PRISONERS' RIGHTS

Prisoners' Legal Rights Bulletin No 88

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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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WHITE & CASE

Contents

COVID-19 POLICY GUIDANCE

Since the start of the Covid-19 pandemic, two Statutory Instruments have been issued, making changes to the Prison Rules. These are entitled The Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020, Nos 1 and 2.

No1 was published on 5 April and introduced the early release from custody scheme for certain prisoners who have 61 days to the end of their sentence. Although at the time of its publication, the media said that up to 4,000 prisoners would be released, as of 15 May only 66 had been freed under that scheme, with another 26 released on special purpose licence; the majority of the second group being pregnant women and those with small babies in custody.

No 2 was published on 15 May and makes amendments to make lawful the suspension of prison visits which was already in place, to reduce access to education and the chaplaincy, and to make changes to allow Independent Adjudicators to refer cases back to prison governors if they cannot practically deal with them due to Covid related restrictions.

The government has also produced a number of guidance documents, related both to the release schemes and prison regimes. In several instances this only became publicly available under threat of legal action.

CASE REPORTS

PAROLE AND ALLEGATIONS

R on the application of Andrew Royston Morris v Parole Board and SSJ [2020] EWHC 711 (Admin)

The claimant was convicted of breaking into his partner's house and holding his partner, her brother and the claimant's infant daughter hostage at knifepoint. The claimant was ordered to serve an IPP sentence with a minimum term of two years.

Between 2013 and 2017, the claimant was twice released on licence and returned to prison. On the first occasion, the claimant confronted an ex-partner at her home. A Building Better Relationships Programme report alleged that the claimant grabbed his ex-partner by the throat. The claimant acknowledged a verbal confrontation took place but denied physical aggression. The alleged victim retracted her statement to the police to shield her son from being compelled to testify. The claimant's failure to disclose this developing relationship to his Offender Manager was a breach of licence.

On the second occasion, a different partner contacted a Domestic Abuse Intervention Service, alleging the claimant had persistently contacted her after she had ended their relationship. The claimant was not charged with harassment, but the police served the claimant with a Prevention of Harassment letter. The claimant denied he had been in an intimate relationship with the alleged victim. Receipt of such a letter is not an admission of the conduct alleged. However, the claimant's failure to disclose this relationship amounted to a breach of licence..

At a parole hearing in 2018, the Parole Board refused to direct the claimant's release on licence. In reaching its

decision, the Board considered the 2014 and 2017 allegations. In particular, it found that: (i) the claimant had given an inconsistent account of his relationship with his ex-partner in relation to the 2014 allegation, and (ii) the claimant struggled to be open and honest with professionals about his lifestyle.

The claimant challenged the Board's decision on the grounds of procedural unfairness, alleging its consideration of unproven allegations breached Article 5(4) of the ECHR, or alternatively was contrary to common law and procedurally flawed.

The claimant separately challenged the SSJ's 2019 Guidance on Allegations, which states that Parole Boards presented with an unproven allegation must make an assessment as to its relevance and weight in order to decide whether and how to take the allegation into account. The Guidance states that allegations should be disregarded only where not relevant. If a finding of fact cannot be made, Parole Boards are nonetheless encouraged to consider the "level of concern" raised by the allegation and its circumstances. The claimant alleged the Guidance was flawed.

HELD:

The court rejected the application for judicial review. The Board's decision was not unfair and the Guidance is not unlawful.

The Board is not a court of law but an expert body tasked primarily with assessing the risk posed to the public by a prisoner. Strict rules of evidence and principles such as the presumption of innocence and burden of proof do not apply. There is no limitation on the nature of the information that may be considered in assessing risk, beyond the Board's common law duty to act fairly. The court drew a distinction between mere allegations with no factual basis and allegations with some prima facie evidential basis. Whilst mere allegations cannot lead to a finding that a prisoner poses a risk to the public, consideration of allegations with some evidential basis is not procedurally unfair in principle. Indeed, Parole Boards may be bound to consider allegations in order to comply with their duty to act rationally.

It was held that the Board had not given undue weight to the allegations. It had made no findings of fact as to the truth of the allegations, but had merely used the material available to establish: (i) the claimant's presence at his ex-partner's home in 2014 giving rise to the attendance of police and the taking of a witness statement; and (ii) the sending of correspondence by the claimant which gave rise to a Prevention of Harassment Letter in 2017. The Board's decision was expressed to be based primarily on the claimant's oral evidence at the hearing. Whilst there was a lack of strong evidence underpinning the Allegations, this went only to the weight to be accorded to them, not to whether the Board was entitled to consider them at all.

The court also noted that the Board had attempted, albeit unsuccessfully, to source further information relating to the allegations from the SSJ and that it had remained open to the claimant to call evidence or summon witnesses in relation to the Allegations.

The court held that the Guidance merely confirms the ability of the Board to consider allegations where it has not been possible to prove these on the balance of probabilities. Equally, the Guidance taken as a whole makes it clear that the Board should approach allegations with care. As such, the Guidance is not unlawful.

COMPASSIONATE LICENCE – COVID-19

R (Davis) v SSJ [2020] EWHC 978 (Admin)

Background

The claimant is terminally ill, with a life expectancy of 9-18 months. The claimant's conditional release date is 29 December 2020. The claimant made applications in 2019 and mid-February 2020 for permanent release on compassionate grounds under s248 of the CJA 2003 but these were refused.

In line with recent NHS Guidelines, the claimant was identified as "extremely vulnerable" in the context of the Covid-19 crisis due to his medical conditions.

On 9 April 2020, the SSJ issued supplemental guidance in relation to the Release on Temporary Licence (ROTL) policy in light of Covid-19. This guidance was not initially in the public domain, but on 16 April 2020, the claimant completed an application form for ROTL. The claimant's solicitors said that they were not aware of this application.

The claimant's present application for judicial review was filed on 13 April 2020, challenging the refusal to grant immediate permanent release under s248. The claimant argued that the SSJ's positive obligations under Articles 2 and 3 of the ECHR required his immediate release on compassionate grounds. The claimant included evidence from experts that the risk of him contracting Covid-19 was unacceptably high in a prison environment.

The court was convened at short notice, with the matter to be heard on 22 April 2020. On 21 April, after discovering more about the SSJ's Covid-19 ROTL policy, the claimant's solicitors invited the SSJ to agree to vacate the hearing pending the resolution of the ROTL application. The SSJ refused. The claimant then filed an application to vacate the hearing.

The court refused the application, agreeing with the SSJ that the issue of whether the ECHR imposed positive obligations requiring immediate release could be determined without knowing the outcome of the ROTL application, and was clearly of wider importance. The court also noted that litigants should not underestimate the difficulties in arranging hearings at short notice; a considerable amount of work had already been undertaken; and the parties were fully prepared and ready to start.

The claimant then filed a notice of discontinuance seeking to withdraw the whole claim. The claimant also filed costs submissions, arguing that the application for judicial review would not have been brought had the claimant's advisors been made aware of the Covid-19 ROTL policy earlier.

HELD:

The court accepted that, from the claimant's perspective, it did not matter by what mechanism he is released. Had the claimant been informed before 13 April 2020 that a decision on ROTL was imminent, he would not have brought this claim. However, there was no secrecy on the part of the SSJ – a letter of 2 April 2020 said that the claimant's eligibility for ROTL was being reassessed, and the claimant and his advisors could have inquired further.

Once the application was made on 13 April 2020, and a hearing convened at short notice, both the claimant's interest and the public interest strongly pointed in favour of an early resolution of the issue. The claimant's outstanding ROTL application did not render the judicial review irrelevant – the ROTL application may be refused, and if the claimant succeeded in the present application then his release would be secured. There

was also a strong inference that the claimant was seeking to circumvent the court's decision not to vacate the hearing date.

The court accepted the SSJ's suggestion that the court record the circumstances in which the claim had been discontinued and make observations on what had happened to date. The court noted that, under CPR r38.7, if the claimant later seeks to revive the claim, he would need the court's permission to do so. At that stage, the court would consider the history of the case, as well as the overall strength of the claim. The court did not comment on the claimant's underlying claim, save to observe that the positive obligation under Articles 2 and 3 ECHR had been overstated.

The court also ordered the claimant to pay the SSJ's costs of the claim, but noted that the claimant was legally aided so the standard costs protection provisions were applicable.

APPEARANCE AT CIVIL HEARING BY VIDEO LINK

R (Michael) v Governor of HMP Whitemoor & Anor [2020] EWCA Civ 29

The appellant was a Category A prisoner serving a life sentence for murder. He brought a civil claim against his solicitors in his murder trial in relation to an alleged breach of the Data Protection Act 1998.

The prisoner applied to attend the hearing in person, advising the prison that he was a litigant in person, suffered from a disability which would make using the video link difficult, and that there would be a secure dock available in court. The prison decided that the prisoner could only attend the hearing by video link and not in person.

The prisoner complained about the decision on the following grounds:

1) His Article 6 ECHR right to a fair trial had been breached;

2) The prison had unlawfully fettered its discretion by applying an unlawful presumption, and the decision failed to have regard to all material facts;

3) The decision was unlawfully taken by the prison when the applicable statute required it to be taken by "the Secretary of State".

HELD:

1) The decision did not violate the prisoner's rights to a fair trial.

2) The prison did not unlawfully fetter its discretion in refusing the prisoner's request to be produced physically at the hearing of his claim.

3) The decision was taken on the basis of a fundamental misunderstanding of an important fact, namely that the hearing would take place in a court with a secure dock.

On the basis of (3), the prisoner's appeal was successful and the decision was ordered to be re-taken in light of up to date information.

Right to a fair trial

The court considered case law from the ECtHR and concluded that Article 6 ECHR does not guarantee the right to personally attend a civil trial. There were logistical difficulties, risks and expenses involved in producing the prisoner at court. Medical evidence did not suggest the prisoner would be better off if physically present in court. Attendance by video link would enable the prisoner to participate fully in the hear-

ing and present his evidence and hear the evidence of the other side. He would be able to question the other witnesses via video link and the judge was required to ensure that there would be a fair trial.

Unlawful fettering of discretion

The prison did not unlawfully fetter its discretion: the decision was not made on the basis that a Category A prisoner could never be physically produced in a civil court. The statement that it was highly unlikely that physical production would be ordered merely reflected the security and logistical difficulties in doing so. The interests of justice were the primary consideration, and these are capable of outweighing any security concerns, according to PSO 4625 Production in Civil Proceedings.

Misunderstanding of facts

The decision was made on the basis a secure dock would be available at court. However, when the decision was made it was not clear where the hearing would take place or what the available facilities would be. This was a misunderstanding of a material fact.

At the time of this appeal, the prisoner's circumstances had changed: he was at a different prison and his risk profile may have changed. Therefore, despite the decision having not impacted on the prisoner's right to a fair trial, it needed to be retaken in light of up to date circumstances.

On the prisoner's final point of appeal (regarding the Secretary of State), the court held that the issue would be better decided in a case where it arises separately.

EXTRADITION

Verde v Governor of HMP Wandsworth [2020] EWHC 1219 (Admin)

The applicant is subject to a European Arrest Warrant (EAW) issued by the judicial authorities in the Netherlands. He consented to be extradited at a hearing before a district judge on 13 March 2020. The judge ordered the extradition, refused bail and remanded the applicant in custody pending extradition. The applicant is currently detained awaiting extradition.

The applicant had to be extradited within 10 days from the making of the order or, if the district judge and judicial authority issuing the EAW agree a later date, 10 days from that later date. As a result of travel restrictions imposed due to the coronavirus pandemic, the applicant could not make the extradition journey to the Netherlands. A district judge on three occasions agreed to postpone the 10 day extradition period to a later date.

The applicant submits that his continued detention is unlawful for two reasons: firstly, the 2003 Act only permitted the judge to grant one extension or only short temporary extensions and, where all air travel between the UK and the Netherlands is indefinitely suspended, the judge could not lawfully agree extensions; and, secondly, that any agreement to extension of the extradition period was unlawful as he had not been given notice or opportunity to make representations at the hearing. Further, he has not been provided with any court order or reasons for the extension.

Background

The applicant is a Romanian national. He was convicted of theft in the Netherlands and sentenced to six months' imprisonment, of which he has 161 days left to serve. On 5 March 2019, the Dutch authorities issued an EAW for his

arrest.

On 8 January 2020, the applicant was arrested in London for attempted theft which was committed in England. On 9 January, the applicant was sentenced to 16 weeks' imprisonment and, on that date, also arrested under the EAW for the offences in the Netherlands. The EAW proceedings were adjourned under the 2003 Act as the applicant was already in custody for 16 weeks.

The applicant initially refused to consent to extradition, but eventually gave his consent on 13 March. The district judge ordered the extradition and that the applicant "be held in custody to await extradition to the Netherlands". A custody warrant was issued to the governor of HMP Wandsworth.

Although the execution of EAWs has not been suspended, air travel between the UK and the Netherlands is presently limited and no surrenders of persons via air are being carried out. Surrenders to the Netherlands from some neighbouring countries are possible, but transfer of the applicant via land/sea from the UK to the Netherlands via France was not possible due to staffing difficulties and requirements for the applicant and escorting guards to quarantine in each country.

HELD:

There were two fundamental issues to be decided in this case: firstly, the lawfulness of the defendant's continued detention and, secondly, whether the district judge had acted within his power in postponing the starting date for the extradition period on more than one occasion.

An order of a court authorising detention is sufficient authority to justify continued detention. (See *Cosar v Governor of HMP Wandsworth* [2020] and *Jane v Westminster Magistrates' Court* [2019]). In this case, the applicant was detained by the order of the district judge, who ordered that he "be remanded in custody to await extradition" under the 2003 Act. That order was therefore sufficient authority to justify the detention.

As regards the second issue, the court found that a district judge can agree a later starting date for an extradition period where the extradition cannot be carried out because of exceptional circumstances. The coronavirus pandemic represented a serious humanitarian reason and a situation where extradition is prevented by circumstances beyond the control of a member state. Postponement was therefore justifiable.

The court also found that, although it is good practice to notify a person subject to an extradition order of a request for an extension of the extradition period, they do not have a legal entitlement to be notified or given reasons, nor does he have the right to make representations.

EXTENDING A DTO

X v SSJ [2020] EWHC 800 (Admin)

X was sentenced to a detention and training order for 18 months. The youth court ordered a delay of his release by two months, citing section 102(5) of the Powers of Criminal Courts (Sentencing) Act and the Youth Justice Board guidance. He applied for judicial review, contending that the order was unlawful.

X was convicted of two offences of encouraging terrorism, contrary to section 1(2) of the Terrorism Act 2006. He had published messages on social media that were indicative of an extreme right-wing ideology and were likely to be understood by members of the public as encouraging the commission of acts of terrorism. He was aged 17 when he committed the offences but aged 18

when he was sentenced to a detention and training order for 18 months.

Shortly after beginning his custodial sentence, X was advised of his sentence expiry date, his mid-term date, and his earliest and latest term dates which were, respectively, two months before and two months after the mid-term date. One month before the mid-point of the custodial term, X was advised that the SSJ intended to apply to a youth court to restrict his release. The Youth Justice Board guidance, which was provided to X at the time, stated that such an application may be made where the prisoner serving a detention and training order had behaved particularly badly in custody.

The SSJ accepted the application was made outside the circumstances contemplated by the guidance, as X's behaviour in custody had been good, but maintained that the application was consistent with the purposes of the detention and training order (rehabilitation and reduction of the risk to the public).

The SSJ's submissions fell into three categories. Firstly, the psychological assessment of X carried out pre-sentence had found that he was emotionally and psychologically damaged and vulnerable to being groomed. It was argued that the psychological assessment, combined with X's conversion to Islam whilst in custody, was cause for concern. Secondly, the SSJ submitted that the prison in which X was serving his sentence had received intelligence that he may be practising an extreme form of Islam, was associated with a known terrorist and may pose a threat to the public on release. The intelligence itself was not provided to X or the court, just the essence of what it potentially suggested. Thirdly, the SSJ pointed to the wider threat context and the risk that X had been, or would be, inspired to violent offending by the recent escalation in low sophistication terrorist attacks committed by serving and recently-released terrorist offenders. X submitted that there was no evidentiary basis that he held extremist views.

The Senior District Judge concluded that the order which was sought was necessary and proportionate to the risks argued by the SSJ, would prevent further offending and would focus on the rehabilitation of X. She noted that X's views 'have veered from one extreme to another', which she felt demonstrated his need to be a part of a group, and said that although she had given 'some weight' to the intelligence, it was the combination of the intelligence and the other factors that had formed her decision.

X claimed two grounds for judicial review. The first ground was that the youth court erred in law by admitting evidence that was not provided to the court or to X, namely the intelligence received by the prison. Second, X argued that the court took into account an irrelevant consideration and/or exercised its power for a purpose extraneous to the statutory purpose.

HELD:

The Administrative Court rejected X's arguments. Regarding the first ground, the court found that the Senior District Judge had carefully considered the amount of weight she placed on the essence of the intelligence the prison had put forward and, as X had the opportunity to contradict that part of the evidence, she was entitled to take the essence of the intelligence into account. Addressing the second ground, the court did not accept the submission that the exercise of the power must be restricted to cases of exceptionally poor progress in custody. The court found that, although these circumstances had not been outlined in the guidance, the Senior District Judge was not prevented from hearing and granting the application.

OVERCROWDING

JMB and Others v France - 9671/15, 9674/15, 9679/15

The applicants were detained across a number of prisons for which the French government was responsible. They alleged that the conditions of their detention were inhuman and degrading and that they had no effective remedy in this regard.

The occupancy rates of the prisons in question ranged from 84% to 215%, with most being over 100% occupancy. The applications also contained allegations that personal space was below the required minimum standard of three square metres, that there was a lack of privacy in using the toilets, a lack of light, inadequate hygiene conditions, inadequate medical care and food rations and a culture of violence. All the applicants maintained that they were locked up for between 15 and 22 hours per day.

The issue considered by the European Court of Human Rights was whether the conditions were contrary to Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (right to private and family life), and whether the lack of remedy was such that Article 13 (right to an effective remedy) had been breached.

HELD:

The court held that there had been a breach of Article 13 (right to an effective remedy), as the government-advocated remedies, which consisted of an urgent application to protect a fundamental freedom and an urgent application for appropriate measures (both made to an administrative judge), were ineffective for a number of reasons. Firstly, the power of the judge to give orders was limited in scope and insufficient to eliminate overcrowding. Secondly, the effectiveness of the urgent applications process was conditional on funding available to, and measures already taken by, prison authorities. Thirdly, the time taken to implement orders was incompatible with the requirement to give prompt redress. An order given would often fail to substantially improve prison conditions, or prisoners would have to make multiple applications to obtain redress.

The court ordered damages to be paid to each of the applicants as a remedy in amounts ranging from €4,000 to €25,000.

PRISON AND PROBATION OMBUDSMAN CASES

Voluntary work on Release On Temporary Licence [Case ref: C70711]

Ms A complained to the PPO that she was no longer allowed to carry out voluntary work during Release on Temporary Licence (ROTL) from the prison she was in.

Ms A had been undertaking unpaid work for a charity that helps ex-prisoners. Ms A said the charity typically took on volunteers who were elderly such as herself or unable to find paid work and needed people with real life prison experience.

Ms A contacted the deputy governor to ask why she was being prevented from continuing her placement. The deputy governor replied that the prison had reduced the number of residents accessing unpaid placements and would only be using unpaid placements for residents with complex resettlement needs who needed additional support when accessing the community. He said Ms A would be found purposeful work in the prison. He added that Ms A had been asked to take up paid work by her Of-

fender Supervisor, but she did not want to. The deputy governor then said he had asked Ms A's Offender Supervisor to review her sentence plan to see if she was meeting the pathway targets and to review whether the level of provision of service needed to be at her current prison or elsewhere.

A Custodial Manager from the Offender Management Unit said the decision to limit unpaid placements had been an unforeseen consequence of the new ROTL policy. He said there was an expectation that residents on unpaid placements should move into paid employment. He said the prison was unable to support a high number of unpaid placements financially and also needed residents to be able to run the internal prison regime of cooking and cleaning etc. He said Ms A had been in the placement for 10 months and suggested that the charity should either offer Ms A paid work, or that she should give up the placement to allow another resident starting their resettlement journey to take up the placement.

Ms A said she felt she had been bullied and threatened by the response of the deputy governor and that others had been similarly bullied as a result of the interpretation of the new ROTL policy. Ms A said the new policy was particularly unfair on old people who found it more difficult to obtain paid work.

The PPO reviewed correspondence between Ms A and the prison, considered the ROTL Policy Framework and questioned staff at the prison.

The PPO supported Ms A's complaint, stating that the prison is there to serve the resettlement needs of the residents, not the other way around. The PPO stated that the purpose of the new ROTL Policy Framework was to enable more prisoners to take early advantage of the rehabilitative benefits of temporary release with greater flexibility. So, if the expectation was that the number of residents on ROTL would rise, then the prison should find a way of coping with that. The PPO also said the argument that Ms A should free up her place at the charity for another resident did not stack up. The new policy no longer required residents to undertake unpaid work before moving on to paid employment, so the pressure on unpaid work placements should decrease. The PPO agreed that the response to Ms A was in part threatening and inappropriate.

The PPO recommended that the Governor should apologise to Ms A for her removal from the charity work placement and arrange for her to be reinstated if Ms A wishes. The PPO also recommended the ROTL policy be revised to give equal weight to unpaid and paid employment in line with the ROTL Policy Framework.

Equal pay [Case ref: C68546/2019]

Mr F complained that he did not receive equal pay to that of his co-workers at HMP Leyhill. Mr F submitted a complaint on the basis that he was only receiving £12.50 per week, and should receive £17.50 per week, as he was classed as a skilled worker.

The Acting Head of Reducing Re-offending reviewed his complaint and said that Mr F was allocated to work as Works Party 2, which was paid at £12.50 a week and therefore his pay was correct. The Acting Head said his pay would increase if he were upgraded to Works Party 1 which would only be possible if there was a vacancy.

Mr F appealed and said that he was the only one being paid on grade 2 monies and the Works Party 1 positions were not available or never advertised. The deputy governor responded stating the pay scales were set to meet budget requirements and that Mr F could apply for a higher paid job in advance of a position becoming

available.

Mr F complained to the PPO who reviewed his case. The PPO investigated, referred to HMP Leyhill's Prisoners' Pay and Working Practices policy and made enquiries of staff.

The PPO concluded that HMP Leyhill's work and pay structure was clear and Mr F's pay was fair. A specific number of posts were allocated to each area and offered different levels of pay based on experience, qualifications and skills. The PPO considered that Mr F was not a skilled tradesperson; he had not stated any qualifications or skills under his work history and did not take any courses other than BICS.

However, the PPO did share concerns about the lack of transparency relating to advertising vacancies. They stated that the vacancies relied on Works supervisors, but that this system was open to abuse (albeit unintentional) in terms of favouritism, discrimination and equality of opportunity. The PPO stated that all vacancies should be advertised and open to all prisoners to apply.

The PPO recommended the governor of Leyhill should review and introduce a new system for work allocation, advertising all vacancies throughout the prison.

Difficulties ordering vegan food [Case ref: C68355]

Mr F complained to the PPO about difficulties he experienced ordering vegan food in prison.

Mr F was a vegan and ordered from the Amazon website certain vegan foods he was not able to order in the prison canteen. The prison canteen list of vegan foods often did not include various vegan items which were otherwise available for order.

Mr F purchased food on the Amazon website; however the prison would not process such orders because the Amazon website did not describe such foods as vegan, only that they were suitable for vegetarians. Mr F provided evidence that the Amazon website was often either incorrect or out of date with respect to the relevant information, and that product websites often provided the correct information as to whether a product was vegan. The prison maintained they did not have the capacity to check individual products and that to permit items not labelled as vegan would put the health and safety of prisoners at risk.

Mr F also maintained that various vegan items from the canteen list were often not available or would go missing, and that the method for ordering vegan items was not easy as relevant meetings were often cancelled or the topic of vegan food was not discussed.

The PPO found that the prison's stance was unreasonably restrictive. The prison put forward no evidence, and the PPO investigator found it unlikely, that there would be any risk to health and safety when a prisoner who has chosen to follow a vegan diet would purchase products for such vegan diet (even if they did not in fact prove to be vegan). The lack of capacity for the prison to check themselves if an item was vegan was irrelevant as there was no particular harm that the prisoner would face due to the lack of a check by the prison. The prison's policy of relying on the Amazon website was in itself restricting the policy of allowing vegan foods to be ordered on Amazon.

In addition, the PPO noted that the method for Mr F ordering vegan foods for the canteen did not seem effective and sought an update from the prison about measures being taken to allow

items to be submitted for the canteen list.

Incentive and Earned Privileges warnings [Case ref: 54589/2019]

Mr M complained about two Incentives and Earned Privileges (IEP) warnings which he believed were invalid because HMP Whitemoor had not followed the proper process in issuing the IEP warnings. The two IEP warnings related to an incident which took place in November 2017, but Mr M did not find out about them until a Category A review almost 12 months later. Mr M appealed to the PPO on 16 December 2018 stating that the IEP warnings were not valid because the correct procedure was not followed and, as a result, he was not given the opportunity to accept or deny the allegations. He argued that since he wasn't given the chance to contest the IEP warnings they should be expunged from his records.

To investigate Mr M's complaint, the PPO reviewed Mr M's NOMIS records, PSI 30/2013 Incentives and Earned Privileges and the local IEP policy in force at the time of the incident.

The PPO found that Mr M's NOMIS record contained details of the two incidents and noted that "due to the negative behaviours [Mr M] is and has been showing he has now generated a review and will be reduced to standard regime". Subsequent NOMIS records highlighted that Mr M refused to speak to any prison staff other than his personal offer and declined the chance to go through a report with one of the officers involved in the incidents.

The PPO's investigation found that the local IEP policy's procedure and requirements included:

- An informal warning system for minor incidents when prisoners' behaviour is not to the required standard. Such informal warnings should be noted in the observations book and prisoners' case notes, but would not be used in a review, provided the prisoner's behaviour improves. If the inappropriate behaviour continues, a formal IEP warning will subsequently be given.

- The recording of formal IEP warnings in the Staff Observation Book, the Wing's IEP Warning Log and in the prisoner's case notes. The prisoner should also be notified verbally by the officer giving the warning and receive a copy of the IEP warning slip, which should be delivered in person by the issuing officer and not by post. All documentation must set out the specifics of the behaviour that resulted in the issuance of the IEP warning.

- Prisoners may appeal by completing the relevant section of the warning sheet and their appeal will be heard by a Supervising Officer.

- Cases of serious single incidents of bad behaviour, such as offences involving violence or narcotics, possession of a mobile phone or attempts to abscond, will result in an immediate IEP review.

The PPO was satisfied that the local policy complied with the national requirements as set out in PSI 30/2013, but was unable to find any evidence of a review by staff at HMP Whitemoor to confirm that correct procedures had been followed in Mr M's case.

In its findings, the PPO noted that whilst Mr M's behaviour was likely to have affected the ability of staff to issue Mr M with IEP warnings, it was satisfied that the available NOMIS records demonstrated that local and national policy had not been followed. Mr M's complaint was upheld and the PPO recommended that his NOMIS record be up-

dated to reflect the lack of evidence that HMP Whitemoor correctly administered the IEP warnings. The PPO did feel however that Mr M's behaviour was unacceptable and the failure by staff to follow the required procedures did not warrant rescinding the IEP warnings.

CSC units and failures to review [Case ref: 49594/2019]

Mr M complained about inadequacies relating to his monthly Close Supervision Centre (CSC) reports at HMP Manchester. Mr M's complaint related to various failures with the handling of his CSC reports and reviews. These included: (i) HMP Manchester's omission to provide Mr M with a copy of his updated report following a CSCMC review; (ii) the reports not being adequately updated; (iii) the relevant multi-disciplinary staff not attending the review; (iv) and the failure to address required issues, such as continued suitability for placement within the CSC and any recommendations for Mr M to work towards potential de-selection.

Mr M had previously raised a complaint to the PPO regarding similar shortcomings in CSC reports when he was at HMP Whitemoor. To investigate this complaint, the PPO referred to its report from Mr M's previous complaint, considered the CSC Operating Manual and carried out a review of the monthly reports from HMP Manchester for January, February and March that were provided by Mr M.

The CSC Operating Manual sets out that Prison Rule 46 provides the authority for prisoners to be held in CSCs. It goes on to state that "*the overall aim of CSC system is to remove the most significantly disruptive, challenging, and dangerous prisoners from ordinary location, and manage them within small and highly supervised units; to enable an assessment of individual risks to be carried out, followed by individual and/or group work to try to reduce the risk of harm to others, thus enabling a return to normal or a more appropriate location as risk reduces*."

The Manual also sets out that the manager attending the monthly CSCMC must ensure that feedback on the decisions reached at the review is communicated to the prisoner within three working days. It also sets out that the review should be attended by various multi-disciplinary attendees including, as appropriate, the CSC Governor, psychology, mental health, wing manager, the personal officer, the offender supervisor and any other relevant people involved in the care and management of individuals.

In Mr M's case, he commenced the complaints process on 18 February 2019 in relation to a monthly report that went to the CSCMC on 22 January, following which he had not received an updated report. On 4 March, a Senior Officer responded that another Senior Officer had stated that he had given Mr M the updated report and that it "had not gone into detail and had only been a few lines". On 6 April, Mr M appealed that the report had not been appropriately updated and did not include any recommendations as to his suitability for continued placement within the CSC. The Custodial Manager of the Segregation Unit replied on 15 April confirming that the report had not gone into detail and did not state Mr M's risk, but stated that "this information had been lost in translation, but had since been rectified and Mr M's following reports had been completed without issues". On 22 April, Mr M wrote to the PPO setting out the failings in relation to January review, and complained that the issues around the monthly reviews remained, with the only change in the months since the original complaint being that a local recommendation had been added, stating that the SIU was "awaiting risk reduc-

tion information from HMP Whitemoor".

The PPO's consideration of Mr M's case stated that placing a prisoner on Rule 46 is a serious matter and the monthly reviews require careful consideration to establish whether the high bar required for continued placement on CSC remains. The PPO stated that staff should not "simply go through the motions" and that each review should be approach anew, with an open mind about whether continued placement is necessary, which should be based upon whether "the prisoner continues to be one of the most significantly disruptive, challenging, and dangerous prisoners".

The PPO raised concerns about the thoroughness and rigour of the reviews carried out at HMP Manchester, which fell significantly short of the requirement for multi-disciplinary attendance and contained no analysis of Mr M's behaviour. The PPO saw no evidence of the question of risk being considered in the reports, which failed to explain why continued placement within the CSC was deemed necessary.

The PPO upheld Mr M's complaint and was very critical of the failure to justify Mr M's retention on Rule 46 and also of the failure of the CSCMC to identify and address these shortcomings. By the time the PPO completed its review Mr M had been deselected from the CSC, but the PPO stated that he was nevertheless owed an explanation. The PPO recommended that within four weeks of the issue of the PPO report, the DDC should provide Mr M with an explicit, evidenced explanation of the risk he was considered to present and the reasons why CSC placement was considered appropriate. Given that the issues raised by Mr M did not appear unique to particular establishments, it was also recommended that the DDC remind those involved in the drafting of monthly reports of their purpose and the required contents. Finally, the PPO recommended that the DDC review a sample of CSCMC reports from across the estate to ensure that they evidenced thorough consideration of the need to retain the relevant prisoner in the CSC.

Assaults [Case ref: C50496-19]

Mr S complained that he had been assaulted by staff in the Segregation Unit at HMP Full Sutton. The complaint was not upheld by the PPO; however recommendations were made.

Mr S claimed that he refused to get off his bed and stand at the back wall, and four officers in riot gear came into his cell and assaulted him by punching him repeatedly, jumping on him, and putting him in a wrist lock, and that he suffered injuries as a result of these actions.

The alleged assaults occurred during a movement between cells. Prisoners had caused damage to a cell observation panel, and staff needed to move Mr S in order to clean the cell due to the possibility of the shards of the observation panel being used as a weapon. Prior to this incident, Mr S was subject to Back Wall Unlock because of a previous episode. He is required to stand at the back of the cell facing the wall whenever staff unlock his cell door. Four members of staff were involved in the incident, and all officers were consistent in stating that Mr S failed to comply with their instructions, that he lashed out, and that of their use of force was necessary and proportionate under the circumstances.

In terms of evidence, no photographs were taken and HMP Full Sutton reported that any CCTV was unavailable as it is automatically wiped from the system after a period of time. Although officers stated the incident was videotaped, by the time of the investigation, there was no handheld or body worn camera foot-

age available as this had also been deleted and/or not saved.

HMP Full Sutton's internal investigation took five months, four months more than the expected completion date. No explanation was provided as to why it took five months to complete the investigation into this matter. Nor has any documentation been provided to evidence that Mr S was kept informed of any delays in concluding this matter.

PSO 1600 says that the use of force is "justified, and therefore lawful, only if it is reasonable in the circumstances; if it is necessary; if no more force than is necessary is used; if it is proportionate to the seriousness of the circumstances".

A national memorandum from the Chief Executive of National Offender Management Service reads that: *'…In all instances, where footage is connected to serious incidents, it must be downloaded and managed in line with the Data Protection Act (DPA) and where possible retained for a period of at least 12 months in case of appeal through NOMS, the courts or through the PPO.'*

The PPO concluded that, given the potential weapons, the debris in the cell and Mr S's demeanour when staff entered the cell, the use of force was reasonable, necessary and proportionate (and found no supporting evidence to the contrary).

Notwithstanding this finding, the PPO made three recommendations to be implemented within one month of the report. The first was that HMP Full Sutton ensures CCTV and body worn camera footage is retained in line with the instructions set out in the national memorandum (above). The second recommendation was that HMP Full Sutton ensures that internal investigations are completed within the specified time scale, and should this not be possible, HMP Full Sutton should issue an interim response to prisoners to keep them informed of the progress of the investigation. The final recommendation was for HMP Full Sutton to provide Mr S with a written apology for the time it took to complete the internal investigation into this matter.

PRISON AND PROBATION POLICY FRAMEWORKS

HMPPS is continuing to transfer guidance on aspects of prison life from PSIs to new Framework documents. Unfortunately there is still no numbering system for them.

The recently published framework documents are:

- Use of X-ray body scanners (adult male prisons) 19 May 2020

- Post Sentence Supervision Requirements 26 March 2020

Health and safety arrangements: management of workplace transport

16 March 2020

Domestic abuse 2 April 2020

PRISONERS' LEGAL RIGHTS BULLETIN SUBSCRIPTION FORM

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

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JUSTICE BEHIND BARS

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

PLEASE TICK THE TYPE OF MEMBERSHIP REQUIRED:

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_____

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