Failure to Cut Prison Numbers Hits Spending Target Plans

Inability to reduce prison population by 6,000 and close older jails is likely to accelerate Tory privatisation plans. The prison population of 86,000 in England and Wales is not expected to fall over the next few years. The political failure of the former justice secretary, Ken Clarke's, sentencing reforms means the prison and probation services are set to miss targets for deep spending cuts set by the Treasury, Whitehall's spending watchdog has warned.

The National Audit Office says that official hopes of saving money by reducing the record prison population of 86,000 in England and Wales by 6,000 and closing older, more expensive prisons have been dashed. Jail numbers are now not expected to fall significantly over the next few years. The Whitehall spending watchdog also warns that prison and probation budgets could come under further pressure from even slight changes in demand and would be placed in even deeper difficulties by any repeat of last summer's riots or a more punitive approach by the courts. The problem is likely to lead to the new justice secretary, Chris Grayling, pushing through a round of spending cuts and accelerating the move to greater privatisation in prisons and probation.

A National Audit Office report published on Tuesday also discloses that the national offender management service, the agency that runs prisons and probation, faces an unexpected bill of up to £35m in 2012/13 to resolve problems in two case management and offender risk assessment computer projects. Both have been designated as "high risk" needing a high degree of scrutiny. "The national offender management service is less than halfway through its cost cutting programme but is already lagging behind its target to curb spending by £884m before March 2015," said Margaret Hodge, chair of the Commons public accounts committee. "This figure must be hit if the Ministry of Justice is to stand any chance of achieving £2bn annual savings by the same deadline."

The NAO says that Clarke's sentencing reform programme, which included sentence discounts of up to 50% for early guilty pleas, was designed to reduce the size of the prison population by 6,000 by 2015. But Clarke was forced to drop key elements of the package last year after a row over his remarks over the sentencing of rape cases.

Inmate Found Hanging at High Security Prison

An investigation has been launched at Whitemoor Prison, March, after a murderer was found hanged. John Green (49) was found hanging at the maximum security prison at 8.45am and pronounced dead at the scene at 9:12 am yesterday (Thursday 13th September). Green was jailed for life last year and told he must serve at least 14 years before being considered for parole, for the murder of his housemate Paul Duffy on January 5. A Prison Service spokesman said: "As with all deaths in custody, the independent Prisons and Probation Ombudsman will conduct an investigation." http://www.peterboroughtoday.co.uk

Hostages: Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar,Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 390 20/09/2012)

William 'Wullie' Beck to Scottish CCRC After Thirty-Year Fight

William 'Wullie' Beck's thirty-year fight to clear his name for a conviction he served six years of imprisonment for has culminated in an appeal thanks to work by the University of Bristol Innocence Project (UoBIP). The Scottish Criminal Cases Review Commission announced this week they have referred Mr Beck's case back to the High Court of Justiciary after agreeing his conviction may be unsafe. William Beck was 20 when he was arrested for an armed robbery of a post van in Livingston, Scotland on 16 December 1981. He served six years of imprisonment for his conviction, which was based exclusively on eyewitness identification.

Although Mr Beck claims that he was in Glasgow the entire day at the time of the robbery, some 40 miles away from where the crime occurred, he was convicted on the positive identification of two eyewitnesses despite other witnesses not identifying Mr Beck in an identity parade.

For more than three decades, Mr Beck has steadfastly protested his innocence, claiming that he is a victim of eyewitness misidentification. By the time he sought the assistance of the UoBIP, Mr Beck has made two previous unsuccessful applications to the Scottish Criminal Cases Review Commission and numerous complaints about how the police conducted the identification parade and the conduct of his legal representatives at trial.

The UoBIP took on Mr Beck's case in 2011 following the Scottish Criminal Cases Review Commission's provisional Statement of Reasons stating that it was not minded to refer his conviction to the High Court of Justiciary. Under the guidance of Dr Michael Naughton, postgraduate law students Mark Allum and Ryan Jendoubi at the University of Bristol Law School undertook detailed research into Mr Beck's case and made two submissions to the Scottish Criminal Cases Review Commission. They contended that a combination of factors rendered a real likelihood of a miscarriage of justice in Mr Beck's case. In addition to the 'flimsy nature' of the eyewitness identification evidence that underpinned his conviction, they argued that the judge had made several serious errors in the way in which he had directed the jury. Mark Allum, one of the Bristol researchers, said: "Mr Beck's conviction was based primarily upon identification evidence part of which the trial judge referred to as unreliable and part of which he suggested the jury should treat with great care. Recently the courts have become increasingly reluctant to base convictions solely upon eyewitness testimony especially since studies have exposed the fallibility of such testimony. Were this case to come before the courts today it is highly likely that the trial judge would dismiss it."

In an interview with Good Morning Scotland, Dr Naughton said: "This is a significant moment for Mr Beck. There has been 1,500 cases applied to the Scottish Criminal Cases Review Commission and only about 100 cases have ever been referred. They have agreed with us that a miscarriage of justice may have occurred in Mr Beck's case and we are delighted that they have referred his case."

In a public statement posted on a justice forum website, Mr Beck expressed his gratitude to both the Scottish Criminal Cases Review Commission and the UoBIP, stating that "he had 'no doubt whatsoever' that it was the UoBIP that convinced the Scottish CCRC to refer his case".

University of Bristol Innocence Project http://www.bris.ac.uk/news/2012/8772.html

Victory for James, Wells and Lee v. the United Kingdom

"Detaining prisoners who were subject to indeterminate sentences of imprisonment for the public protection ("IPP sentences") indefinitely on grounds of risk without giving them access to rehabilitative courses was arbitrary'

In Chamber judgment in the case of James, Wells and Lee v. the UK (application .25119/09, 57715/09 and 57877/09), which is not final ', the European Court of Human Rights held:

Unanimously, that there had been a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights concerning the applicants' detention following the expiry of their tariff periods and until steps had been taken to progress them through the prison system with a view to their access to appropriate rehabilitative courses;

and, by six votes to one, that there had been no violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) concerning Mr Wells' and Mr Lee's complaint about the possibility of their release.

The Court found in particular that the considerable delays in the applicants making any progress in their sentences had been the result of lack of resources, planning and realistic consideration of the impact of the sentencing scheme introduced in 2005, despite the fact that it had been premised on the understanding that rehabilitative treatment would be made available to those prisoners concerned. Indeed, these deficiencies had been the subject of universal criticism in the domestic courts and had resulted in a finding that the Secretary of State had breached his public law duty.

Principal facts: The case concerned prisoners who were subject to indeterminate sentences of imprisonment for the public protection ("IPP sentences") in the United Kingdom. IPP sentencing was introduced in April 2005 by virtue of section 225 of the Criminal Justice Act 2003 (the "2003 Act"). It was initially mandatory where a future risk existed of further offending. Risk was assumed where there was a previous conviction for violent or sexual offences, unless the sentencing judge considered it unreasonable to make such an assumption. A minimum term, known as the "tariff", was fixed by the sentencing judge. After the expiry of the tariff, IPP sentences required the Parole Board's decision that the prisoner was no longer dangerous before he could be released. Following the entry into force of this new legislation, large numbers of IPP prisoners swamped the system. The IPP scheme was amended in 2008 and, no longer mandatory, only applies in cases where - if imposed - the tariff would be fixed at more than two years, subject to certain limited exceptions. Further, risk is no longer assumed, even where a defendant has relevant previous convictions.

The applicants, Brett James, Nicholas Wells and Jeffrey Lee, are British nationals who were born in 1985, 1983 and 1965 respectively. Mr James lives in Wakefield (England), Mr Wells is currently in detention and Mr Lee lives in Fleetwood (England). Following their convictions for violent offences and in the light of their offending histories, all three men were given automatic IPP sentences in 2005 with tariffs of, respectively, two years, 12 months and nine months.

They were recommended to take part in a number of rehabilitative courses, such as ETS (Enhanced Thinking Skills), ASRO (Addressing Substance Related Offending), CALM (Controlling Anger and Learning to Manage it), Victim Awareness and Healthy Relationships Programme. However, by the time their respective tariffs expired, all three applicants remained in their local prisons, without access to the relevant courses, awaiting transfer to first stage lifer prisons to begin progressing through the prison system. They were only transferred five months (Mr James), 21 months (Mr Wells) and 25 months (Mr Lee) after the expiry of their tariffs.

Meanwhile, all three men brought judicial review proceedings before the national courts,

tice system is creating a lost generation of children raised without mothers.

Only 80 young children are accommodated with their mothers behind bars in eight mother and baby units, the figures show. Evidence suggests that separation by imprisonment causes long-term emotional, social, material and psychological damage for the children involved.

Nearly two-thirds of boys with a parent in jail will go on to commit some kind of crime themselves, research shows, and children with a parent behind bars are three times more likely than their peers to engage in anti-social behaviour. Their chances of suffering mental health problems also increase threefold. Yet despite evidence that even a short maternal absence can be extremely disruptive to a child, two-thirds of the 10,181 women sent to jail in 2011 served sentences of six months or significantly less. More than a third were jailed for theft or handling stolen goods, or other low-level "nuisance" offending, and a quarter of them had no previous convictions. "A significant number of women in prison are not a risk to the public," said the Labour politician Baroness Corston, who wrote a seminal report on women in British prisons in 2007. The average cost of keeping a woman in jail is £56,415 a year, but punishment in the community costs less than a quarter of that.

Hidden Victims of a Lock 'em Up Culture *Leader Indpendent: 17/09/12*

Lock 'em up and throw away the key is, sad to say, not only the right-wing populist attitude to crime and criminal justice, it sums up the attitude of much of the country. The number of people in Britain's prisons is at an all-time high, it is announced with a tedious regularity. The nation tuts and turns away. Prison itself, it seems, is an issue we should, metaphorically, prefer to lock up and throw away the key.

There are two groups who suffer most from this lack of interest. One is women. Over the past 15 years, the number of female prisoners has more than doubled, and more than 10,000 women are now sent to jail every year. The five-part investigation which begins in The Independent today explains why, and also offers some ideas of what might be done to improve the situation.

The financial cost of such a surge in prison sentences is enormous: the average bill for a woman behind bars is £56,415 a year. But the social cost is greater still. Taking mothers away from their children causes such emotional, developmental and psychological damage that it sharply accelerates the creation of the next generation of criminals. The statistics are alarming. A child with a parent in prison is three times more likely to exhibit anti-social behaviour, and three times more likely to develop mental health problems. A staggering 65 per cent of boys who have a parent in jail will go on to commit some kind of crime themselves.

Here, then, are the entirely innocent victims of the ballooning prison population. Every year, as many as 200,000 children have to cope with the consequences of a parent in prison - far more than the number who are separated by family break-up. And the ones who suffer the most are the 17,000 each year who see their mothers put behind bars. Most are inside for fewer than six months, for crimes such as shoplifting, non-payment of fines, benefit fraud and offences linked to drug addiction and sex work. But the impact of even a short sentence can be catastrophically disruptive for children who have committed no crime - and who may have already suffered disproportionately because of their drug and drink-dependent mothers' chaotic lives. The children of convicted mothers almost always move house and switch school, as well as facing the stigma and trauma of their situation. Being a parent cannot, of course, be a woman's "get out of jail free" card. But the fact remains that whenever a mother is locked up her child is punished too. As the prison population rises ever higher, society cannot continue to look the other way.

therefore sufficient safeguards had been in place, in particular after the Howard League for Penal Reform had been involved. While there were faults in the investigation, including the investigating officers' lack of knowledge about the prisoner's disability and that the prison's disability policy should have led to the appointment of an appropriate adult for him, he was at all times able to consult his father and the penal reform charity and he could have, if he wished, brought civil proceedings against the state or criminal proceedings against F.

There had been no neglect by the state of its Article 3 since breach of the investigative obligation under that provision would only occur where the investigation conducted was not proportionate to the seriousness and idiosyncrasies of the incident. Rix LJ, giving the leading judgment, rejected "any suggestion that the court is required, or even permitted, to go through the statutory remedies for discrimination as though that issue was before the court, when it is not.". . . . I bear in mind the passages which have been cited to us from the UN Convention on the Rights of Persons with Disabilities (articles 9(1), 15(2) and 16(3)), but in my judgment they do not take the matter any further. I have no reason to think that, in a situation where there is and can be no complaint in this court that the state has abused its preventative obligations, and the facts regarding its investigative obligation are as set out by the judge and in this judgment, there was any breach by the state pursuant to article 3 arising out of NM's vulnerabilities. In his view this was the sort of fact-sensitive context where respect must be accorded to the careful findings and conclusions of the judge.

Spending Watchdog Trains Fire On Interpreter Contracting Chaos

The Ministry of Justice has come under fire from public spending watchdogs for awarding a £90m contract for court interpreters to a company that lacked the ability to deliver it. In a damning report on the outsourcing of language services in the justice system to Applied Language Solutions, the National Audit Office (NAO) declares that the MoJ 's due diligence on the successful bid 'was not thorough enough'. ALS was a small company and the volume of work the ministry wanted to give to it was large. Yet a report the ministry itself commissioned from a financial data company indicated that Applied should only be given contracts worth up to £1m.The contract with Applied for the provision of court interpreters is worth an estimated £90m over five years. The NAO says: 'The ministry considered the financial report but did not see it as a barrier to the award of the contract. It told us that this was because it considered [Applied] to be only a managing agent for interpreters, who themselves remained freelance sole traders.'

On the rationale for the new contract, the public spending watchdog says that the MoJ had strong reasons for changing the old system, which it said was 'inadequate in several respects'. However, in accepting Applied's assertion that it would be able to increase the number of interpreters working in the justice system, the MoJ 'did not give sufficient weight to the concerns and dissatisfaction that many interpreters expressed' with Applied. The report criticises the department for both failing to analyse the number of interpreters likely to be available and willing to work with Applied, and for not modelling the cut in income that public sector interpreters could expect. *Catherine Baksi / Law Society Gazette*

Children in Peril As Women are Jailed in Record Numbers

Paul Vallely, Sarah Cassidy, Indpendent, Monday 17 September 2012

The number of women in prisons has more than doubled in 15 years, with 17,240 children separated from mothers who are in jail, an investigation by The Independent shows today. Britain has the highest rate of female imprisonment in the European Union, with 10,181 women put behind bars last year alone. That statistic has raised fears that the criminal jus-

which were eventually joined on appeal before the House of Lords. They complained in particular that their post-tariff detention and lack of access to courses was unlawful and in breach of Article 5 §§ 1 and 4 of the European Convention.

Throughout the domestic proceedings the Secretary of State was criticised for the systemic failure to put in place the resources necessary to enable the provisions of the 2003 Act to function as intended and he was found to have breached his public law duty. In particular, before the House of Lords, Lord Judge referred to "seriously defective structures" and the fact that the new sentencing provisions were "comprehensively unresourced" with the result that numerous prisoners continued to be detained after the expiry of the punitive element of their sentences "without the question either of their rehabilitation or the availability of up to date, detailed information about their progress". He indicated that as tariff periods expired, nothing had been done to enable an informed assessment by the Parole Board of the question whether the protection of the public required the prisoner's continued detention.

Nonetheless, on 6 May 2009 the House of Lords unanimously dismissed the applicants' appeals, finding no breach of either Article 5 § 1 or 4 of the Convention. It held that, despite the above concerns, the applicants' detention could not be said to be arbitrary or unlawful as notwithstanding the failure to provide access to courses the causal connection between the ground for the detention and the detention itself had not been broken. It also found that the procedure before the Parole Board satisfied the requirement for a speedy review of the legality of their detention.

Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 4 (right to liberty and security), the three applicants complained about the failure to ensure their access to courses to address their offending behaviour while in prison and the impact of this failure on their ability to show that they were rehabilitated and able safely to be released. Mr Wells and Mr Lee further argued under Article 5 § 4 that neither the Parole Board nor the domestic courts had been able to order their release due to the provisions of the primary legislation and the absence of any such power in the 2003 Act. The applications were lodged with the European Court of Human Rights on 7 May 2009, 27 October 2009 and 27 October 2009, respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech Garlicki (Poland), President, David Th6r Bjorgvinsson (Iceland), Nicolas Bratza (the United Kingdom), George Nicolaou (Cyprus),Zdravka Kalaydjieva (Bulgaria), Nebojsa Vucinic (Montenegro), Vincent A. de Gaetano (Malta),and also Fates Aracl, Deputy Section Registrar.

Decision of the Court - Article 5 § 1 (whether detention was lawful)

The Court noted that in these cases, once risk of re-offending had been established by way of the statutory presumption, the sentencing judge had no power to impose any sentence but an indeterminate sentence of imprisonment. It was therefore important to ensure a genuine correlation between the aim of the detention and the detention itself. The Court reviewed statements made by Baroness Scotland of Asthal, then Minister of State at the Home Office, during the Parliamentary debate on the draft legislation, and the Government's policy as regards the management and treatment of prisoners serving indeterminate sentences. It also considered the findings of the judges in the domestic proceedings in the High Court, the Court of Appeal and the House of Lords. It concluded that in cases concerning indeterminate sentences of imprisonment for the protection of the public, a real opportunity for rehabilitation was a necessary element of any part of the detention which was to be justified solely by reference to public protection.

Turning to assess the operation of the IPP scheme in practice, the Court referred to the

harsh criticism in the domestic courts. In the Court of Appeal it was found that there had been a systemic failure on the part of the Secretary of State to put in place the resources necessary to implement the scheme of rehabilitation necessary to enable the provisions of the 2003 Act to function as intended. In the House of Lords the Secretary of State was found to have failed "deplorably" in the public law duty that he had to be taken to have accepted when he had persuaded Parliament to introduce IPP sentences. References were also made to the "seriously defective structures" and to the "comprehensively unresourced" sentencing provisions. The Court noted that the specific impact of these general deficiencies on the progress of the applicants through the prison system in the present cases could be clearly seen.

The Court found that indeterminate detention for the public protection could be justified under Article 5 § 1, but that it could not be allowed to open the door to arbitrary detention. Where a prisoner was in detention solely on the grounds of the risk that he was perceived to pose, regard had to be had to the need to encourage his rehabilitation. In the applicants' cases, this meant that they had to be given reasonable opportunities to undertake courses aimed at addressing their offending behaviour and the risks they posed. Experience had shown that courses were necessary for dangerous prisoners to cease to be dangerous. While Article 5 § 1 did not impose any absolute requirement for prisoners to have immediate access to all courses they might require, any restrictions or delays due to resource considerations had to remain reasonable.

It was therefore significant that the Secretary of State had failed to anticipate the demands which would be placed on the prison system by the introduction of IPP sentencing, despite the relevant legislation having been premised on the understanding that rehabilitative treatment would be made available to IPP prisoners. Indeed, this failure had been the subject of universal criticism in the domestic courts and resulted in a finding that the Secretary of State had breached his public law duty.

Substantial periods of time had passed as concerned each of the applicants before they had even begun to make any progress in their sentences, and this despite the clear guidance in relevant policy documents. It was clear that the delays had been the result of a lack of resources. The inadequate resources had apparently been the consequence of the introduction of the measures for indeterminate detention without the necessary planning and without realistic consideration of their impact. Further, the length of the delays in the applicants' cases had been considerable: for around two and a half years, they had simply been left in local prisons where there had been few, if any, offending behaviour programmes. The stark consequence of the failure to make available the necessary resources was that the applicants had no realistic chance of making objective progress towards a real reduction or elimination of the risk they posed by the time their tariff periods expired. Moreover, once the applicants' tariffs had expired, their detention had been justified solely on the grounds of the risk they had posed to the public and the need for access to rehabilitative treatment at that stage became all the more pressing.

In those circumstances, the Court considered that following the expiry of the applicants' tariff periods and until steps had been taken to progress them through the prison system with a view to their access to appropriate rehabilitative courses, their detention had been arbitrary and therefore unlawful within the meaning of Article 5 § 1. Although in the cases of Mr James and Mr Wells the Court was satisfied that following their transfer there was no evidence of any unreasonable delay in providing them with access to courses, it noted that Mr Lee had experienced a further five-month delay following the recommendation for prior motivational work. By the time the recommendation was made, Mr Lee was already two years and ten months post-tariff, in the context of a ninemonth tariff. It had accordingly been imperative that his

28. The authorities within remit, the Secretary of State for Justice, the Home Secretary or the Secretary of State for Children, Schools and Families will normally reply within four weeks to recommendations from the Ombudsman. The Ombudsman should be informed of the reasons for any delay. The Ombudsman will advise the complainant of the response to the recommendations.

Fatal incidents: 29. The Ombudsman will investigate the circumstances of the deaths of: i) prisoners and trainees (including those in young offender institutions and secure training centres). This includes people temporarily absent from the establishment but still in custody (for example, under escort, at court or in hospital). It generally excludes people who have been permanently released from custody; ii) residents of approved premises (including voluntary residents); iii) residents of immigration reception and removal centres, short term holding centres and persons under managed escort; iv) people in court premises or accommodation who have been sentenced to or remanded in custody.

Clinical issues: 33. The Ombudsman's investigation includes examining the clinical issues relevant to each death in custody – such deaths are regarded by the National Patient Safety Agency (NPSA) as a serious untoward incident (SUI). In the case of deaths in public prisons and immigration facilities, the Ombudsman will ask the local Primary Care Trust (PCT) or, in Wales, the Healthcare Inspectorate Wales (HIW) to review the clinical care provided, including whether referrals to secondary healthcare were made appropriately. Prior to the clinical review, the PCT will inform the NPSA of the SUI. In all other cases (including when healthcare services are commissioned from a private contractor) the Ombudsman will obtain clinical advice as necessary, and may seek to involve the relevant PCT in any investigation. The clinical reviewer will be independent of the prison's healthcare. Where appropriate, the reviewer will conduct joint interviews with the Ombudsman's investigator.

Copies of the report, should be available in your prison library

Mere Faults in Prison Investigation does not Breach Article 3 Rules Court of Appeal

UK Human Rights Blog, by Rosalind English R (NM) Secretary v of State for Justice [2012] EWCA Civ 1182

The Court of Appeal has ruled that a prison had conducted an adequate investigation into a sexual assault on a prisoner with learning disabilities and this complied with the prison's investigative obligation under Article 3 of the European Convention on Human Rights. See our post on the decision below here for the background facts.

Briefly, instead of a formal investigation, the matter was investigated by prison officers under the prison's violence reduction strategy. The other prisoner (F) admitted assaulting the appellant. But the Secretary of State refused a PSO 1300 formal investigation, asserting that a sufficient investigation had taken place. Judicial review of this refusal was dismissed, although the judge noted that the appellant's disability had been overlooked as the investigating officers were unaware of it and that the prison's disability policy should have led to the appointment of an appropriate adult for him. Nevertheless HHJ Mackie QC concluded that the investigation had been reasonable and did not breach Article 3 or PSO 1300. In this appeal it was submitted that the judge erred in concluding that the prison's investigation complied with Article 3.

The Court of Appeal's judgment: The appeal was dismissed. HHJ Mackie QC had been right to conclude that the investigation had not been flawed. The incident, although unpleasant, was not a serious one and no systemic failure had occurred. The opportunities for learning lessons were also absent. The appellant had been in touch with responsible officers and higher management almost immediately after his complaint to his father about the incident and

Matters subject to investigation 12. The Ombudsman will be able to investigate:

i) decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of prisoners in custody, by prison staff, people acting as agents or contractors of NOMS and members of the Independent Monitoring Boards, with the exception of those excluded by paragraph 14. The Ombudsman's terms of reference thus include contracted out prisons, contracted out services including escorts, and the actions of people working in prisons but not employed by NOMS;

ii) decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of offenders under probation supervision by NOMS or by people acting as agents or contractors of NOMS in the performance of their statutory functions including contractors and those not excluded by paragraph 14;

iii) decisions and actions (including failures or refusals to act) in relation to the management, supervision, care and treatment of immigration detainees and those held in short term holding facilities by UKBA staff, people acting as agents or contractors of UKBA, other people working in immigration removal centres and members of the Independent Monitoring Boards, with the exception of those excluded by paragraph 14. The Ombudsman's terms of reference thus include contracted out establishments, contracted out services including escorts, and the actions of contractors working in immigration detention accommodation but not employed by UKBA.

Time limits: 20. The Ombudsman will consider complaints for possible investigation if the complainant is dissatisfied with the reply from NOMS or UKBA or receives no final reply within six weeks (or 45 working days in the case of complaints relating to probation matters).

21. Complainants submitting their case to the Ombudsman must do so within three calendar months of receiving a substantive reply from the relevant authority.

22. The Ombudsman will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the Ombudsman, unless the delay has been the fault of the relevant authority and the Ombudsman considers that it is appropriate to do so.

23. Complaints submitted after these deadlines will not normally be considered. However, the Ombudsman has discretion to investigate those where there is good reason for the delay, or where the issues raised are so serious as to override the time factor.

Outcome of the Ombudsman's investigation

24. It will be open to the Ombudsman in the course of a complaint to seek to resolve the matter in whatever way the Ombudsman sees most fit, including by mediation.

25. The Ombudsman will reply in writing to all those whose complaints have been investigated and advise them of any recommendations made. A copy will be sent to the relevant authority.

26. Where a formal report is to be issued on a complaint investigation, the Ombudsman will send a draft to the head of the relevant authority in remit to allow that authority to draw attention to points of factual inaccuracy, and to confidential or sensitive material which it considers ought not to be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations. The relevant authority may also use this opportunity to say whether the recommendations are accepted.

27. The Ombudsman may make recommendations to the authorities within remit, the Secretary of State for Justice, the Home Secretary or the Secretary of State for Children, Schools and Families, or to any other body or individual that the Ombudsman considers appropriate given their role, duties and powers.

treatment be progressed as a matter of urgency and, in the absence of any explanation from the Government for the delay, the Court concluded that that period of detention had also been arbitrary and therefore unlawful within the meaning of Article 5 § 1. There had therefore been a violation of Article 5 § 1 of the Convention as concerned all three applicants.

Article 5 § 4 (whether lawfulness of detention was decided speedily by a court) The Court found that no separate issue arose under Article 5 § 4 regarding the applicants' complaint about lack of access to courses as it had already been examined in the context of their complaint under Article 5 § 1. Furthermore, there had been no violation of Article 5 § 4 as concerned Mr Wells' and Mr Lee's complaint about the possibility of their release, as the Court found that they had failed to establish that the combination of the Parole Board and judicial review proceedings could not have resulted in an order for their release.

Just satisfaction (Article 41): The court held that the United Kingdom was to pay Mr James 3,000 euros (EUR), Mr Wells EUR 6,200 and Mr Lee EUR 8,000 in respect of non-pecuniary damage. For costs and expenses, the applicants were awarded EUR 12,000, each.

Judge Kalaydjieva expressed a dissenting opinion regarding Article 5 § 4:

I find myself unable to share the opinion of the majority that, in the light of the examination of the applicants' complaints of arbitrary detention resulting from the authorities' failure to allow their timely participation in courses under the first paragraph of Article 5 of the Convention, no separate issue arises under Article 5 § 4.

The substantive right to personal liberty guaranteed by the first paragraph of Article 5 is clearly distinct from the procedural guarantees required by Article 5 § 4 for the purposes of effective protection against arbitrariness. While it is true that the notion of 'lawfulness' has the same meaning in both provisions (see paragraph 230 of the judgment), in the instant case the underlying statutory requirement to impose and order the continuation of the period of detention served as an assumption of lawfulness, which affected these distinct rights in a different manner. This assumption not only required the domestic courts to impose IPP sentences without any initial individual assessment, but also limited the scope of any subsequent assessment of the applicants' situation - despite the express criticism and censure of the quality of the law and the authorities' failure to enable prisoners to meet the statutory prerequisites for release imposed by it. This assumption of lawfulness pre-empted the proceedings before the Parole Board and limited the scope of the formally available review to an extent which ultimately acted as an obstacle to the exercise of the domestic authorities' competence to decide speedily on the lawfulness of the applicants' detention. It is true that "[s]hortly after the lodging of their judicial review claims, both [Mr Wells and Mr Lee] were transferred to a first stage prison for access to relevant courses and assessments" (see paragraph 231). However, the subject matter and outcome of these proceedings appear to be different from proceedings in which "the lawfulness of detention shall be decided speedily by a court and release ordered if the detention is not lawful" as required by Article 5 § 4.

The respondent Government failed to demonstrate any other available proceedings or practice established by the Parole Board and/or the competent domestic courts capable of affording a proper scope of review without consideration of the statutory assumption of the initial and continuing lawfulness of the applicants' detention, and which could have resulted in an order for release where appropriate. In this regard the "exceptional nature" of the decision of the Parole Board to release Mr James (see paragraph 212) only emphasises the problem as regards the effectiveness of the proceedings for the purposes of Article 5 § 4. In this regard

I see no reason to disagree with the findings of Moses LJ (see paragraphs 61-66). Lastly, I find myself unable to accept the approach of shifting onto the applicants the burden of proof as to the effective operation of the Parole Board and the judicial review proceedings for the purposes of Article 5 § 4 (see paragraph 232). The opposite approach by the Court in cases under Article 5 § 4 (as in cases concerning Article 13) seems well established.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Prisons & Probation Ombudsman Annual Report 2011 – 2012

229 persons died in prison, immigration detention and probation service approved premises in 2011–12. This is the highest annual figure since we took on this onerous responsibility in 2004 and a 15% rise on the previous year

71 committed suicide, 13 more than the previous year and a reversal of the downward trend seen in recent years. 142 deaths from natural causes: 9 were from some other non-natural cause, mostly drug-related. 1 was homicide and 6 cases are still awaiting classification at the time of writing this report 15 deaths were investigated in probation approved premises (four more than last year) 4 in immigration removal centres (two more than last year)

20% of our investigations into self-inflicted deaths found evidence of bullying or intimidation from other prisoners in the three months before their death."

Prisoners aged 60 and over are now the fastest growing age group in the prison estate and this rose 128% between 2000 and 2010

Increasing numbers of people are growing old and dying of natural causes in prison, said Nigel Newcomen, Prisons and Probation Ombudsman (PPO), as he published his first annual report. He added that there had also been a troubling rise in the number of self-inflicted deaths in custody.

PPO independently investigates the circumstances of each death in custody and identifies lessons that can be learned so that services are encouraged to improve. In 2011-12, the PPO started 229 investigations into deaths in prison, immigration detention and probation service approved premises. This was the highest annual figure since the PPO took on this responsibility in 2004, and a 15% rise on the previous year. The year also saw three apparently self-inflicted deaths of children in custody, the first such deaths in over three years.

The recommendations made as a result of PPO investigations are key to effecting change when needed. For example, the PPO saw a growth in the number of cases where the deceased was undergoing methadone treatment and had also been taking other drugs, either licit or illicit. These concerns were raised with the National Offender Management Service (NOMS) who launched their own inquiry.

Nigel Newcomen said: "The majority of deaths investigated were from natural causes, continuing an upward trend over recent years, which may reflect the fact that more prisoners now serve longer sentences, more prisoners are sentenced later in life and some prisoners display significant health deficits. This has led to an aging and ailing population and prisons having

Trust had failed to implement the findings of the internal investigation. He, therefore, asked for his complaints to be reviewed by an appeal panel (in line with the Trust's policy). The Trust refused on the grounds that Mr W had raised no new information. When Mr W wrote repeatedly asking for his complaints to be reviewed, and making derogatory remarks about staff, the Trust categorised him as a vexatious and persistent complainant and told him that they would no longer respond to his letters. We concluded that the Trust had contravened its own complaints policy by refusing to arrange a review of Mr W's complaint. Whether or not he had raised any new points, Mr W was entitled to have his complaint reviewed by an appeal panel, and it was not appropriate to categorise him as a vexatious and persistent complainant because he continued to ask that this be done. We upheld the complaint and recommended that the Trust apologise to Mr W and arrange for his complaint to be reviewed.

Immigration detention: We investigated 76 complaints from immigration detainees during the year. Many were similar to those from prisoners, with a third being about property.

But we have also investigated some serious complaints of assault by staff. There was the case of Ms B on page 32 and the following investigation into assault.

Ms Y complained that she had been assaulted by escorting staff8 and left with her hands cuffed behind her back for over five hours. An investigation carried out by UKBA's Professional Standards Unit found that Ms Y had been handcuffed as she described because the escorting staff had lost the key to the cuffs, and recommended that she receive an apology. It went on to find that CCTV was not working in the escort van when the alleged assault occurred, and concluded that Ms Y's allegation of assault could not be substantiated.

We took the view that UKBA's investigation had been inadequate for such a serious complaint in that neither Ms Y, nor the staff involved had been interviewed. We were extremely concerned to learn that the CCTV in the escort van did not function when the engine was turned off, since, in the nature of things, most incidents that may give rise to complaint – restraints and the application of handcuffs – will take place when the vehicle is stationary. We were also disappointed to find that the escort contractors had refused to apologise to Ms Y for the fact that her hands were cuffed behind her back for five hours. They argued that, even if the escort staff had not lost the key, she would have been handcuffed anyway because of her behaviour. We did not accept this – the evidence from the escorts themselves was that Ms Y was asleep for most of the time. We recommended that UKBA ensure that CCTV operates in escort vehicles for the whole time a detainee is in them and this has been accepted. We also recommended that UKBA apologise to Ms Y for the shortcomings in their investigation and we await a response.

Complaints - Persons able to complain - 10. The Ombudsman will investigate complaints submitted by the following categories of person:

i) prisoners who have failed to obtain satisfaction from the prison complaints system and whose complaints are eligible in other respects;

ii) offenders who are, or have been, under probation supervision, or accommodated in approved premises, or who have had reports prepared on them by NOMS and who have failed to obtain satisfaction from the probation complaints system and whose complaints are eligible in other respects;

iii) immigration detainees who have failed to obtain satisfaction from the UKBA complaints system and whose complaints are eligible in other respects.

11. The Ombudsman will normally only act on the basis of eligible complaints from those individuals described in paragraph 10 and not on those from other individuals or organisations. However, the Ombudsman has discretion to accept complaints from third parties on behalf of individuals described in paragraph 10, where the individual concerned is either dead or unable to act on their own behalf.

concluded that the problems with his mail had been caused by systemic problems at the prison and he had not been deliberately targeted. We recommended that the prison carry out a review of their procedures for handling prisoners' mail. This review has been completed and, if its conclusions are implemented, there should be no further grounds for such complaints.

*Incentives and earned privileges:*As in previous years, we received a number of complaints from prisoners who were unable to achieve the enhanced level of the incentives and earned privileges (IEP) scheme because they were not taking part in accredited offending behaviour programmes. Such complaints generally come from prisoners convicted of sexual offences who have been assessed as being unable to take part in the Sex Offender Treatment Programme (SOTP) because they deny their guilt. The Prison Service is obliged to accept the verdict of the courts and we consider that it is appropriate for the most important aspects of a prisoner's time in custody – risk reduction work, pro-social behaviour and compliance with sentence plan objectives – to be rewarded by the IEP scheme. Conversely those who do not engage with this work should not expect to receive the same rewards as those who make the often painful steps towards confronting and changing their offending behaviour.

*We upheld the following complaint.*Mr O had been convicted of serious sexual offences, which he denied. He complained that he was downgraded to standard because he was not undertaking any offending behaviour work. We were concerned to find that, although Mr O had been in custody for two years, he did not have an OASys risk assessment or a sentence plan (apparently because of a disagreement about which probation trust had responsibility for him). As a result, although he had been told that he needed to do the SOTP, he had never been assessed to determine whether he was suitable for it.

We did not consider that it was reasonable to penalise Mr N for not undertaking a programme for which he had never been assessed. We, therefore, upheld Mr O's complaint and recommended that his enhanced status be restored. The report was also copied to the Chief Officer of the relevant probation trust so that a sentence plan could be put in place for him.

Recommendations that cost money: Almost all the recommendations made by the Ombudsman are accepted by NOMS and UKBA. However, as budgets are cut, there may be less willingness to accept recommendations that come with a price tag. We are conscious that recommendations need to be realistic, but at the same time this will not stop us making recommendations which are right and necessary.

Mr S complained that he was not able to make a hot drink when he was locked up overnight (for between 12 and 15 hours depending on the day of the week). This was out of line with Prison Service policy and practice in most prisons. In our view, both health and decency require that prisoners are provided with the means to make a hot drink when they are locked up for such long periods. Commendably, the Prison Service accepted the recommendation – and the cost implications – that the prison should provide prisoners with vacuum flasks or in-cell kettles for this purpose.

Mr W complained that the Probation Trust had refused to consider his complaints about his offender manager. The investigation established that Mr W had complained to the Trust about a number of alleged inaccuracies in his offender manager's report to the Parole Board.

The Trust initially told Mr W that no changes would be made to the report. However, when Mr W continued to complain, an internal investigation was carried out which concluded that, although most of Mr W's complaints were unfounded, the report did contain two, potentially quite significant errors. As a result the Trust apologised to Mr W. Mr W remained dissatisfied because he believed that the

to care for increasing numbers of people who are growing old and dying of natural causes in their care. The number of apparently self-inflicted deaths also rose, a reversal of the downward trend seen in recent years. This is particularly worrying."

The other principal part of the PPO's remit is the independent investigation of complaints. The total number of complaints received, around 5,300, is a similar number to those received last year, although around half of those complaints were found to be ineligible. However, as more investigations were begun this year, there was a significant rise in actual casework, at a time when the PPO, along with other public services, faces considerable budget cuts.

Mr Newcomen said: "My staff will rise to the challenge of delivering more for less and my office will target resources more effectively. I need to ensure we do a first class job in our most serious cases where there is most to put right and most to learn but I will have to be more proportionate in other cases. In every case, however, care for bereaved families and fairness to complainants will remain the touchstone."

Serious complaints: Ms C, a young offender, complained, among other things, that she was unable to complete her Detention and Training Order (DTO) because she was transferred to an adult establishment on her eighteenth birthday.

The investigation found that, once Ms C transferred to the adult establishment, she was no longer engaged in a DTO regime and followed the normal regime for adult sentenced offenders. In our view this effectively subverted the court's intentions and substituted a different, less therapeutic, form of sentence. We also found that different procedures are followed for male and female young offenders. The presumption is that, on turning 18, a male young offender will remain where he is and continue with his DTO. Female young offenders, however, are routinely transferred to adult establishments because of lack of space and are, therefore, unable to complete their DTOs in any meaningful sense. The Chief Executive of NOMS accepted our recommendation that he carry out a review of national policy on the transfer of 18-year-old women serving a DTO, to ensure that they are not treated any less favourably than young men and continue to experience a regime that is consistent with the intentions and ethos of a DTO.

Serious complaints concerning prison's responsibility to care for prisoners appropriately.

Ms E, a prisoner in a male high security prison who regards herself as transsexual, complained that she was not being allowed to live in role as a woman. The prison accepted that they had refused to allow Ms E to wear female clothes. They said that Ms E did not yet have a diagnosis of gender dysphoria and that she was a vulnerable individual who would be at risk of sexual exploitation by other prisoners if she was allowed to live and dress as a woman.

Our investigation found that Ms E's medical diagnosis was extremely complex and that she was a vulnerable person who did not always show good judgement in relation to her personal safety. We accepted that, in refusing to allow Ms E to live and dress as a woman, the prison believed that they were acting in her best interests. We found no evidence that prison staff were pursuing a personal vendetta against her, as she believed. On the contrary, we were satisfied that she had been treated with sensitivity and that staff had invested considerable time in trying to ensure her safety and wellbeing.

However, the Prison Service's own policy on the care and management of transsexual prisoners (set out in PSI 07/2011) says that a formal diagnosis of gender dysphoria is not required and that establishments must permit prisoners who consider themselves to be transsexual to live permanently in their acquired gender. This will include allowing prisoners to dress in clothes appropriate to the acquired gender. The policy makes it clear that any risk to and

from a transsexual prisoner must be identified and managed.

In this case, it was clear that the prison was not complying with Prison Service policy. We fully recognise the challenges that a transsexual prisoner living in role can pose in a male high security prison. Nevertheless, prisons have to manage many prisoners whose offence, sexuality, personality or behaviour puts them at particular risk. The risks of dressing as a woman must be managed in the same way as any other vulnerability. We, therefore, upheld Ms E's complaint and recommended that the prison put plans in place to manage transsexual prisoners in line with PSI 07/2011. It was also recommended that the Prison Service take account of our report in their training for staff on the care and management of transsexual prisoners.

One of the Biggest Causes for Complaint was Lost or Damaged Property

Other complaints may seem relatively minor to many people, but are nevertheless significant to detained complainants. For example, as in previous years, one of the biggest causes for complaint was lost or damaged property. Although the sums involved are often small, most prisoners have very few possessions and those they do have may be an important source of personal identity. The care establishments take with prisoners' property may also say something about their attitude to prisoners more generally.

Property cases have the highest uphold rate of all complaints, with over a quarter either fully or partially upheld and a further 16% where mediated settlements are achieved. This high uphold figure reflects the fact that many property complaints need never reach this office and should have been resolved locally. It is often clear, for example, that the property has gone missing or been damaged in transit between two or more prisons, but none of the establishments involved are prepared to accept responsibility and the prisoner is simply passed backwards and forwards between them. Other complaints arise because prisons fail to follow Prison Service policy. The care establishments take with prisoners' property may also say something about their attitude to prisoners more generally

In Mr G's case, for instance, he complained that a number of items had been wrongly confiscated from him. The investigation found that the items probably belonged to Mr G and the Governor had agreed to send them on to Mr G at his current prison. The complaint seemed to have been settled satisfactorily. However, Mr G then contacted us again to complain that, when his property arrived at his current prison, it had been destroyed. The prison accepted that it had destroyed the property, but said it had done so, in line with local policy, because they had been told that the items had been confiscated at Mr G's previous prison.

This was concerning because, since March 2010, Prison Service policy has reflected the Coleman ruling which established that Governors may confiscate a prisoner's property temporarily, but have no power to destroy it or deprive them of it permanently. The prison's local policy was, therefore, not in line with national policy – or the law. We upheld Mr G's complaint and recommended that he be paid £100 in compensation.

Mr I complained that several items of clothing had gone missing in the laundry. The prison had refused to compensate him on the grounds that he had signed a disclaimer saying that he held property in his possession at his own risk.

However, following a previous Ombudsman's case, Prison Service policy makes it quite clear that it is not reasonable to expect a prisoner to bear responsibility for any loss or damage to items that have been handed over to the prison laundry. We, therefore, upheld Mr I's complaint and recommended that he be paid £100 in compensation.

Mr N had been convicted of serious sexual offences against the young daughters of his previous partner. After being released on licence, he had formed a relationship with another

woman with young daughters. He was subsequently recalled to prison and then applied to marry his new partner. The prison was concerned that she was a vulnerable individual and that her children would be at high risk of harm if she married Mr N. They, therefore, delayed taking a decision on his application while they consulted the Multi Agency Public Protection Panel. Mr N complained that this amounted to an unlawful refusal.

The investigation established that Mr N's partner had been told about his convictions and that she still wished to marry him. It was also established that Social Services had been made aware of the situation. We found that the prison's delay had in effect amounted to a refusal of Mr N's application. We recognised that the prison had acted in what it believed to be the best interests of Mr N's partner and her children. However, Governors have no authority to refuse a prisoner's application to marry on the grounds that the marriage is undesirable. We, therefore, upheld Mr M's complaint. He had by then transferred to another prison where the marriage had gone ahead.

In about 20% of complaints about adjudication, we concluded the finding of guilt was unsafe

Adjudications are another significant cause for complaint. As with property complaints, many of these complaints need never reach this office if Prison Service policy is correctly followed. The Ombudsman's role in considering complaints about adjudications is not to rehear the evidence, but to decide whether, based on the evidence presented at the hearing, it was established beyond reasonable doubt that the prisoner did what he was charged with doing, that the correct procedures were followed, and that a fair and just decision has been reached. In about 20% of complaints about adjudication, we concluded that the finding of guilt was unsafe – most commonly because the adjudicator had failed to call witnesses without good reason, or to enquire fully into the prisoner's defence, or to record the reasons for decisions.

Mr K was charged with using threatening, abusive or insulting words or behaviour. The adjudicator found the charge proven and Mr K received a punishment of seven days cellular confinement. Mr K complained that the adjudicator had refused to call his witnesses.

The investigation established that the adjudicator had indeed refused to call Mr K's witnesses. He may or may not have had justifiable grounds for doing so, but it was impossible to know because he had not recorded his reasons, beyond saying, 'I do not propose to have a parade of prisoner witnesses who will all tell me the same thing'. As a result, we could not be satisfied that the adjudicator had made sufficient inquiries into Mr K's defence to find the charge proved beyond reasonable doubt. We, therefore, upheld Mr K's complaint and recommended that the finding of guilt be quashed. This was the second poorly conducted adjudication in a short space of time from the same prison and we, therefore, recommended that the Governor remind adjudicators that they need to ensure the prisoner's defence is fully explored and that a clear record is made of the hearing. We then investigated a third very poor adjudication from the same prison making the same errors, and have now recommended that adjudicators at the prison are given refresher training.

Mr M complained that his prison had opened his legally privileged mail on several occasions and had lost recorded delivery letters he had placed in the external post. He believed his post was being deliberately targeted by prison staff.

Our investigation was unable to establish what had happened to individual items of Mr M's mail. However, we found that some staff involved in handling prisoners' mail did not have a good understanding of the processes to be followed, there was poor communication between departments and there was a lack of structure and direction. In these circumstances, it was easy to imagine errors occurring. We, therefore, upheld Mr M's complaint on the balance of probabilities, although we