awarded.

RULE 39 CORRESPONDENCE

In a case taken by a prisoner at HMP Wymott, the High Court declared unlawful the policy adopted by the prison governor requiring each and every item of legally privileged correspondence received by a prisoner to be opened by prisoners in the presence of a prison officer. The apparent purpose of this unlawful policy was to allow a prison officer the opportunity to check whether any illicit material was included within the envelope sent to the prisoner.

Declaring the said policy as unlawful, the High Court, as part of the consent order, ordered the defendants, The Governor of HMP Wymott and the SSJ, to pay the claimant's costs.

WHOLE LIFE SENTENCES

Petukhov v Ukraine (No 2) [2019], App no 41216/13, ECtHR

Background

The applicant was sentenced to life imprisonment in Ukraine after being found guilty of a number of serious crimes committed by an organised criminal group. His case concerned several claimed violations of Articles 3 and 8 in relation to:

i) Poor conditions of detention;

ii) Inadequate medical care;

iii) Irreducible life sentence;

iv) Restricted family visits.

i) Poor conditions of detention

These complaints included a lack of sufficient daylight and fresh air, limited opportunity for outdoor walks and poor yard conditions, constant video surveillance, poor sanitation and inadequate disinfection, damp and cold cells, poor quality drinking water and inadequate and insufficient provision of food. In assessing the conditions of detention, the ECtHR emphasised that it was careful to consider the cumulative effects of the conditions and duration of detainment as well as the specific allegations made by the applicant. Ultimately, however, it did not consider that the applicant had satisfactorily substantiated its complaints and ruled this ground as inadmissible.

ii) Inadequate medical care

The applicant complained that he was not being provided with adequate medical care and treatment for his TB. He claimed that there were repeated shortages of key drugs and that when sup-

plies had run out staff would falsely record him refusing to take the mediation. The domestic authorities admitted to shortages of anti-TB medication and inadequate procurement procedures in the prisons. These shortages rendered the applicant's treatment ineffective and caused him to develop a resistance to all possible anti-TB drugs meaning that his disease became incurable. The authorities' inability to assure a regular, uninterrupted supply of essential anti-TB drugs to patients was considered to be a key factor in the failure of his TB treatment and called into question the overall quality of medical treatment. The ECHR agreed that the authorities had failed to safeguard the applicant's health in detention and considered that this breached Article 3. It also noted the lack of any legal framework in Ukraine for ensuring palliative care in prisons.

iii) Irreducible life sentence

The applicant challenged the compatibility of Ukraine's laws on life sentencing with Article 3 as it was neither *de jure* nor *de facto* reducible. The only possible routes to release were on the grounds of a serious illness preventing further imprisonment or through the presidential clemency procedure.

The application for release on health grounds was refused as TB was not a condition which fell within the list of diseases warranting early release and it was considered that the applicant was stable. In practice, release on the grounds of serious illness preventing further imprisonment meant only that a prisoner could be allowed to die at home or in a hospice rather than in prison; recovery would lead to a return to prison.

Presidential clemency is therefore the only viable opportunity for release. However, the applicant argued that the procedure lacked clarity and foreseeability but that life prisoners were effectively excluded from the process under the regulations. Furthermore, no reasoning was required to be made in decisions regarding requests for clemency, nor was there a judicial review process available. The ECtHR likened this to a modern-day equivalent of the royal prerogative of mercy and concluded that, as a result, there was no realistic prospect of release or sentence review.

iv) Restricted family visits

The applicant complained about restrictions on his wife visiting him in prison.

HELD: The ECtHR found that there had been violations of Article 3 of the Convention on account of both the lack of medical care available to Mr Petukhov in detention and his irreducible life sentence. Ukraine was ordered to pay damages to Mr Petukhov as a result and conduct a reform of its system and, under Article 47 (implementation), to review every whole-life sentence case to examine whether continued detention was justified.

Despite finding some deficiencies, the Court considered the applicant's complaints in respect of the material conditions of his detention to be insufficient to raise an issue under Article 3 and thus declared them inadmissible. The Court also declined (on a 5:2 majority) to examine or give a separate ruling on Mr Petukhov's complaint in respect of the restrictions on family visits.

UPDATES ON FRAMEWORKS & POLICIES

PRISON AND PROBATION POLICY FRAMEWORKS

Further to the list we published in our last Bulletin, the Prison and Probation Service have now added the following Framework documents:

- HMPPS Finance Manual Policy
  3 October 2019
- Serious and organised crime policy
  3 October 2019
- The care and management of individuals who are transgender
  22 July 2019

We are updating our PAS information sheets as frameworks are published to reflect relevant changes. Please contact us if you would like copies.

PAROLE BOARD RULES *2019*

Unfortunately in the summary of the new Parole Board Rules in our last issue, we omitted details of Rule 19. Rule 19 expands the type of cases in which decisions can be taken 'on the papers'. The case of those prisoners serving life sentences will no longer require an oral hearing. However, the Board says that although there will be cases of indeterminate sentence prisoners where a decision can be safely and fairly 'on the papers' to avoid unnecessary delay, in the majority of cases, oral hearings will continue to be used in the interest of public protection and fairness.

OMBUDSMAN AND ICO CASE SUMMARIES

Removal of clothes during search [Case ref: 86256/2019]

Mr T complained that he was required to remove religious headwear during Level B searches at Whitemoor prison. The Ombudsman recommended that Whitemoor amend their local policy on the removal of religious headwear to ensure that it is in line with PSI 07/2016 (Searching of the Person) and HMPPS accepted recommendations and have implemented the changes.

PSI 07/2016 states that when conducting a Level B (standard) rubdown search, the removal and searching of religious headwear is acceptable when there is receipt of a positive hand-held metal detector indication that cannot be accounted for or on intelligence or suspicion that contraband is concealed on the person. The removal of religious headwear as part of the search should be conducted in private and by staff of the same sex as the person being searched. Staff should not attempt to unwind or remove religious headwear; the person being searched must be given the opportunity to do so themselves.

In addition, Mr T complained that he was being required to remove his cardigan during Level B searches on C Wing. He stated that he was routinely required to remove a cardigan that did not have pockets or lining when walking through the metal detector. Under PSI 07/2016 it is not normally expected for clothing to be removed or raised in order for a prisoner's waistband to be searched and a prisoner can be asked to remove or raise outerwear only in the existence of intelligence or reasonable suspicion that something is concealed in the area.

Whitemoor's local Searching Policy (January 2019) was reviewed and it stated that 'prisoners will be required to remove jackets, coasts or outer garments to be search as required by staff', suggesting that this was at the discretion of the staff. PSI 07/2016 is clear that outerwear should only be raised or removed when there is reasonable suspicious that something may be concealed and so Whitemoor's local policy was not in line with the national policy.

Recategorisation review [Case ref 82179/2018]

Mr D was a Category B prisoner who complained to the PPO in 2018 about a re-categorisation review which took place in September 2017 at HMP Frankland. The complaint was based on the fact that the review had taken place without Mr D's knowledge and that Mr D had been unable to submit his representations. In addition, Mr D's complaint covered the fact that there had been inaccuracies within his RC1 recategorisation form, which had been completed by his then Offender Supervisor.

In response to Mr D's complaint, the Governor at HMP Frankland stated that he had appointed Mr D a new Offender Supervisor and had directed them to speak to Mr D in order to review the recategorisation decision of September 2017. However, it was revealed that this review of the 2017 decision had never taken place. In response to the PPO's further enquiries to HMP Frankland, the Governor confirmed that Mr D's new Offender Supervisor (together with Mr D's input) has set to work quickly in securing Mr D's transfer to HMP Lowdham Grange. This transfer was successful.

The PPO contacted the Director of Lowdham Grange setting out the facts of Mr D's case and requested an immediate recategorisation review. The review took place in October 2018 and the outcome resulted in refusing Mr D to be categorised as a category C prisoner. However, Mr D appealed against this decision. The PPO received a copy of the subsequent recategorisation appeal decision, dated 21 December 2019, in which the decision was made to downgrade Mr D to category C.

The PPO was pleased for Mr D and saw no merit in pursuing the matter further, since Mr D successfully secured his recategorisation. Mr D's complaint was upheld and has now been resolved.

Ban on books being handed or posted in [Case ref: 83775/2018]

Mr G complained that he had been denied access to books that had been handed in to the prison for him during a visit.

HMP Full Sutton had issued a Community Notice stating that books could only be ordered from approved suppliers; and, whilst families and friends could hand books into the prison, books could not be posted into the prison. The prison subsequently issued a Community Notice which stated that books would no longer be permitted to be handed in on visits, resulting in prisoners only being able to source books from the approved suppliers. The prison confirmed that families and friends may order books from the approved suppliers, but these must be delivered directly to the prison.

In its submissions to the PPO in support of the policy, the prison made reference to a risk assessment that had been conducted, which noted an increase in the amount of books that had been handed

in on visits which had tested positive for psychoactive substances. The prison stated that it needed to maintain a safe and decent environment for both staff and prisoners, whilst reducing the potential tracking of the substances.

The PPO found in favour of Mr G. The PPO referred to 'Prison Service Instruction (PSI) 30/2013 – Incentives and Earned Privileges', as amended on 1 September 2015, which provided that: *'families and friends will also be allowed to send in or hand in books to prisoners irrespective of whether or not there are exceptional circumstances [subject to security checks and restrictions].'* The PPO was sympathetic to the policy aims of the prison; however, the policy was effectively a blanket ban that failed to comply with national policy. The prison had therefore breached PSI 30/2013.

The PPO recommended that HMP Full Sutton ensure that the prison was acting in accordance with national policies, and allowed Mr G to have the books that were handed in, subject to the usual security checks.

Use of force [Case ref 71993/2016]

Mr M raised a grievance relating to HMP Whitemoor's handling of an investigation into his complaint of use of force by an officer. The PPO investigated whether the prison had provided Mr M with adequate information relating to its investigation, whether the prison had updated its information regarding the incident following the outcome of its internal investigation, whether the investigation was carried out appropriately and gave Mr M sufficient opportunity to contribute and finally, whether the prison owed Mr M an apology.

In July 2015 there was an incident during which Mr M was assaulted by an officer. Mr M immediately asked for an investigation, but received no written confirmation from HMP Whitemoor that it would investigate and heard nothing at all until he was interviewed several months later.

In January 2016 Mr M commenced the formal complaints procedure and, following submission of a Comp 2, the Governor visited him without warning and discussed the issues at a very high level. At some point after this meeting, he was taken aside, handed a brown envelope and was given just 20 minutes in which to read the contents. Mr M was dissatisfied for several reasons; the document was just three A4 pages and its contents were disappointing, his request to get a pen and paper in order to make notes was refused and the governor who gave him the document knew nothing about it and was unable to answer any of Mr M's questions. Mr M was unsatisfied by the prison's responses to and handling of his complaint and therefore escalated it to the PPO, asserting that throughout the investigation and subsequent complaints process the prison had failed to address his concerns, and compounded his distress.

To investigate Mr M's complaint, the PPO referred to PSO 1300 – Investigations and PSI 2/2012 – Prisoner Complaints. They also obtained a copy of the prison's investigation report and annexes, as well as requesting information about what exactly had been disclosed to Mr M.

The PPO found that the investigation was commissioned and carried out largely in line with the requirements of PSO1300, but HMP Whitemoor had breached the requirement to give interviewees reasonable advance notice. In the course of its investigation, the PPO

ascertained that the investigation had been delayed and the prison failed to inform Mr M of the delay in breach of paragraph 2.3.5 of PSI 2/2012. Although the PPO agreed with HMP Whitemoor that it was not appropriate for Mr M to be told what action had been taken against the officer, they asserted, however, that Mr M should have been told that his complaint of unnecessary use of force had been upheld. The three page document which Mr M was allowed 20 minutes to read was not available for the PPO to examine and they were instead provided with a document of eight sides. The PPO found that, although the document could have been somewhat condensed and contained some personal information which would have to be redacted, it was not possible to reduce it to just three pages without losing a significant amount of content. Mr M's complaint was serious and it was important for him to be confident that the prison's investigation had been robust and thorough, which he could only know by being given a copy of the entire report to review at his leisure. Finally, although the PPO did not review all of the records held on Mr M, the one reference to the incident on NOMIS reported it in neutral terms and reflected Mr M's complaint of assault. The PPO did state, however, that if the incident were reported elsewhere in terms that portray Mr M negatively then that would be inappropriate.

The PPO upheld all four elements of Mr M's complaint and recommended that the Governor of HMP Whitemoor apologise to Mr M, provide him with a redacted copy of the full investigation report, ensure that the findings of the investigation are noted on Mr M's NOMIS account and ask all department heads to ensure that the incident had not been negatively reported.

Access to information [Case 85428/2019]

Mr D's complaint arose after he did not receive information about himself which he had requested. The PPO partially upheld his complaint.

On 28 November 2018 Mr D requested information about himself from the Psychology Department at HMP Lowdham Grange. On 29 November 2018, the Psychology Department responded, saying that Mr D would need to 'put a DPA request in'. Subsequently on 3 and 6 December 2018, the Psychology Department advised Mr D that he would 'need to go through the DPA process'.

Following Mr D's complaints between December 2018 and January 2019 to HMP Lowdham Grange that he had not received the information he had requested, the Psychology Department informed Mr D that it would send him a letter to answer his concerns. In January 2019, the Psychology Department returned a COMP1 form to Mr D, explaining that Mr D would need to 'submit a general application to DPA'.

The PPO investigated whether Lowdham Grange handled Mr D's request for information about himself in line with PSI 03/2018.

Paragraphs 5.27 – 5.29 of PSI 03/2018 - Data Protection Act 2018 and General Data Protection Regulation state that requests made by any individual for personal information about them are called Subject Access Requests (SARs). SARs are to be responded to within one month (30 calendar days) from the date they are received. If requests are received from offenders, ex-offenders or their representatives, prison staff should 'immediately determine if the request is a SAR or a request for routine information, which can be given directly to

the offender. If [the prison staff] are satisfied that the request is a SAR, [the prison staff] must send it immediately on to the data protection team based in Branston'.

Based on the available evidence before the PPO, Mr D first requested documents from the Psychology Department at HMP Lowdham Grange on 28 November 2018. On 14 December 2018, Mr D's SAR was being dealt with by the Data Protection Compliance (DPC) team at Branston.

The PPO found that although there was not a significant delay in Mr D's request being processed, Lowdham Grange did not handle Mr D's request for information in line with PSI 03/2018. As soon as staff identified Mr D's request for information as a SAR, they should have submitted this to the DPC team at Branston. Lowdham Grange have now issued a 'Notice to Staff, reminding them of the correct process to follow when they receive a request for information that they identify as being a SAR.

However, the PPO also held that the Psychology Department at HMP Lowdham Grange was not in a position to provide Mr D with the information he had requested. SARs are to be dealt with by the DPC team at Branston, and complaints could be escalated to the Information Commissioner's Office.

Restriction on use of IT equipment [Case ref 81515/2018]

Mr C complained that he was unfairly banned from using IT services. The Security Collator's reasons were that Mr C had been convicted of offences relating to the use of a computer, including the possession and distribution of indecent photographs. Mr C submitted a number of complaints about the restriction. In particular, Mr C noted that the Prison Service IT did not allow access to the internet and all work was strictly monitored. Three months after his initial complaint, Mr C was told he was entitled to use IT services under strict supervision. However, Mr C was then turned down a for a library orderly role because he was told restrictions on computer access were still in place. Mr C then complained to the PPO.

The PPO reviewed security information about Mr C and asked about the investigation carried out by the Senior Officer. The PPO also reviewed two letters issued by the then Director of Public Sector Prisons and referred to the Prison Service Instruction and IT Security Policy. The investigation found that there was confusion over what exactly Mr C was allowed to do. Additionally, in justifying the decision to deny Mr C access, prison staff had referred to letters from the Director of Public Sector Prisons. However, these letters did not place an absolute ban on access to IT, even for those who had been convicted of offences involving the use of computers. The letters only stated that any access should be risk assessed, and there was no evidence that in Mr C's case any risk assessment had been carried out.

Upholding Mr C's complaint, the PPO stated that he should not have been absolutely barred from using any IT (and hence from any employment requiring access to IT). When the PPO's report was issued, Mr C was no longer at the prison in question and therefore the PPO saw no need to make any recommendation with regard to Mr C's access to IT. However, the PPO recommended that within four weeks of the issue of the PPO's report, the Governor should ensure that all relevant staff were fully aware of and understand the policy on prisoners' access to IT.

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