PRISONERS' RIGHTS

Prisoners' Legal Rights Bulletin No 76

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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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HERBERT SMITH FREEHILLS

Contents

CASE REPORTS

AUTOMATIC DEPORTATION

Hesham Ali (Iraq) (Appellant) v Secretary of State for the Home Department (Respondent) [2016] UKSC 60

This appeal concerned the deportation of "foreign criminals" as defined in the UK Borders Act 2007 and was the subject of a challenge to a deportation order against Mr Ali.

Mr Ali is an Iraqi national who has lived unlawfully in the UK since 2000. He made an unsuccessful asylum claim in 2002. In 2006 he was convicted of two counts of possession with intent to supply Class A drugs and sentenced to four years' imprisonment and released from custody in January 2009. He has been engaged to a British citizen since 2005 but owing to the constraints of his immigration status they have not married or started a family. He has no remaining family in Iraq.

On 5 October 2010, the SSHD made an automatic deportation order under section 32(5) of the UK Borders Act 2007. This provision requires deportation orders to be made in respect of foreign criminals unless one of the exceptions in section 33 of that Act applies, which includes breach of ECHR rights. A foreign criminal is defined in section 32(1) as a person who is not a British citizen, who is convicted in the UK of an offence and who is sentenced to a period of imprisonment of at least 12 months. The SSHD found that the appellant did not fall within any of the exceptions in section 33. The appellant appealed this decision, successfully arguing that an exception in section 33 applied because his removal would be incompatible with his Article 8 rights. The Court of Appeal allowed the SSHD's appeal and remitted the appeal for reconsideration by a differently constituted Upper Tribunal. This appeal to the Supreme Court was against that decision by the Court of Appeal to remit.

HELD: The Supreme Court dismissed the appellant's case by a majority of 6-1. The leading judgment considered that the 2012 Immigration Rules were a relevant and important consideration when assessing the proportionality of the interference with Article 8 rights. The weight to be attached to each factor in this balancing exercise falls within the margin of appreciation of the national authorities. In particular, the Immigration Rules state that there is a presumption that the deportation of foreign criminals is in the public interest, except where specified factors are present and thus outweigh that interest. Aside from those specified factors, the Rules state that exceptional circumstances – ie compelling reasons – are required to outweigh the public interest in deportation. Whilst the Immigration Rules are not law, they do have a statutory basis and require the approval of Parliament. It is therefore within the margin of appreciation to adopt rules reflecting the assessment of the general public interest made by the SSHD and endorsed by Parliament.

CATEGORY A ORAL HEARINGS

Bell v Secretary of State for Justice [2016] EWHC 1804

The claimant was a post-tariff mandatory lifer who had been sentenced to six life sentences for murder, attempted murder, rape and buggery. He challenged two decisions made by the Category A Review Team (CART) in 2014 and 2015 not to recategorise him downwards from category A. In each instance the claimant had asked for but been denied, an oral hearing. The claimant sought a judicial review arguing that it was unreasonable to deny an oral hearing on the facts of his case, in particular given that there was conflicting expert evidence.

HELD: The court decided that the decisions not to permit an oral hearing were correct and that there was no unfairness caused by the refusal to permit an oral hearing. The court recognised that during his lengthy imprisonment the claimant had never had the benefit of an oral hearing for categorisation purposes. The court also recognised that there were conflicts between the psychological expert reports before CART, and acknowledged that conflicting expert evidence is one of the circumstances in which an oral hearing may be required as a matter of fairness (citing paragraph 88 of Lord Reid's judgment in *R (Osborn) v Parole Board* [2014] AC 1115 as the source of this principle). However the court took the view that even when adopting the interpretation of the report that was most favourable to the claimant, it was "never likely in reality to provide a foundation for a decision to recategorise the claimant"; there was therefore little point in an oral hearing. The court also considered that the offences were of "the utmost gravity" and that there was "clear evidence" of a real risk of escape and the "high" risk to the public if this happened. Therefore a decision to deny an oral hearing to determine the categorisation of a prisoner will not be unfair on grounds of conflicting expert evidence where the categorisation decision would be unlikely to be any different even if all the conflicts were resolved in favour of the prisoner.

INDETERMINATE SENTENCES -

ABSCONDER POLICY

McAtee v Secretary of State for Justice [2016] EWHC 1019 (Admin)

The claimant, serving an IPP, was 6 years over tariff when he was moved to open conditions following a Parole Board recommendation. After serving 3 months in open prison he was transferred back to closed conditions without notice by the defendant in light of its new 'Absconder Policy' as he had a history of absconding from prison.

The prisoner lodged a judicial review against the decision to move him to closed conditions, arguing that (1) the transfer without notice was procedurally unfair and inconsistent with PSO 4700, with the earlier decision to transfer him to open conditions and with internal Interim Instructions; and (2) a breach of public law duty as there were no systems in place to afford him a reasonable opportunity to demonstrate that he was no longer dangerous.

HELD: The court found that in light of new Absconder Policy it was not procedurally unfair to transfer the prisoner to closed conditions. However, the prisoner should have been told that the review of his categorisation had given greater weight to his history of absconding, a gist/summary of criteria that had been applied to his case and the negative factors which led to the decision to transfer. The internal Interim Instructions had not been published, so that ground could not succeed. In the circumstances, no relief was given.

In relation to the second part of the claim, the court held that the public law duty as to what would be a reasonable opportunity would depend on the specific facts of each case. In the instant case, the court found that there had been a limited delay of 5 months between the prisoner going to closed conditions and being offered assessment for the 'progression regime' (designated category C facility for indeterminate sentenced prisoners with an abscond history who are no longer able to transfer to open conditions). The court considered that the duty to afford prisoners a reasonable opportunity to demonstrate they are no longer dangerous had been fulfilled by the introduction of the progression regime.

PRISONERS' VOTING RIGHTS

Millbank & Others v United Kingdom (44473/14)

The ECtHR determined that the applicants, who are convicted prisoners, had an admissible complaint that there was a breach of Article 3 of Protocol No. 1 concerning the individuals' rights to vote in elections.

In a joint ruling on behalf of 22 applicants, who complained about their ineligibility to vote in both the European Parliament 2014 and Westminster Parliament 2015 election, all of the applications were held to be admissible.

In making its decision the ECtHR considered the leading cases on similar issues, namely *Hirst v the United Kingdom (No,2) no. 74025/01* and *Greens and M.T v the United Kingdom nos 60041/08 and 60054/08*; both of these cases concluded the statutory ban on prisoners voting in elections is, by reason of its blanket character, incompatible with Article 3 of Protocol No 1. However, the UK has so far ignored all of these rulings, and Parliament has voted several times in favour of a blanket ban on prisoner voting. The court held that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants, hence no award of damages was made.

ACCESS TO REHABILITATIVE COURSES

Gourlay v (1) The Secretary of State for Justice (2) Sodexo Limited [2016] EWHC 1957 (Admin)

The claimant had been convicted of three offences of rape in 1991. After his release, in 2000, he was convicted for a further offence of rape and sentenced to life imprisonment with a tariff of 5 years 2 months. At the time of this judgment the prisoner was 11 years over tariff, and into his 16th year of imprisonment in closed conditions. In order to progress through the prison system, the claimant needed to complete a sex offenders' treatment programme (SOTP). He had repeatedly been assessed as unsuitable for the programme because he maintained that he was innocent of all of the offences of which he had been convicted. The programme was unsuitable for offenders who denied their guilt. The claimant did take other courses, but stated that he did not gain anything from them and that there was nothing he needed to change. In 2015 a psychologist concluded that no further treatment or intervention could be recommended, because it was not possible to make any meaningful changes to the claimant's attitudes and behaviour unless he chose to change and could see the benefits to himself of doing so.

The claimant was therefore unable to demonstrate a reduction in risk in relation to sexual offending and remained in closed conditions.

The claimant sought a judicial review of the defendants' alleged breach of their duty under the common law and Article 5 ECHR to provide him with a reasonable opportunity to demonstrate that he no longer presented an unacceptable danger to the public. He made a 'systemic challenge' relating to the non-provision of courses for those in denial, and an 'individual challenge' based on the fact that over a long period of time he had not been assessed and identified for an achievable rehabilitation pathway.

HELD: The claim was dismissed. The court stated that denial of guilt must not, of itself, prevent progression or release of a prisoner, but it will be a relevant factor in assessing risk reduction. The court also pointed out that the duty is to provide an opportunity that is 'reasonable in all the circumstances'. The extent of available resources and

competing needs for limited resources are a relevant consideration. There is no duty to do 'everything conceivably possible' for the claimant. The 'systemic' duty includes a duty to keep course provision under review and develop courses in line with ongoing research, including those designed to assist categorical deniers. The court decided that there had been no breach of that duty in this case. In any event, the claimant would likely not qualify for the programmes which were currently being researched.

The judge concluded that the claimant had been provided with an opportunity, reasonable in all the circumstances, to rehabilitate himself and demonstrate that he no longer represents an unacceptable danger to the public. The fact that he had so far been unable to do so does not mean that he had not had that opportunity; the reason lies within his own attitudes, including his refusal to recognise any need for change himself, and his refusal to discuss an offence which might have given him access to the SOTP.

As a side issue, the judge held that the duty to provide rehabilitation provision is the same for the Secretary of State as it is for prisons, whether the prisons are private or run by the state.

RECALL

Browne v Parole Board [2016] EWHC 2178 Admin

Mr Browne, a determinate sentence prisoner, was recalled to prison following his release on licence; he was later convicted by his own plea of two breaches of a non-molestation order whilst on licence. The Parole Board decided not to direct his re-release following an oral hearing.

Mr Browne challenged the refusal on the following grounds: i) failure to apply a presumption in favour of release; ii) unfair assumptions against the claimant made by the defendant in the absence of a fair procedure for the determination of disputed matters or proper enquiry, ie procedural unfairness; and iii) irrational or wrongful assessment of a high risk of serious harm to the claimant's ex-partner rendering it necessary to detain and/or failure to have regard to material evidence and considerations.

HELD: The court dismissed the application. It agreed that a presumption in favour of re-release must be applied by the panel but although the panel had not been reminded of this at the oral hearing, and although the decision did not mention such a presumption at all, the court held that the panel had nonetheless correctly applied this presumption. Only where there is a 'clear positive indication' that there was a failure to apply the presumption, such as where the panel effectively shifts the burden of proof onto the prisoner, is a court entitled to find that the presumption has not been correctly applied.

The court took the view that although unconfirmed allegations are of themselves insufficient to prove a risk of reoffending, they can be taken into account when assessing risk. There was no obligation on the panel to determine whether the allegations were true. Further there is no obligation on the panel to address everything, provided that it addresses 'the substance of the issues required to be addressed'.

Finally it was not irrational for the panel in the particular circumstances of the case to conclude that there was a high risk of causing serious harm to an intimate partner, although there had been no injuries and no serious psychological harm, as well as no record of domestic violence. The claimant's argument that case law suggesting that the test for judicial review had moved away from be-

ing one of *Wednesbury* unreasonableness to being one of proportionality was dismissed by the court because, although this point has been raised in some Supreme Court cases, there is no actual ruling to that effect and adopting a test of proportionality would therefore be premature.

UNLAWFUL DETENTION

Bowen & Stanton v Secretary of State for Justice [2016] EWHC 2057 (Admin)

The claimants were both convicted of serious offences and sentenced to indeterminate sentence, which they each served. The Parole Board then reviewed their cases and concluded that detention was no longer necessary for the protection of the public, and directed them to be released, subject to additional licence conditions, including a period of residence at Mandeville House, an Approved Premises (AP). Each claimant had to wait some months for a bed at Mandeville House. Their claims relate to that period of waiting, some 69 days and 118 days respectively, which they challenge as being, in whole or part, unlawful detention.

The claimants argued that given the decision taken by the Parole Board to release them, the defendant should have done so immediately or within a short period of time, as once it is decided that a prisoner is no longer a threat to the public there is no reason why they should be further detained. They also believed that the defendant was in breach of Article 5 ECHR and that detention became unlawful once it continued after release has been ordered. As a last point they argued that the defendant should have assisted them in their release and rehabilitation irrespective of the resources available at the time.

HELD: The claims were dismissed. The court concluded that that the release of the claimants was subject to the condition that they be released to Mandeville House. Therefore until space became available there was no duty to release. When residence is a condition of release, that moment comes when the condition is capable of being fulfilled.

In terms of the breach of Article 5 the court found no arbitrariness. There was no question of breaching a duty to make adequate provision of APs as the supply of APs was sufficient. It was therefore considered that that the detention after the point of release was lawful and that the delay was reasonable.

PAROLE– OPEN CONDITIONS

Stubbs v The Parole Board [2016] EWHC 28 (Admin)

In November 2006 Mr Stubbs was given an IPP with a minimum term of four years. In May 2014, when he was a category C prisoner, he appeared before the Parole Board requesting that he be transferred to open conditions. There was a general consensus that Mr Stubbs had made efforts to address his risk profile while in closed conditions; however the Parole Board was presented with conflicting evidence by two psychiatrists, on the question of whether sufficient progress had been made to justify a move to open conditions.

In the circumstances, the Parole Board did not recommend a transfer to open conditions, noting its own concerns about Mr Stubbs in its decision letter, and the need for him to undertake particular additional work. All parties recognised that existing accredited programmes would not provide Mr Stubbs with the opportunity to carry out this additional work and, as such, some form of tailored programme would need to be provided. Since this time, Mr Stubbs had been held in three different prisons, none of which had the facilities to enable him to carry out this additional work,

and had been informed that his offender manager has been unable to find another prison which could provide such facilities. In 2015 the Parole Board again refused to recommend a transfer to open conditions as the additional work had not been undertaken.

Mr Stubbs applied for judicial review on the grounds that the Parole Board's 2014 decision was irrational as: 1) it relied too heavily on the conclusion of one psychiatrist despite rejecting the evidential basis for this; 2) the Parole Board gave no reasons for preferring this psychiatrist's evidence to that of other witnesses; and 3) it required Mr Stubbs to carry out work which was not properly identified and was unworkable in practice, as the facilities necessary for this were not available in closed conditions.

HELD: The court dismissed Mr Stubbs's first two grounds with little difficulty suggesting that, in fact, the Parole Board had relied upon its own analysis of the evidence and perception of Mr Stubbs, rather than the psychiatrist's evidence. On the third ground, the judge recognised that *'were the situation to continue, [Mr Stubbs] would never be able to move to an open prison and consequently he would never be released from prison, despite his own willingness to undertake the Additional Work. That cannot be right.'* However, the court nevertheless dismissed this ground suggesting that the Parole Board was entitled to assume the SSJ had complied with its duty to make reasonable provision to allow prisoners to demonstrate their safety for release. In this instance it was SSJ who had failed in their duty, rather than the Parole Board. Nevertheless, the judge indicated that, in future decisions on this matter, he would expect the Parole Board to assess whether the additional work was really the only way in which Mr Stubbs could demonstrate his fitness to move to the open estate, given the lack of facilities.

ARTICLE 3 & 8 ECHR

Szafrański v Poland (17249/12) ECHR

This case concerned the inadequate separation of toilet facilities in a shared prison cell.

Between 31 March 2010 and 6 December 2011 Mr Andrzej Szafrański, a Polish national, was detained in ten different cells in Wronki Prison, Poland. Of these, seven of the cells contained a toilet in the cell entrance which was only separated from the rest of the cell by a fibreboard partition without doors.

Mr Szafrański complained of poor sanitary conditions in the cells, and claimed the inadequate partition meant he was not afforded even a minimum level of privacy. He submitted that he had requested that the prison authorities at least provide a curtain to separate the toilet from the rest of the cell. However, his requests were refused on the grounds that domestic law did not contain special rules on the way in which sanitary facilities should be separated off.
Mr Szafrański submitted that as a result he had been subject to inhuman and degrading treatment, in breach of Article 3 of the ECHR, and that his right to respect for his private life, under Article 8, had been breached.

HELD: The Court held that there had been a breach of Article 8, but not Article 3. It noted that in previous cases where the insufficient partition between sanitary facilities and the rest of the cell was at issue, other aggravating factors were present and only their cumulative effect allowed it to find a violation of Article 3. In contrast, here the other conditions in the cell, such as lighting, heating and ventilation were appropriate, and so the threshold required for a breach of Article 3 was not reached.

In respect of Article 8 the Court held that, in having to use the toilet in the

presence of other inmates, Mr Szafrański was deprived of a basic level of privacy in his everyday life and that the domestic authorities had failed to discharge their positive obligation to provide access to sanitary facilities which are separated from the rest of a cell in a way which ensures a minimum of privacy. Accordingly Article 8 had been breached. Under Article 41 the Court awarded Mr Szafrański 1,800 euros for non-pecuniary damage.

ARTICLE 3 ECHR

Bamouhammad v Belgium (47687/13) ECHR

This case concerned the impact of a prisoner's conditions of detention on his mental health.

The applicant, Farid Bamouhammad, a French national, was convicted in Belgium of a range of offences between 1984 and 2008, including murder and robbery. In 2007 a psychiatrist recorded that he was suffering from Ganser syndrome (also known as 'prison psychosis') and that his mental state was deteriorating due to the special prison regime he was subject to and frequent transfers.

Between January 2006 and November 2014 Mr Bamouhammad was transferred approximately 40 times between prisons. Due to problems of discipline and violence he was restrained by his wrists and ankles throughout his 11-day stay in one prison in 2007, and in each of the prisons he was held in from June 2008 until his release in 2014 he was placed on a 'special individual security regime', involving solitary confinement and/or systematic searches.

Although Mr Bamouhammad was eligible for day release from 2007, prison leave from 2008, and release with an electronic tag from 2009, all requests for such alternatives to detention were denied by the domestic courts. This was despite reports from professionals, from 2011, that his imprisonment no longer satisfied its legitimate objectives. Medical reports recommended psychological supervision, but Mr Bamouhammad's repeated transfers prevented this.

Due to the above Mr Bamouhammad alleged that he was subject to inhuman and degrading treatment, in breach of Article 3 of the ECHR, which had affected his mental health. He also claimed there had been a breach of Article 13, which provides the right to an effective remedy.

HELD: The European Court of Human Rights held that there had been a breach of Articles 3 and 13. The Court found in particular that the manner of Mr Bamouhammad's detention, involving continuous transfers between prisons and repeated special measures, together with the prison authority's delay in providing him with therapy and refusal to consider any alternative to custody despite the decline in his state of health, had subjected him to distress of an intensity exceeding the inevitable level of suffering inherent in detention, breaching Article 3. The repeated transfers had denied Mr Bamouhammad an effective remedy by which to submit his complaints, in breach of Article 13.

The Court found that the vast majority of Mr Bamouhammad's transfers had not been justified by security imperatives or any need to avoid a risk of escape, and that a fair balance had not been struck between security and the need to ensure Mr Bamouhammad was detained in humane conditions.

The Court recommended, under Article 46, that Belgium should introduce a remedy for prisoners to complain about transfers and special measures. It held, under Article 41, that Belgium must pay Mr Bamouhammad 12,000 euros for

non-pecuniary damage and 30,000 for costs and expenses.

ARTICLE 8 - PROHIBITION ON GROWING BEARD

Birzietis v Lithuania (Application No. 49304/09)

The applicant, Mr Birzietis, was detained in a prison in Lithuania at the time of these events. Upon arrival, the prison regulations were made known to him, including a rule prohibiting prisoners from growing beards. The applicant signed to confirm he understood the rules. About a year later, he submitted a request to allow him to grow a beard for health reasons. He stated that he had been diagnosed with tongue cancer and had undergone radiation treatment, and therefore shaving irritated his skin. Medical personnel examined him and found no traces of irritation, and they noted in their report that he had admitted that he made the request largely because his electric shaver broke and he could not afford a new one. The prison denied the request on this basis.

The applicant argued that the prohibition on his growing a beard while in prison violated his right to respect for his private life under Article 8 ECHR, and that the rule was not in accordance with the law. The respondent argued the rule was legal, as legal acts provide that prisons can establish their own internal order: imprisonment necessarily entails certain restrictions on the personal choices of prisoners, such as the requirement to wear special clothing, justified by the need to facilitate identification and prevent disorder, and the prohibition on beards was no different; the prohibition aimed to maintain discipline and hygiene, and to ensure security and proper supervision.

While the Court agreed that the measure was in accordance with the law, it expressed reservations about its seemingly legitimate aim. Firstly, the Court noted that the justification of 'hygiene and tidiness' was wholly unrelated to the exceptions listed in Article 8(2) for interference with one's Article 8 rights. Secondly, the Court doubted the justification of 'prevention of disorder and crime', noting that the respondent did not identify how permitting prisoners to grow beards could lead to such activity.

In any event, the Court stated that the measure was not necessary in a democratic society. Indeed, this would require there to be a pressing social need justifying the interference with Article 8, and the measure to be proportionate to its aim. In this instance, the Court considered the rule was not proportionate: it placed an absolute prohibition on prisoners growing a beard, irrespective of length, tidiness, or other considerations, and it appeared arbitrary as the rule did not include other types of facial hair, such as moustaches and sideburns.

Accordingly, the Court held 6-1 that there had been a violation of the applicant's rights under Article 8. It recognised that his desire to grow a beard was related to the expression of his personality and individual identity.

In a dissenting judgment, Judge Wojtyczek argued that there had been no violation, finding that the approach and reasoning of the majority was flawed. He recognised that although an absolute prohibition on prisoners growing beards may be problematic in certain circumstances, such as where the decision is based on religious or medical grounds, the applicant had not shown that such circumstances prevailed. In his view, the Court should not in principle call into question absolute bans so long as their implementation on the facts of the case is not incompatible with the ECHR.

UPDATES ON PRISON SERVICE INSTUCTIONS

PSI 12/2016 Writing healthcare reports for the parole and recall processes

This is a new instruction that has been written to clarify the existing requirement for prison healthcare staff to provide written reports to the Parole Board, and to attend oral hearings to give evidence when directed to do so, and when the written evidence alone is not sufficient to reach a decision. The instruction sets out the nature of the evidence that healthcare staff are expected to provide, and how to challenge Parole Board directions that are considered to be unclear or unachievable. It also introduces an amended SPR-F template for the healthcare report to be used in all cases subject to the Generic Parole Process (PSI 22/2015 / PI 14/2015) and recall reviews. The template has been agreed with NHS England and NHS Wales, and is compatible with the existing prison health care contracts.

PSI 17/2016 (PI 16/2016) The care and management of transgender offenders

This instruction provides information and guidance on the care and management of people who identify as transgender in prison and in the community in statutory contact with providers of probation services. The primary focus of this policy is those who identify as transgender and who have expressed a consistent desire to live permanently in the gender they identify with which is opposite to the biological sex assigned to them at birth. This includes those who are intersex and who wish to transition to a gender different from the sex assigned to them at birth. The policy also deals with those who have a permanent neutral (non-binary) gender identity or who have a more fluid gender identity (including those who identify as gender-fluid and/or transvestite). Transgender people who have applied for or gained legal recognition of the gender they identify with (via a Gender Recognition Certificate) are included in this policy in terms of any support, care and management needs relating to their transgender status.

The instruction deals with identification of and communication with transgender prisoners and people being supervised, assessments and decisions via Transgender Case Boards, sentence management in custody and the community, and complex and high risk offenders. A glossary of terms is provided.

The instruction notes that transgender equality is a rapidly developing area of policy: a NOMS Transgender Advisory Board will be established to enable NOMS to develop further guidance and policy in response to the rapid pace of academic research, social and legislative changes within this policy.

OMBUDSMAN CASES

Independent healthcare complaints body - HMP Parc

Mr Y lodged a complaint with the PPO regarding the failure by nursing staff to attend when he was coughing up blood. He further contended that he was unable to refer his healthcare complaint to an independent body at HMP Parc.

The PPO reviewed Mr Y's healthcare entries as well as witness testimony from officers on-shift and found no evidence to suggest that the prisoner had been coughing up blood that day.

The PPO then investigated Mr Y's complaint concerning the prison's healthcare complaints procedure. Given that the prison is private and its healthcare is not provided by the NHS, there was no access to the Parliamentary and Health Service Ombudsman. Neither was there any clear route of complaint through the privately-run healthcare service. The PPO discovered that healthcare complaints were often redirected back to the healthcare staff at the prison. They noted that there was 'a need for both independence and medical expertise and authority'.

The PPO did not find in Mr Y's favour that nursing staff had failed to attend, however they did find there was a lack of independent governance for healthcare complaints which was 'wholly inadequate' for the prison.

The PPO recommended that within 3 months of the report, all relevant governing bodies for the prison's healthcare should establish independent routes of complaint for prisoners at HMP Parc for all types of healthcare complaint. Furthermore, there should be a clearly sign-posted complaints procedure before the end of 2016.

Access to distance learning

Mr B complained that HMP Full Sutton had refused his application to undertake a 'Business Start-Up' course. This was because Full Sutton's Activities Approval Panel had raised psychology and security concerns – specifically, that setting up his own business would have parallels with his previous employment, which had been highlighted as an offending risk for him.
Mr B argued that he should be allowed to participate in the course to give him more options in the future to rebuild his life, as due to his mature age and criminal record he would find it difficult to obtain quality employment. He explained that the business he was planning was different to his previous employment which had been highlighted as a risk factor, because it did not involve travel. Mr B also argued that the prison's response was based on out-of-date policy, as PSI 33/2010 (under which his application was considered) has now been replaced by PSI 32/2012.

The PPO considered Mr B's OASys alongside Chapter 9 of the Public Protection Manual (PPM) and found that HMP Full Sutton's reasons for refusing Mr B's application for the distance learning course were sound and consistent with the PPM, as the intended start-up business was 'virtually identical' to the business he was employed in when he offended.

The PPO noted that the relevant part of the current PSI 32/2012 was identical to the old guidance, so that this did not render Full Sutton's decision unsound. Mr B's complaint was not upheld.

Loss of, and damage to, property following transfer

Mr X complained that on his transfer to closed conditions at HMP Whatton, some of his non-perishable property was lost, some was broken, and some

suffered leakages. He also claimed that he was not permitted to dispose of food items when leaving HMP North Sea Camp and take glass jars containing food items with him to HMP Whatton.

The PPO requested from HMP Whatton a copy of Mr X's Property Card and Prisoner Escort Record covering his transfer. Contrary to the requirements of PSI 58/2010, these were not provided by HMP Whatton.

The PPO upheld Mr X's complaint in part: (1) as HMP Whatton had failed to provide any documentation, the claim for lost property was upheld and compensation recommended unless the items were returned to Mr X; (2) the claim regarding leakages was upheld on the same basis and compensation was recommended; (3) however, the claim in relation to the refusal to dispose of food items was not upheld – whether or not the items were disposed of or left for other prisoners to eat, the result would be the same for Mr X; (4) the claim in relation to the refusal to allow Mr X to take glass jars containing food with him on his transfer was not upheld as it was not unreasonable that Mr X was unable to take glass jars with him into closed conditions.

Furniture in segregation cells

Mr M complained to the PPO because HMP Swaleside refused to provide a table in his segregation cell.

Swaleside's decision was based upon security reasons, due to previous poor discipline in the segregation unit before Mr M was located there. The decision applied to the entire segregation unit. Swaleside also stated that a table was not required, and that Mr M could sit on his bed and eat his food from his lap.

The PPO initially agreed with Swaleside. However, the Prisoners' Advice Service reminded the PPO that although the security reasons might be justified, under PSI 17/2012 the security assessment (and the decision to remove furniture) should be made on an individual basis.
Prison Service Order 1700 on Segregation Outcome (PSO 1700) states:
1. Prisoners are housed in cells that provide safe and decent conditions
2. Normal [segregation] cells are well lit and equipped to a standard similar to that found on normal location within the prison
3. Any restriction of facilities … is to be supported by a risk assessment
4. Governors must ensure that the restrictions on prisoners segregated under Prison Rule 45 … are no more than are necessary to protect the prison concerned or to maintain the good order or discipline of the establishment.

The PPO upheld Mr M's complaint. Swaleside had not carried out an individual risk assessment for Mr M. It found a complete ban on tables in segregation cells was inappropriate and unfair, and was a punishment for all prisoners based on the actions of a few. Also, Swaleside's suggestion that Mr M sit on his bed to eat food from his lap did not meet with the PSO 1700 requirement of 'decent conditions'.

The PPO recommended that Swaleside ensure all prisoners in segregation have individual risk assessments before furniture is removed, as required by PSO 1700.

Duty of Care to Prevent Assault

Mr K (a vulnerable prisoner) complained to the PPO about a lack of duty of care following an alleged assault on him by other (mainstream) prisoners in February 2015 in a category C establishment.

Reference was made in Mr K's complaint to a number of questions. How was one of the alleged perpetrators allowed to attack him after having made

verbal threats three days earlier? Could he have a copy of the CCTV and the report from an instructor? Why was he not allowed to return to the classroom following the assault? Why was he not asked if he wanted to press charges against his attackers? Why were photographs of his injuries not taken?

During the PPO's investigation, many conflicting accounts were put forward of the incident and a number of questions remained unanswered. On the balance of probabilities, it was determined that Mr K's evidence was credible.

It was determined that the prison had failed in its duty of care towards Mr K and it was recommended that a letter of apology be sent to Mr K by the Governor. In addition, specific recommendations were made in relation to the introduction of notices and systems at the prison to ensure, for example, that CCTV in disputed incidents and written records be retained.

Sending out self-image photographs

Mr C complained to the PPO after being refused permission to post two self-image photographs out of HMP Full Sutton to his sister. In his complaint, Mr C stated that he had completed an A to Z programme which he considered to be an Offending Behaviour Programme (OBP) therefore allowing him to have pictures taken and posted yet was refused permission to post the photos on the basis that the A to Z programme was not an OBP.

During the PPO's investigation, a copy of current details of OBP's issues by the Ministry of Justice was obtained. This lists 47 accredited OBPs with the A to Z programme being the only OBP which is not accredited.

PIN 104/2015 "Prisoner Self Image Photographs" provides a list of circumstances in which permission for self image photographs should be approved. One such circumstance is following completing of an OBP. Although approval for two photos to be taken was given to Mr C, this was on the understanding that these were to be kept in Mr C's possession. Indeed, applications for self image photographs to be sent out of prison can only be granted by the Head of Security or above.

The complaint regarding being unable to post self image photos out was not upheld as the A to Z programme is not an OBP and is instead more like a precursor to an OBP. In addition, permission by the Head of Security or above must be obtained to send self image photographs out of prison. The allowing of Mr C to keep the photographs was simply a compromise.

Job and activities applications

Mr Z complained that HMP Frankland had inappropriately withheld activities and jobs from him and had discriminated against him. He also complained about delays and inefficiencies from Frankland's activities hub when applying for jobs.

Frankland denied discrimination and said that it followed local allocations processes. During the course of the PPO's investigation, Mr Z was allocated a job at Frankland.

The PPO found that the matter was resolved when Mr Z was allocated a position and that it could not conclude that the prison had acted inappropriately in giving other prisoners positions ahead of Mr Z.

However, the PPO concluded that the failure to tell Mr Z about his position on job waiting lists or to give timescales for waiting time for jobs was in breach of PSI 3/2012. It also found that inconsistencies in responses to various com-

plaints would have left Mr Z feeling concerned and frustrated and contributed to his concerns that there was discrimination. The PPO recommended a notice to staff reminding them to tell prisoners about waiting lists and timescales for positions as required by PSI03/2012.

Delay in accessing medical treatment

Mr D complained that (1) there was a delay in seeing the nurse when he first complained of chest pain, as he was told to wait in a queue at the dispensing hatch while another prisoner was dealt with, (2) there was a delay in getting him to the hospital as he was made to change into prison clothing, and (3) these delays resulted in long-term health effects.

HMP Wakefield responded that (1) the staff did not assess the situation as requiring Mr D to be escorted directly to the nurse or to make an emergency call, and that he had been first in the treatments queue so delay was minimal, (2) Mr D was a high security prisoner, and a nurse had felt it was practical for him to change into prison clothing, and (3) it is impossible to determine if the delay in getting Mr X the required medical treatment caused any long lasting damage to his health.

The PPO found that it was reasonable for staff to take Mr D to the dispensing hatch, and as he was first in the queue any delay would have been minimal. However, the PPO also found that it was unreasonable in the circumstances to make Mr D change into prison clothing before leaving the prison while in severe pain, and against the advice of the specialist cardiac nurse. Although delays in treatment for heart attacks can lead to long term complications, the experts agreed it is impossible to determine if the delay caused any long-term health effects to Mr D and therefore the third part of the complaint was not upheld.

WHITE PAPER: PRISON SAFETY AND REFORM

On 3 November, the Ministry of Justice published its White Paper, Prison Safety and Reform, which sets out the government's plans for reshaping the prison system and which is the precursor to the Prison Reform Bill promised by former Justice Minister Michael Gove.

Although Gove has now been replaced by Liz Truss, the content of the White Paper has his stamp on it, in that the main 'reform' plans consist of the introduction into the prison system of similar mechanisms to those he brought into schools when he was Education Minister, with the White Paper stating that the plan is to 'reform the whole framework through which the prison system is run', along the lines of 'the success of other public sector reforms in education and health'.

Governors of six prisons have already been formally granted greater autonomy. This will be expanded to more existing prisons and incorporated in planned new gaols to be built on the sites of currently closed prisons at Wellingborough in Northamptonshire and Glen Parva in Leicestershire, as well as at the new HMP Berwyn in Wales which is due to open in February 2017. The White Paper also announces plans to build five new 'community prisons' for women.

The main proposals consist of:

- Devolved power for governors, who will be freed from the current '562 policies prisons must comply with' (presumably this refers to PSIs and PSOs), to make decisions about regimes and budgets, and in particular regarding the use of prison labour in conjunction with local businesses.
- A framework of standards and expectations (with agreed targets for escapes, assaults, time prisoners spend out of their cells and progress in education, health and work).
- Prisons to be ranked in league tables according to their performance against these targets.
- A strengthened prisons' inspectorate and a 'rectification process' for 'failing' prisons, consisting of various types of intervention, including replacing senior management with different 'leadership'.
The recruitment of 2,500 new prison officers by 2018.

There are a series of other measures, some of which have been around before:

- A personal officer scheme whereby each prison officer is responsible for overseeing the care and progress of six prisoners.
- Increased emphasis on teaching of basic Maths and English.
- Recruitment of ex-army personnel and recent graduates as prison officers.
- More money to be spent on surveillance, phone-blocking and anti-drone technology.
- Special units for 'radical extremists' to which 'the most subversive individuals will be removed from the mainstream prison population… to protect others from their poisonous ideologies.'

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