



The
**Prisoner
Ombudsman**
for Northern Ireland

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FOREWORD BY THE PRISONER OMBUDSMAN FOR NORTHERN IRELAND

I am pleased to present my third and final Annual Report for the 2007/08 business year as Prisoner Ombudsman.

The past year has been an eventful one not least of all because of my decision to resign as Ombudsman. The media reported wrongly at that time that I had resigned following a 'row' with the Northern Ireland Office. It is true that I had become increasingly disenchanted at the failure to secure the position of Prisoner Ombudsman in primary legislation which would appropriately empower the Office. In particular my views on the lines of accountability and independence for the Prisoner Ombudsman were largely disregarded in the draft legislation to be incorporated in the Ministry of Justice sponsored Criminal Justice and Immigration Bill. My exchanges on these issues with the Northern Ireland Office and especially with the Prison Service though robust were professional and polite and no 'row' ever took place.

I am heartened if somewhat sceptical about the process and timescale, that the advertisement for my replacement has stated "Government is currently considering options to place the Office on a statutory footing". The central issue in determining the nature of primary legislation is, I believe, that if the case is made for a specialist ombudsman for prisons then the Office of Prisoner Ombudsmen should be empowered in the same way as for other statutory ombudsmen. This is the only way of avoiding duplication of effort arising from the involvement of several ombudsmen. Furthermore it is the only way to ensure that the Prisoner Ombudsman can deliver a holistic service which deals comprehensively with the totality of prisoner complaints. If this means the transfer of powers from other statutory ombudsmen to the Prisoner Ombudsman so be it.

I do recognise that the Parliamentary Ombudsman has challenged the rationale "in the minds of the Ministry of Justice... for creating a statutory Prisons Ombudsman (in the Criminal Justice and Immigration Bill), when prisons already fall ultimately within the statutory remit of the Parliamentary Ombudsman...". However, there is strong evidence for example from experience in the UK, Canada, and latterly New Zealand, that a specialist 'prisons' ombudsman is justified for what is a uniquely high risk public service environment.

In essence my decision to resign my Office was reluctantly taken because of an irreconcilable difference between myself and the Northern Ireland Office over the key principle of the independence of the Prisoner Ombudsman. I am grateful for the fact that the UK Parliamentary Ombudsman has recorded, with regard to my objections to the Criminal Justice and Immigration Bill proposals for my Office, "you clearly understood the issues at stake and their importance". I was also grateful for the extensive cross party political support for my views following my resignation.



Brian Coulter

I am sorry to be leaving Office prematurely and wish my successor well. I also want to place on record my thanks to Robin Masefield and his staff for contributing to a professionally sound and generally respectful relationship with myself and with my team. I am hopeful that my successor's relationship with the Criminal Justice Directorate within the Northern Ireland Office which has been tentative during my time will be strengthened.

Meanwhile, despite the potential diversion arising from such higher level debates, the work of my Office has continued.

I comment elsewhere in this Report that there has been a significant fall in prisoner complaints for the third consecutive year. The irrational decision to remove healthcare complaints from my remit will substantively reduce complaints received. On the other hand, though likely to be small in number, the proposed addition of prison visitor and probation complaints to my remit is welcomed.

I have also taken the opportunity to review death in custody investigations over the past three years. It is a sad reality that a small number of prisoners will die in custody. However the facts that some of those who have died over the past three years are relatively young and that their deaths have been contributed to by in prison drugs misuse or by mental health problems or both continues to represent a major challenge to the Prison Service. I welcome the transfer of prison healthcare to the Health and Social Services Trusts. The priority for them must be to develop services which are subject to rigorous clinical governance and at all times recognise and address the needs which are peculiar to prisons.

Finally as part of this Foreword I want to say a big thanks to my staff team who have worked hard over the past three years and set high standards for my Office despite the destabilising influence at times of staff changes. I also want to wish the Prison Service well for the future. The Prison Service plays a hugely important part in the life of our community even though this is often poorly understood. The challenge for a Northern Ireland Prison Service which remains in transition is immense but I am hopeful that with the proper political and public support the correct balance between satisfying public protection and meeting the needs of prisoners and their families can be met. Last but by no means least I want to thank Stephen Shaw C.B.E., Prisons and Probation Ombudsman for England and Wales for his wise counsel and practical support throughout my term in Office.

Brian Coulter

Prisoner Ombudsman for Northern Ireland
2005-2008

CHAPTER 1

INTRODUCTION

THE PRISONER OMBUDSMAN AND HIS TEAM

Brian Coulter is the Prisoner Ombudsman for Northern Ireland. He is supported by a small team of investigators and other administrative staff.

Prisoner Ombudsman

Brian Coulter was appointed Prisoner Ombudsman on 1 May 2005. He has had a 23 year career in health and social services having begun as a social worker and finished his career as a senior manager. He retired as Chief Executive of the FOLD Group in 2005 and was honoured for his services to social housing.

Brian was founder Chairman of the Regulation and Quality Improvement Authority for Health and Social Services. He was a Privy Council appointee to the General Dental Council, former member of the Personal Social Services Advisory Committee and has worked in a voluntary capacity in the fields of learning disability and social housing.

What does the Prisoner Ombudsman for Northern Ireland do?

The Prisoner Ombudsman is appointed by the Secretary of State for Northern Ireland, under Section (2)(2) of the Prison Act (Northern Ireland) 1953 (an employee, defined as a Statutory Office Holder), and investigates eligible complaints referred by a prisoner, or former prisoner held in Northern Ireland who remains unhappy with the answer received from the Prison Service regarding his or her treatment in prison and, if he considers it appropriate, will make recommendations concerning that complaint to the Director of Northern Ireland Prison Service (NIPS). The Ombudsman is completely independent of NIPS and is accountable to the Secretary of State.

The role of a Prisoner Ombudsman is nothing new within the United Kingdom. In 1994 the Scottish Commissioner for Prisoner Complaints was introduced and the English and Welsh Prison and Probation Ombudsman's Office was established in 1995.

Due to the changing political climate within Northern Ireland John Steele recommended to the Government of the day that it should consider the introduction of an independent Prisoner Ombudsman for Northern Ireland when he led the Safety Review Team in his review of staff and prisoner safety in HMP Maghaberry in September 2003. Until then, unlike the rest of the UK, Northern Ireland did not have such arrangements for considering prisoner complaints independently from the Northern Ireland Prison Service. Following proposals in April 2004 and a period of public consultation during April and May 2004 the Ombudsman's Office opened in Belfast City Centre on 3 May 2005.

Prisoner Ombudsman's Mission Statement

To provide prisoners with an accessible, independent and effective way to resolve their complaints and make a valuable contribution to defusing the tensions which arise in prisons in Northern Ireland.

Prisoner Ombudsman's Office Values

- To be accessible to all who are entitled to make use of the office of the Prisoner Ombudsman and actively to seek removal of any barriers to it.
- To be independent and demonstrate the highest standards of impartiality, honesty, objectivity, thoroughness, fairness and accuracy in the investigation, consideration and resolution of prisoner complaints.
- To be effective by ensuring that complaints are dealt with as quickly as possible and that any recommendations are well founded, capable of being implemented and are followed through.
- To be constructive in helping the Prison Service improve its handling of complaints and contribute to defusing tensions that arise in prisons.

Prisoner Ombudsman

Brian Coulter

Personal Secretary

Sharon Hetherington / Linda McIlwrath

Head of Operations / Principal Administrative Officer

David McCall

Senior Investigator

Paul Bullick

Office Manager

Pat McKinney

Complaints Investigators

Michael Hillis

Geraldine Lennon

Karen McAfee

Investigators are responsible for deciding whether complaints are eligible for investigation, the conduct of investigations into complaints, prioritising work and deciding what type of investigation needs to take place.

Case Worker

Kevin McQuillan

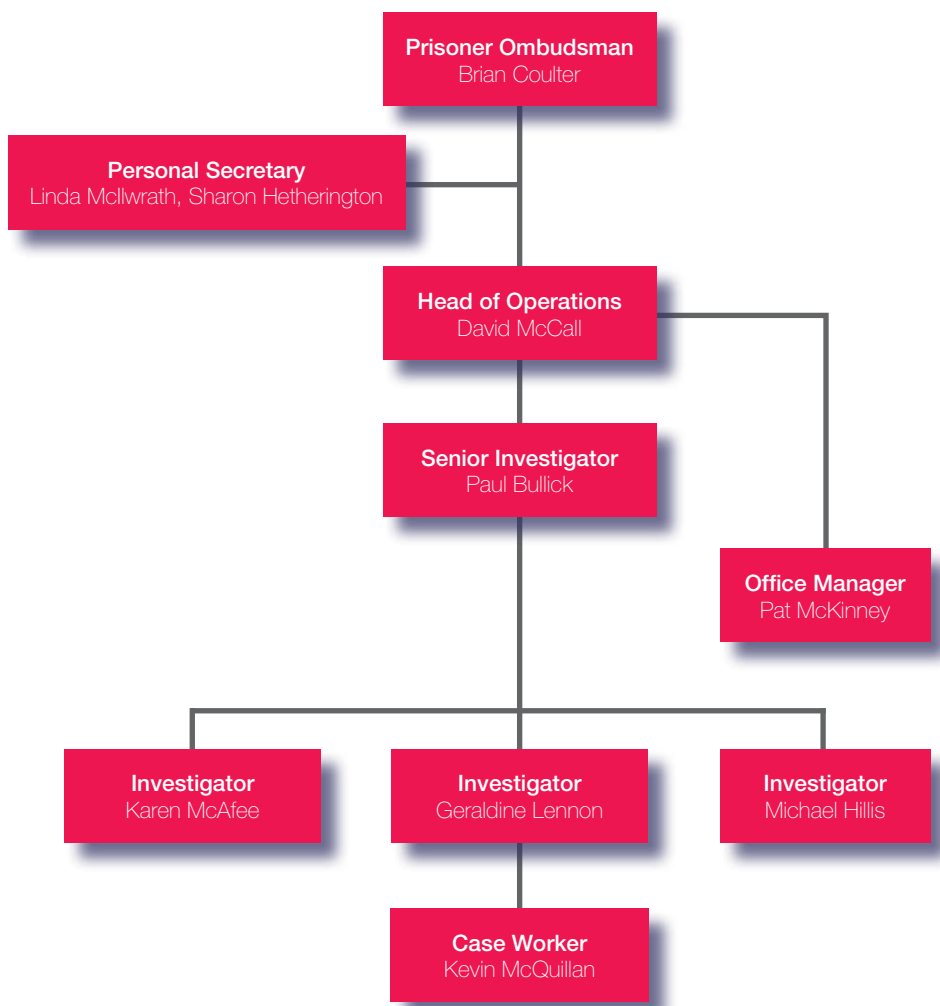
The team has three main functions:

- To handle the processing of complaints received by the Prisoner Ombudsman's office
- To handle the processing of all death in custody investigation files
- To take follow up action to ensure a timely response where recommendations have been made and that any action required to implement the recommendation is taken.

MISSION STATEMENT

To provide prisoners with an accessible, independent and effective way to resolve their complaints and make a valuable contribution to defusing the tensions which arise in prisons in Northern Ireland.

ORGANISATION CHART



OFFICE VALUES

- **To be accessible** to all who are entitled to make use of the office of the Prisoner Ombudsman and actively to seek removal of any barriers to it.
- **To be independent** and demonstrate the highest standards of impartiality, honesty, objectivity, thoroughness, fairness and accuracy in the investigation, consideration and resolution of prisoner complaints.
- **To be effective** by ensuring that complaints are dealt with as quickly as possible and that any recommendations are well founded, capable of being implemented and are followed through.
- **To be constructive** in helping the Prison Service improve its handling to defusing tensions that arise in prisons.

CHAPTER 2

REVIEW OF OPERATIONS

“Ministers approved in principle that my Office should be put on a statutory footing.”

Given that the Office of Prisoner Ombudsman is only three years old it might be expected that development would continue. In this regard I have a number of positive matters to report. Unfortunately however a lot of good work has been overshadowed by the fact that - once again - legislation to place the Office of Prisoner Ombudsman on a statutory basis with appropriate powers has been postponed.

For the bulk of the time, the absence of legislation makes limited practical difference. Evidence is collected, witnesses are interviewed, reports are issued: all without any impediment. Indeed on occasions the absence of legislation has enabled us to take on new tasks with the minimum of fuss. Occasionally however, the absence of statutory powers really does make a difference. For example the contribution that my investigations make to the investigative obligation under Article 2 of the European Convention on Human Rights is clearly weakened so long as I do not enjoy independence established in statute. My response to this situation is now well documented.

Furthermore the importance attaching to the functional independence of the Office of Prisoner Ombudsman should not be underestimated with regard to securing the confidence of complainants and their representatives.

In addition to the failure to put my Office on the necessary statutory footing the year's other big disappointment has been the lack of any meaningful consultation on the transfer of Healthcare to the Health and Social Services Trusts and in particular with regard to a structured complaints system. I have commented upon this elsewhere in this report.

On a more positive note there have been a number of key developments all of which contribute to the ongoing development and hopefully efficiency and effectiveness of my Office.

INVESTIGATIONS AND POLICY DEVELOPMENT

During the year I was able to recruit a Senior Investigating Officer. This addition together with robust capacity management has meant that I have been able to eliminate the considerable backlog of complaints that has built up. The result is that I am pleased to report that by year end we were meeting our key business targets for investigation and reporting of complaints. I have also further developed the investigation process and introduced a new policy on how evidence is recorded thus ensuring a consistency

of approach amongst my investigators. In the past I have also spoken of local resolution as a way of resolving complaints without going to a full investigation. As a result of developing policy in this regard I am pleased to report that an increasing number of complaints have been resolved in this way resulting in a “win/win” situation for both the prisoner and the Prison Service. A Local Resolution is where my investigators meet with the complainant and the appropriate Prison Service personnel in an effort to broker an outcome agreeable to both parties. Furthermore the office has fully endorsed the “Principles of Good Complaints Handling” as set out by the British and Irish Ombudsman's Association. These principles are the basis on which we conduct all investigations. The Key Principles can be found at Annex C.

There are two further matters related to investigations that I want to flag at this point in my report: In chapter 6 I report on my first investigation into the use of PAVA incapacitant spray; and in chapter 7 I report the results of our first prisoner survey. This has been a useful exercise and has helped to inform our strategy going forward.

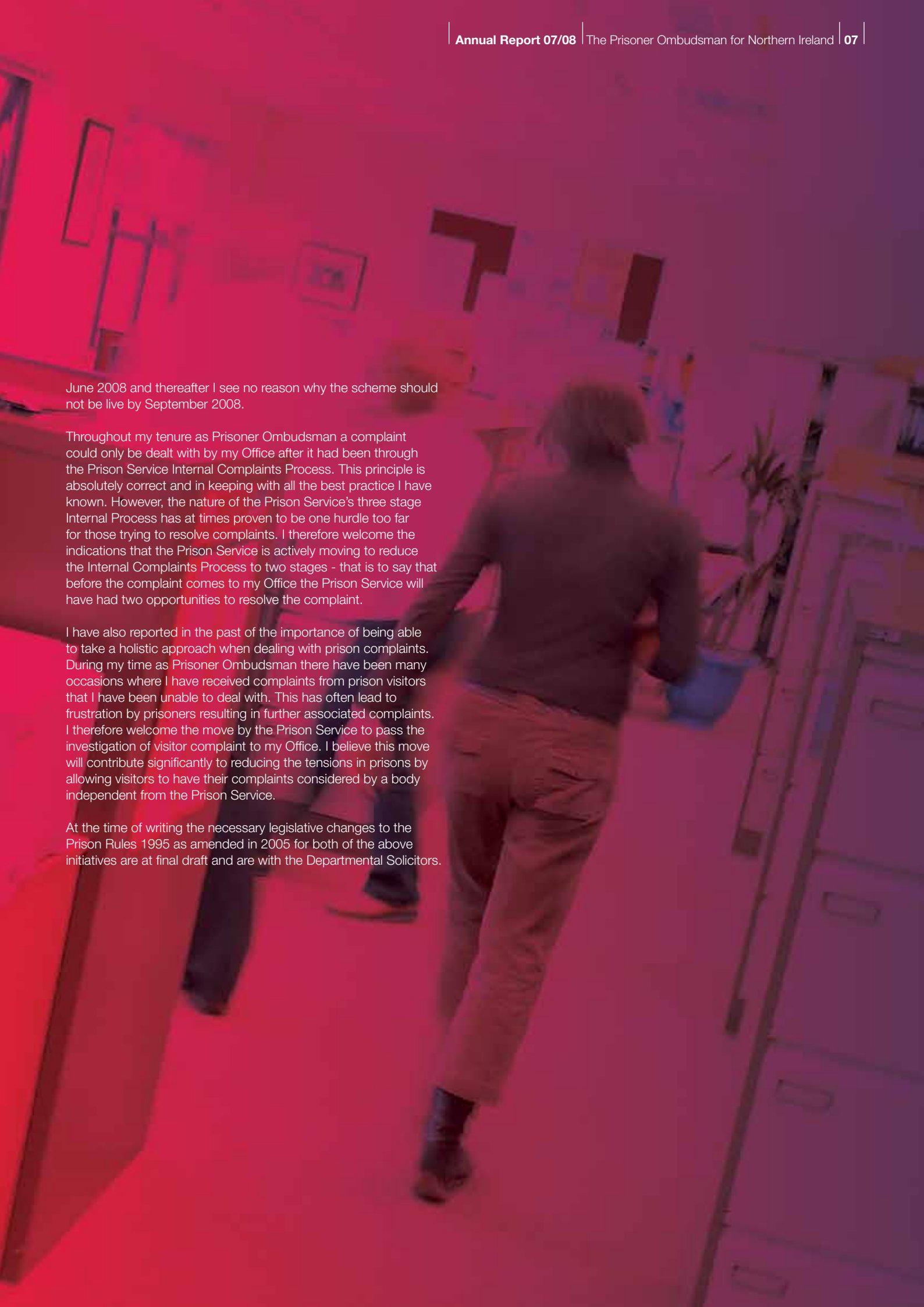
We have introduced new office policies designed to promote greater awareness among colleagues of our impact on others, and to provide a consistent approach. Our complaints procedure - for complaints about the Prisoner Ombudsman - has been developed and will be publicised on our website in due course. We have also developed a policy that sets out how we respond to the very small minority of unreasonable or abusive complainants who undermine our ability to provide a good service.

PRISON SERVICE COMPLAINTS PROCESS

In previous reports I have commented on the Prison Service's internal complaints process. I have no doubt that in part at least, the reduction in the number of complaints coming to my Office is due to a greater awareness amongst operational managers of the importance of correctly dealing with internal complaints. Unfortunately however there is still some evidence to suggest that some staff do not see complaints as a positive indicator. In the round however I do feel that there is a willingness to embrace the learning derived from complaints within the service. Due to the fact that prisoner complaints handling is a core activity for my Office a fuller analysis is provided in Chapter 4.

FUTURE DEVELOPMENT

There are a number of significant initiatives that should reach a conclusion early in the new business year. I reported last year that a pilot scheme with the Probation Service for Northern Ireland had been agreed in relation to their staff working inside prisons. Working through the finer details of this scheme has taken longer than expected, but the final series of meetings are planned for



June 2008 and thereafter I see no reason why the scheme should not be live by September 2008.

Throughout my tenure as Prisoner Ombudsman a complaint could only be dealt with by my Office after it had been through the Prison Service Internal Complaints Process. This principle is absolutely correct and in keeping with all the best practice I have known. However, the nature of the Prison Service's three stage Internal Process has at times proven to be one hurdle too far for those trying to resolve complaints. I therefore welcome the indications that the Prison Service is actively moving to reduce the Internal Complaints Process to two stages - that is to say that before the complaint comes to my Office the Prison Service will have had two opportunities to resolve the complaint.

I have also reported in the past the importance of being able to take a holistic approach when dealing with prison complaints. During my time as Prisoner Ombudsman there have been many occasions where I have received complaints from prison visitors that I have been unable to deal with. This has often lead to frustration by prisoners resulting in further associated complaints. I therefore welcome the move by the Prison Service to pass the investigation of visitor complaint to my Office. I believe this move will contribute significantly to reducing the tensions in prisons by allowing visitors to have their complaints considered by a body independent from the Prison Service.

At the time of writing the necessary legislative changes to the Prison Rules 1995 as amended in 2005 for both of the above initiatives are at final draft and are with the Departmental Solicitors.

CHAPTER 3

COMPLAINTS

My previous two Annual Reports have demonstrated that my investigation role encompasses most aspects of prison life. This last year has been no different as the following case examples and complaints by category analysis will show.

PRISONER HEALTHCARE

I received a substantive increase in healthcare related complaints in 2007/08. In 05/06 prisoner healthcare complaints accounted for 8% of total complaints received. This figure was similar to that in 06/07 with 7.9% received. In 07/08 such complaints accounted for just over 30% of total complaints received (see figure 4). On further analysis this increase resulted in part from a similar increase in complaints received from female prisoners. As I have already stated in this report I welcome the transfer of lead responsibility for prisoner healthcare to the Health and Social Services Trusts. However I am disappointed that I have not been involved in the development of an appropriate post transfer complaints process. I believe where such an important change is to take place it is vital to involve all interested parties. This should include ensuring that prisoners receive the necessary information relating to my removal from the healthcare complaints process and on any new process available to them.

OVERVIEW

I reported in my first Annual Report that the number of complaints received by my Office was 368, more than 60% higher than the figure estimated when the Office was set up. In my second year I reported that this figure had settled to 275 which was still higher than the estimated figure upon which my office was based. This figure has again reduced to 207 complaints received within the reporting year 2007/08.

I am unable to categorically identify one reason for the continuing reduction in prisoner complaints received by my Office.

One possible reason could be that the Prison Service has managed to resolve a significant number of complaints internally. However, my investigators have reported that an increasing number of prisoners have complained that when they ask for an Internal Complaint Form they are provided with a Request Form and have been encouraged to use this before instigating a complaint. I fully believe every prisoner should afford the Prison Service an opportunity to resolve or deal with a problem informally. It is also a prisoner's fundamental right to complain and for the Prison Service to issue Request Forms for this purpose is unhelpful. This is an issue I would urge the Prison Service to address as part of its ongoing training in relation to handling and complaint management. I am currently instigating a collaborative exercise to enhance learning from complaints management by mutual analysis of complaints received by both the Prison Service Internal Complaints Process and my own Office.

Figure 1: Complaint Statistics 05/06, 06/07, 07/08

	05/06	06/07	07/08
COMPLAINTS RECEIVED	368 (225 estimated)	275 (246 estimated)	207 (246 estimated)
COMPLAINTS RECEIVED BY ESTABLISHMENT			
Maghaberry	289 (78.4%)	202 (80.1%)	130 (62.8%)
Magilligan	66 (17.8%)	41 (16.3%)	27 (13%)
Hydebank Wood Female	6 (1.5%)	6 (2.4%)	44 (21.2%)
Hydebank YOC	7 (2.3%)	3 (1.2%)	6 (3%)
OUTCOME			
Upheld	50% (approx)	23.4%	18.7%
Local Resolution		16.6%	43%
Not Upheld	50%	60%	38.3%

Figure 2: Comparison by month of complaints received and original estimate

	Total Complaints Received 07/08	Complaints Estimated
April	10	20.5
May	21	20.5
June	13	20.5
July	6	20.5
August	12	20.5
September	11	20.5
October	18	20.5
November	29	20.5
December	15	20.5
January	10	20.5
February	54	20.5
March	8	20.5
Total	207	246

OUTCOMES OF INVESTIGATIONS

Of the complaints received by my Office in 2007/08 I upheld 18.7%. Local resolution was secured in a further 43% of complaints. A Local Resolution is where my investigators meet with the complainant and the appropriate Prison Service personnel in an effort to broker an outcome agreeable to both parties. As I have reported in previous years, I consider a local resolution to be an outcome which is both beneficial to the prisoner and the Prison Service. Therefore, based on these figures I can conclude that approximately 60% of complaints investigated have received a positive outcome for the prisoner. I believe that the Prison Service has also benefited systematically through this process.

Since my office opened in 2005 I have made over 250 recommendations to the Prison Service. I am pleased to report that the majority of these recommendations have been accepted by the Prison Service and as a result have been incorporated into an Action Plan for implementation.

However, due to the failure to secure the position of Prisoner Ombudsman in primary legislation, thus providing appropriate empowerment for my Office, I have been constrained in following up recommendations which the Prison Service has refused to accept.

Figure 3: Outcomes of Investigations

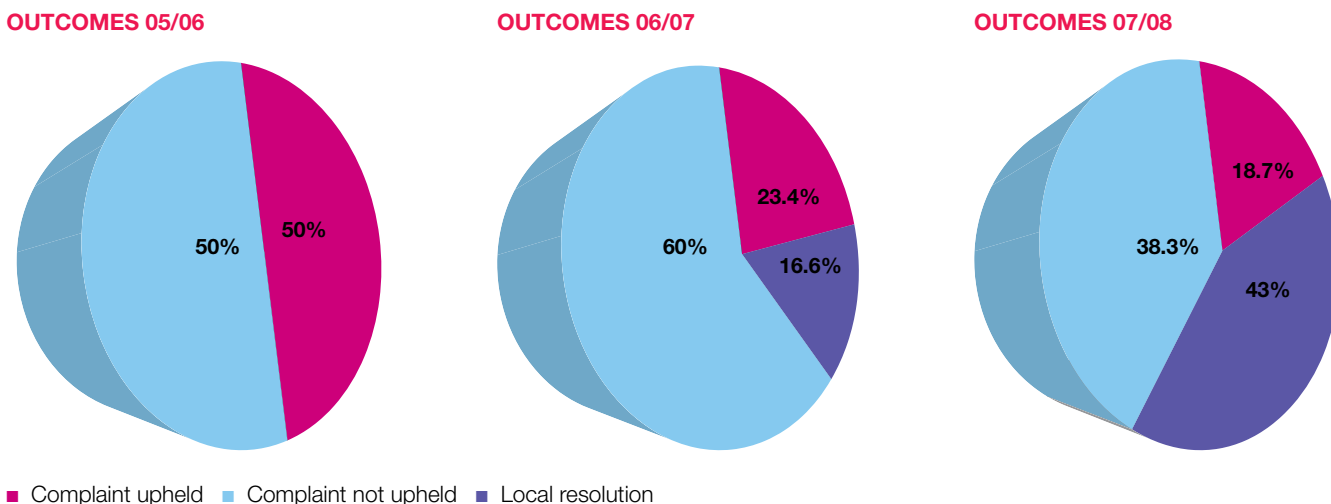


Figure 4: Complaints by category

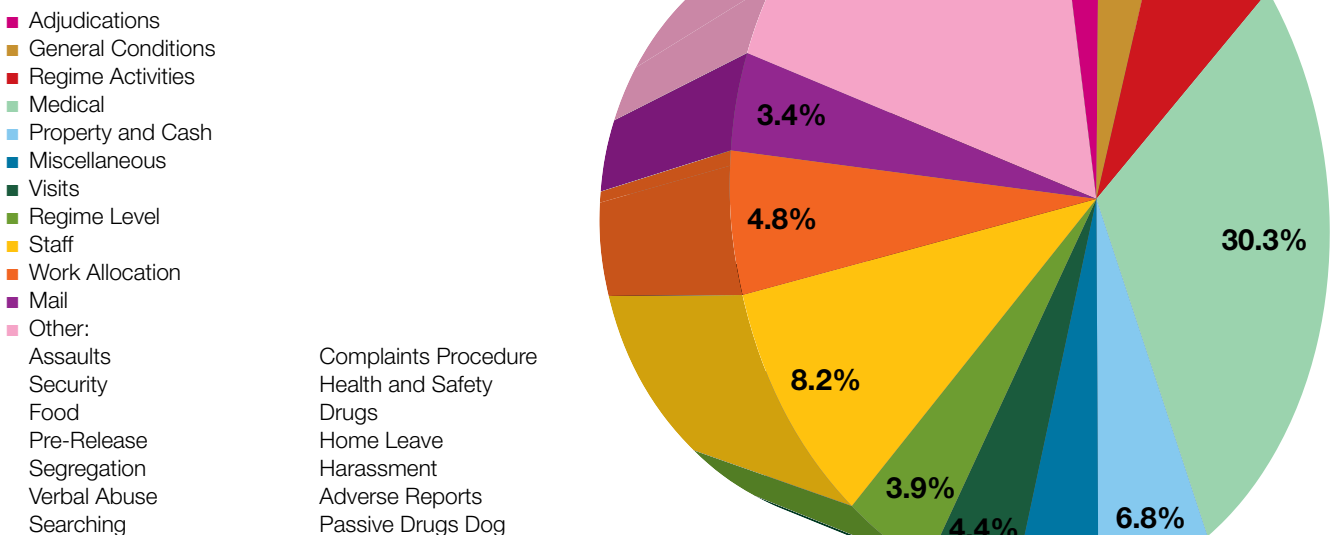
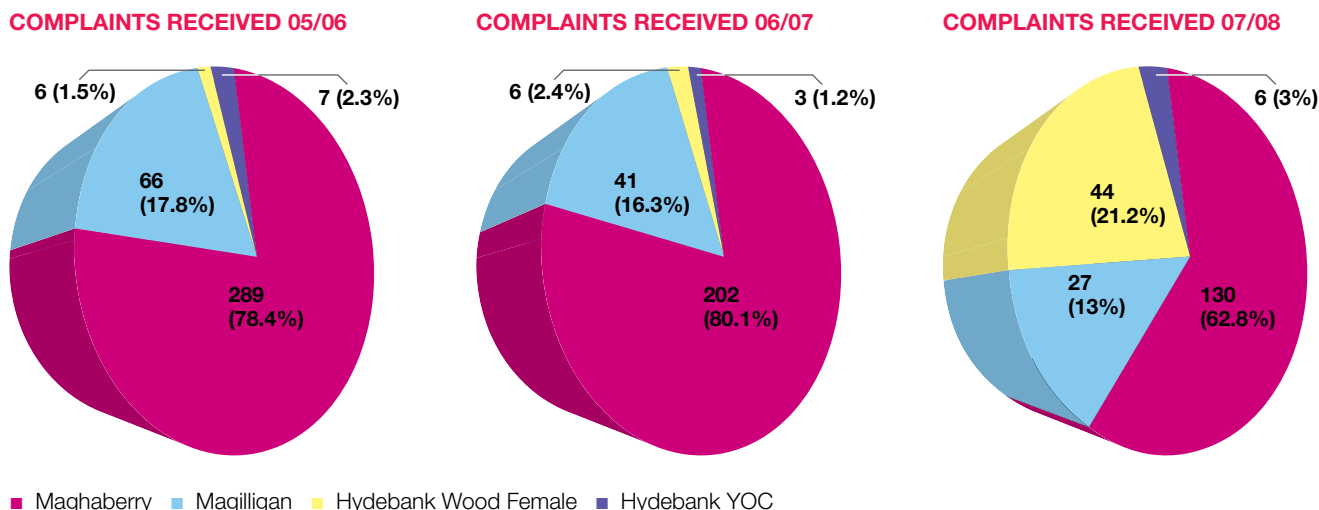


Figure 5: Complainants



Adult Male Prisoners

It is clear from the statistics recorded that typically most of the complaints received by my Office originate from prisoners at HMP Maghaberry (62.8%). This is a trend that has been consistent since I began dealing with prisoner complaints. I have reported in previous Annual Reports that this is a trend that is not surprising given that there are higher numbers of longer term prisoners who would wish to make use of the formal complaints system to channel grievances or seek resolution. Again the trend with regard to complaints received from prisoners at HMP Magilligan has remained consistent, accounting for 13% of total complaints received into my Office.

Young Male Prisoners

In three years of dealing with prisoner complaints, complaints from young male prisoners have accounted for a very small percentage of total complaints received, i.e. 2.3% in 2005/06, 1.2% in 2006/07 and 3% in 2007/08. I have reported elsewhere in this report of my concerns around prisoners being discouraged from using the complaints process. My concerns are particularly heightened with regard to young prisoners who often do not wish to 'rock the boat' by making a complaint. I have also received reports from my investigators where young prisoners have stated that 'when you ask for a complaint form you are given a request form and told to fill that in first'; or 'complaint forms are not easily accessible on the landing and I don't want to ask staff for one'.

I have highlighted these concerns to the Prison Service in the past and again take this opportunity to recommend that these problems are dealt with as part of ongoing training for staff in managing the complaints process. I believe it is vital that young

prisoners are afforded an easy avenue to complain, this should include ready access to complaints forms on the landing without having to request them from staff.

I also believe it is important that young prisoners are educated on the role of my Office. This has been included as part of the Communication Strategy I have developed for the Prisoner Ombudsman. Particular attention to catering for young prisoners has been highlighted.

Female Complaints

In the first two years of my Office being established complaints from female prisoners accounted for a very small percentage (05/06: 1.5%, 06/07: 2.4%), however I can report that this figure has increased in 2007/08 to 21.2% of total complaints received. My own investigators have reported that access to complaint forms has been improved for this segment of the prison population, however, it would appear that female prisoners are very reluctant to utilise a formal complaints process.

In my previous Annual Report I supported recommendations by the Criminal Justice Inspectorate for Northern Ireland about improving access to complaint forms, provision for prisoners with difficulty understanding complaints information and training for staff on handling complaints. While I acknowledge that the Prison Service has done some work in these areas, I believe that a nominated liaison Governor in each prison should be given responsibility for ensuring that all reasonable means of improving access to my Office are implemented and maintained.

Figure 6: Processing of Complaints

PROCESSING OF COMPLAINTS	
Number of Complaints Received in this Period:	207
% of complaints acknowledged and assessed for eligibility within target 10 days	100%
Number of complaints cleared / investigated in this period	240
% of complaints cleared within 18 week target *	70.8%
% of complaints cleared outside 18 week target	29.2%

* 18 week target includes time taken to investigate complaint and report to both NIPS and complainant

CHAPTER 4

COMPLAINT CASE SAMPLES

Legal Privilege

Mr H's complaint related to the confiscation of legal papers prior to his attendance at a meeting with his solicitor through the Video Link. Mr H also complained that his Internal Complaint Form relating to this incident was missing.

My Investigator visited Mr H to clarify his complaint. Mr H stated: "I was called for a legal visit and I put my legal papers in an envelope - signed SO 5.3.05. I went through 2 search boxes and I handed the legal envelope over. One officer queried the envelope and took it off me. I went to the VCR room and had a video link with my solicitor and told the solicitor what happened. They had no right to take it off me. I went back through the search box and I asked why he didn't let me hold on to the legal document for my interview with the solicitor and his reply was "it was only a video link" and he was aggressive and abusive towards me. I can't remember the name of the officer. I got my papers back later that day. My complaint forms also disappeared."

In my consideration of this complaint, I examined Northern Ireland Prison Service Standing Orders, in particular, 5.3.05 - Legal and Privileged Correspondence which states:

"Correspondence between a prisoner and his or her legal advisor or any of the statutory bodies... is privileged and shall be treated as private and confidential provided the envelope is clearly marked 'Legal Correspondence' where it contains correspondence between a prisoner and a legal advisor...".

"Where a governor believes that any envelope marked either 'Legal Correspondence' or 'Privileged Correspondence' contains material to which legal privilege does not attach or which does not relate to the function of one of the statutory bodies, he may direct that it be opened, in the presence of the prisoner where reasonably practicable and examined by staff to the extent necessary to ascertain whether it should be properly afforded confidentiality. Where an envelope is opened in accordance with the order, the correspondence shall be withheld from the prisoner on the direction of the Director of Operations or his authorised representative."

I also took into account the Prison and Young Offenders Centres Rules (Northern Ireland) 1995.

72 - Correspondence in connection with legal matters:

- (1) A prisoner who is a party to any legal proceedings may correspond with his legal adviser or any court, national or international, in connection with those proceedings.
- (2) A prisoner may correspond with a solicitor for the purpose of obtaining legal advice concerning any matter in relation to which he may become a party to legal proceedings or for the purpose of instructing the solicitor to issue proceedings, or to allow him to conduct any legal business.
- (3) A prisoner shall on request be provided with any writing materials necessary for the purpose of paragraph (1).
- (4) No letter to which this rule applies shall be opened by the governor unless he has reason to believe that it contains matter not related to actual or potential legal proceedings or other legal business.

(5) Subject to any directions given in the particular case by the Secretary of State, a registered medical practitioner selected by or on behalf of a prisoner to whom paragraph (1) applies shall be afforded reasonable facilities for examining him in connection with the proceedings and may do so out of hearing but in the sight of an officer.

In my consideration of this complaint, and in the absence of his Internal Complaint Forms, I accepted that the envelope which Mr H was carrying to the Video Link meeting with his solicitor did, in fact, contain 'legal papers'. NIPS did not dispute this. Unfortunately I was unable to corroborate exactly what happened in the Search Box area that day, other than to confirm that the papers that Mr H had in his possession for the Video Link meeting with his solicitor were, indeed, confiscated, even if only temporarily.

Nonetheless, I accepted that this may have placed Mr H in a disadvantaged position as he had no longer any notes or papers to refer to in the Video Link meeting with his solicitor. I concluded, in line with Prison Service Standing Order 5.3.05 and Prison Rule 72 that Mr H should have been afforded the opportunity to retain his legal papers on the day in question for the Video Link meeting with his solicitor.

I upheld this aspect of Mr H's complaint. I also included the following recommendation.

I recommend that the Prison Service apologises to Mr H for the temporary confiscation of his legal papers in the Search Box area whilst he was on his way to a Video Link meeting with his solicitor.

In relation to the missing Internal Complaint Form my Investigating Officer examined and copied the register from the Residential House. This indicated that it had been returned to Mr H following a response from NIPS at Stage Three. However, Mr H stated that he never received the Complaint Form following Stage Three. I was unable to make a conclusion either way about whether Mr H did or did not receive his Internal Complaint Form following Stage Three. What I could be certain of is the fact that the Residential House did not hold copies of any responses to Mr H's complaint, other than what was recorded on the Internal Complaints Register. In accordance with Prison Rule 79D, it is the responsibility of "all those who deal with a complaint" on behalf of the Prison Service to "keep an appropriate record of the completed complaint form, the response to the complaint and the investigation of the complaint". I regard the use of the Internal Complaints Register as an appropriate record of the whereabouts of the completed Internal Complaint Form. However, I did not regard it as an appropriate record of the actual response to the complaint or the action taken or outcome of the investigation of that complaint.

I concluded that on this occasion the Prison Service has not acted appropriately in compliance with the complaint recording requirements set out in Prison Rule 79D and for that reason **I also upheld this aspect of Mr H's complaint.** I made the following recommendation.

I recommend that the Prison Service reinforces the need for staff, through an Instruction or Notice, to comply with Prison Rule 79D to ensure they keep "an appropriate record of the completed complaint form, the response to the complaint and the investigation of the complaint".

Sick In Cell

Mr V complained to me about being searched on return from work and being locked in his cell for long periods when he was ill.

My Investigating Officer met with Mr V to clarify this complaint and discuss several others he had also raised with my Office. During interview it was explained that all prisoners may be subjected to random rub down searches or full body searches when returning from work and that this was not a form of victimisation unless records showed it was excessive without due cause. The staff in the Residential House also confirmed that it is not house policy to search prisoners on return from work, however the Standby Search Team (SST) may on behalf of the Governor carry out random searches of prisoners returning from work according to Prison Rules paragraph 16 sub paragraphs 4-10:

- (4) The governor may direct that a prisoner or prisoners be searched at such other times as is considered necessary for the safety and security of the prison.
- (5) Where the governor has grounds to believe that a prisoner is in possession of a prohibited or unauthorised article and that item may only be discovered by means of a full search the governor may direct that the prisoner be required to submit to a full search.
- (6) A prisoner shall not be undressed, or required to undress, in the sight of another prisoner, or any persons other than the officers conducting the search, but a prisoner may be required to remove a hat, coat or overcoat.
- (7) Any search for which a prisoner must undress may only be carried out by an officer of the same sex as the prisoner.
- (8) Where a prisoner refuses to co-operate with a search, including a full search, such force as is necessary to effect the search may be used.
- (9) This rule does not permit the search of a body cavity, but a prisoner may be required to open his mouth to permit a visual inspection.
- (10) Under this rule a search of a prisoner may include a search of any prisoner's cell and property.

SST records confirmed that on the dates in question Mr V received a full body search and that nothing was taken from him. I did not consider from these records that Mr V was subjected to excessive searches during this period.

Mr V also explained to my Investigating Officer during interview that on occasions he could be sleepy in the mornings due to medication and as a result may take longer to "get started" than other prisoners. He felt that staff should understand this and have more compassion towards him. Mr V was unhappy about being locked in his cell on the days he reported sick.

My investigator established that the current policy was set out in a Notice to Prisoners. This Notice stated:

"When a prisoner reports sick at unlock he should be confined to his cell until he is seen by a Nursing Officer who will assess his illness and decide:

- If the prisoner is fit for regular activities i.e. work/education or if the prisoner is ill and to what degree he is incapacitated;
- The Nurse Officer will then decide according to the illness if the prisoner should be confined to his cell for up to 24 hours before reviewing him again; or
- Whether or not there is a need, urgent or otherwise, that the prisoner be seen by a doctor."

The policy states that a prisoner should remain in cell until he is seen by the doctor, although in most cases unless directed otherwise by healthcare staff, house staff will permit a prisoner out of cell to collect his meals.

My Investigating Officer agreed to check with Healthcare staff to establish if there were any medical reasons why Mr V should be treated differently from other prisoners who were unwell. My Investigating Officer consulted with the Healthcare staff including the doctors who would have been aware of Mr V's healthcare needs. From this it was clear that in the past Mr V had a variety of difficulties regarding work duties and house allocation, however in recent months these did not appear to give rise to any problems. I was also able to confirm that Mr V's attendance and performance at workshop courses and education had been spoken of positively and that his illness had not played a factor recently. The doctor reported that interference with any current routine would not be of benefit. The doctor also confirmed that there were no current medical issues that would suggest Mr V should be treated any differently from other prisoners within Maghaberry prison.

Taking account of the views of professional medical staff, along with the other evidence available, **I was unable to uphold Mr V's complaint.**

Star Status

Mr S wrote to my office asking that I investigate a complaint about Star Status. He had applied to the Prison Governor to have Star Status restored but this was refused. Mr S subsequently initiated an Internal Complaint to the Prison Service stating: "I am writing to complain about the decision made by the Governor about not giving me back my Star Status."

After receiving a response from the Prison Service explaining the reasons why 'Star Status' was refused, Mr S remained unhappy and proceeded to complain to my Office.

My Investigator established that he applied for Star Status and was given a written response by the Governor who advised:

"I can advise you that the only category of prisoner automatically entitled to be classified as Star Class are first time offenders. However, Ordinary Class prisoners i.e. those who have previously served a prison sentence may apply to be re-classified in line with Prison Rule 9. It is clear from prison records that you are not a first time offender; indeed your current sentence is your second period of imprisonment."

"Each application for re-classification from Ordinary Class to Star Class is considered on its own merits in line with Prison Rule 9 paragraphs 1 and 2 which state:

"Prisoners shall be classified in accordance with any directions made by the Secretary of State, having regard to their age, offence, length of sentence, previous record, conduct in prison or whilst on temporary release under Rule 27 and the requirements of security, good order and discipline at the prison in which you are confined."

Paragraph 2 of the same rule states:

"A prisoner may be re-classified following a review by the governor taking into account any of the matters set out in paragraph 1."

I examined the Prison Service Policy for Pre-Release Home and Resettlement Leave Arrangements which became effective from 1 March 2004 and which were revised in April 2005. I established from this that the practice of classifying prisoners as either 'Star' or 'Ordinary' was used to identify first offenders (Star) from regular offenders (Ordinary) so that the prisoners in each group could be managed and accommodated separately where practicable. However, developments towards integrated regimes, coupled with the introduction of earned privilege schemes rendered obsolete the Star/Ordinary classification process.

The policy also set out the new arrangements by which sentenced prisoners coming towards the end of their sentence may apply for periods of temporary release. It stressed that Pre-Release leave, whether under the old arrangements or the new arrangements, was neither a right nor an entitlement but it was, and still is, a privilege to be earned by prisoners.

As part of my investigation I also examined Mr S's Criminal Record and noted that this was not his first prison sentence. My investigator spoke to the Governor who assessed Mr S's application for re-classification. He confirmed that each application is considered on its own merits in line with Prison Rule 9 and that the type and nature of a prisoner's offence is also taken into account when making a decision.

My Investigator then met with Mr S to clarify the position with this complaint and to discuss his concerns. My investigator also took time to fully explain the background, rules and regulations relating to Star and Ordinary Status and the reasons why he did not automatically qualify for Star Status. After discussion Mr S acknowledged that **I could not uphold his complaint**. He also agreed that his personal circumstances did not qualify him to be classified as a Star Status prisoner. I consider this to be a successful local resolution to the prisoners complaint.

Healthy Eating

Mr O wrote to me stating: “As you will see there is only three fruit options available in Maghaberry from the tuck-shop list. There is a seemingly endless amount of junk food on offer. Obesity is now the second highest killer in society; the Government recommends five a day fruit and vegetable intake. Even so the prison is very reluctant to supply more than 12 pieces per week of either apples, oranges or bananas. I would like to see a fruit selection on par with the junk food selection, with more pieces being available.”

I firstly confirmed that the Prison Service has a duty to provide balanced meals to prisoners as set out in Prison Rules:

Food

- 82.** - (1) Every prisoner shall be provided with sufficient food which is wholesome, nutritious, palatable, adequately presented and well prepared and which takes into account age, health, and work, and as far as practicable, religious or cultural requirements.
- (2) Unless the governor or the medical officer directs, no prisoner shall be allowed to have any food other than that ordinarily provided.
- (3) A prisoner who wishes to complain about the food supplied to him must make the complaint as soon as possible after he has received the food; any such complaint shall be properly considered by the governor and, where appropriate, action to remedy the complaint shall be taken as soon as possible.
- (4) The governor shall ensure that the condition, quality and quantity of food, both before and after it is cooked and at the point of delivery, and the conditions under which it is prepared, are inspected frequently and that appropriate action is taken as soon as possible where any shortcoming is discovered.
- (5) The medical officer shall satisfy himself that the nature, quality and quantity of food is appropriate to prisoners' health.
- (6) A member of the board of visitors shall, on behalf of the board, inspect the preparation and delivery of prisoners' food and its palatability at frequent intervals.
- (7) In this rule 'food' includes drink.

I also noted that Prison Service Standing Orders direct that the meals are nutritious and are prepared in accordance with the authorised dietary scales:

2.2.1 AUTHORISED DIETARY SCALES

In the preparation of meals the authorised dietary scales will be strictly observed. Details of the meals served each day will be recorded in the Menu Book and the Governor, Deputy Governor or a nominated Governor and the Medical Officer shall sample the meals and sign the kitchen journal daily. Each prisoner shall be provided with sufficient food which is wholesome, nutritious, palatable, adequately presented and well prepared and which takes into account age, health, and work, as far as practicable, religious or cultural requirements.

Through my consultations with the Prison Service I established that catering staff within Maghaberry Prison regularly liaise with and receive advice from a dietician from within the Health and Social Care Trust and although there has not been an active five-a-day campaign within the prison, all meals are nutritiously balanced and catering staff have also advised that prisoners can choose fruit with their meals as an alternative to any dessert.

I also considered it necessary as part of this investigation to clarify what was available for prisoners to purchase through the Prison tuck-shop. Prisoners may purchase items from the tuck-shop using their earnings and their private cash in accordance with instructions issued by Operational Management Division. Items sold in the tuck-shop will be at the discretion of individual Governors but will be subject to the master list restrictions (published from time to time by Operational Management Division).

My investigator examined the tuck-shop list and from this I was able to confirm that there was provision of fresh fruit in the form of apples, oranges and bananas and that 12 pieces of fruit may be purchased weekly. Fruit cocktail, strawberries, peaches, pears and pineapple are also available in cans and pure orange, grapefruit, Five Alive and various fruit flavoured juices are available as drinks.

The Prison Service also confirmed that during a recent meeting of tuck-shop representatives it was suggested that fresh grapefruit and kiwi might be a possible addition; however, this would be dependent upon demand and how well the fruit would store. Consideration was also given to supplying “fruit smoothies” however it was noted that these are a very expensive item and required refrigeration which neither tuck-shop stores or prison cells have and this item was therefore ruled out. The tuck-shop representatives advised my investigator that they regularly keep tuck-shop items under review.

From the evidence available I was satisfied that there was a suitable variety of fresh and canned fruit available through the tuck-shop to supplement prison food which has also been assessed by nutritional experts with regard to fruit intake. **I therefore did not uphold Mr O's complaint.**

Cell Searching

Mr N complained to me about the confiscation of items following a search of his cell by the Standby Search Team. Mr N submitted Stage One of his Internal Complaint Form to the Prison Service on 25 May 2007. In his complaint he stated that during a search of his cell staff had removed two sheets of plywood and one sheet of hardboard which he had made into pen, video, paint and CD holders. The prisoner stated that his cell had been searched on previous occasions and that these items had not been removed.

An Officer of the Standby Search Team replied to Mr N advising that the items had been removed because they were made from cell furniture.

Mr N proceeded to Stage Two and Three of the Internal Complaints Process stating that this was not the case and that the items had been made from plywood purchased in the tuck-shop. Mr N also requested that these items be shown to a Governor for clarification and advised that he had never damaged cell furniture.

The Prison Service replied to Mr N stating that a Senior Officer had confirmed that he bought plywood from the tuck-shop, however this had no relevance to the fact that the item removed was made from cell furniture. Mr N advised at this stage that the item had been destroyed due to the fact it contained no handicraft material.

The Prison Service also replied at Stage Three stating: "I have spoken to the staff involved and to the Senior Officer. I am happy that this matter has been investigated. Members of the Search Team behave in a professional manner. I have nothing further to add".

Mr N subsequently referred his complaint to me as he remained unsatisfied with the replies provided to him by the Prison Service. My Investigating Officer met with Mr N and established that the confiscated items were two rectangular 'desk tidies', each consisting of three square holders, which he kept on top of his cell table to store a range of small items. My Investigating Officer retrieved all relevant records from the Prison Service to include the tuck-shop purchase records for Mr N. The records clearly showed that Mr N had purchased "1 sheet of plywood 2 x 2 square" at a cost of £3.30. My Investigating Officer also retrieved all the records from the Standby Search Team for the cell searches carried out on that day. The records showed that "shelving" was confiscated from the cell where Mr N resided.

My Investigating Officer took the opportunity to inspect Mr N's cell and observed that everything in the cell appeared to be old cell furniture and none, particularly the cell locker base, appeared to have been replaced.

My Investigating Officer made contact with the Principal Officer of the Standby Search Team who dealt with Mr N's complaint at Stage Three requesting for further information on this case. He advised that the matter had been fully investigated and he had made reference to this in his reply to Mr N at Stage Three. My Investigating Officer also contacted the Trades and Stores Departments in Maghaberry Prison to establish if any repairs had been made or replacement furniture ordered for Mr N's cell. A Principal Officer confirmed from records that no cell furniture was repaired or replaced in Mr N's cell.

I found the following Standing Orders relevant to Mr N's complaint:

Northern Ireland Prison Service Standing Orders

4.8 - Cell Craft Activities

4.9 - Personal Possessions

In particular I took cognisance of Standing Order 4.8 (d) relating to cell craft activities. It states:

"...the use of any material belonging to the prison is expressly forbidden. Such articles will be confiscated and disciplinary action may be taken against offender."

It was clear from this investigation and, in particular, the comments made throughout the Internal Complaint Process, that the Standby Search Team used Standing Order 4.8 (d) as the sole basis for their decision to confiscate the 'box tidies' in Mr N's cell.

I also took cognisance of another reference in Standing Order 4.8: "The Governor may impose such conditions on the manner in which the cell craft is undertaken and on the nature of the final product, as he thinks necessary in the interests of the security, good order or discipline of the prison". I believe that the words "security, good order or discipline of the prison" are the paramount determining factors when making a decision as to whether a prisoner can retain a finished article in his cell, which he had made from cell craft material.

I asked myself two questions in this case, which are directly relevant to the Standing Orders I have quoted above:

Were the 'box tidies' actually made from Mr N's cell furniture, as the Standby Search Team had repeatedly reported? and

Could the 'box tidies' be viewed as compromising the "security, good order or discipline of the prison"?

Due to the fact the confiscated items were immediately destroyed I was unable to prove or disprove whether or not the desk tidies were made from cell furniture. However the weight of the evidence available supported the fact that Mr N made his 'box tidies' from the plywood he purchased from the tuck shop and not from cell furniture. I also could not comprehend how anyone could view that having a small number of 'box tidies', such as Mr N had, would, in any way, breach the conditions in Standing Order 4.8, namely that they would compromise the "security, good order or discipline of the prison". Furthermore, I considered that the Prison Service had failed to carry out a proper investigation to establish the facts as part of the Internal Complaint Process.

I therefore upheld Mr N's complaint and included recommendations for the Prison Service to ensure that items confiscated by the Standby Search Team should not be immediately destroyed and to ensure thorough investigation of all prisoner internal complaints.

Paperback Books

Mr K wrote to my office asking me to consider the decision by the Prison Service not to allow visitors to leave books for prisoners at the Visitors' Reception area. Mr K also highlighted the increasing charges associated with posting books into the prison.

I was firstly interested in establishing, from a visitor's perspective, what information is in the public domain advising which items a visitor could leave in Visitors' Reception for onward transmission to a prisoner. My first enquiry was to the Prison Service website. Although there was a substantial amount of information for visitors on the website, including details of visiting times and the ability to book a visit, I was disappointed that there was no specific information about what a visitor could leave at Visitors' Reception for a prisoner.

In consideration of the complaint my Investigating Officer contacted all the relevant personnel in Visitors' Reception who play a part in the supply chain for a prisoner receiving items into the prison. My investigation examined the current procedures in place and the operation of those procedures. I took cognisance of the Notices for Visitors displayed in the Visitors' Reception area, particularly Notice 08/07 which states:

"With effect from 1 August 2007 clothing parcels will only be accepted for prisoners from their visitors."

My Investigating Officer also retrieved the following instructions relevant to this investigation:

Notice to Prisoners 65/04 which lists the clothing allowance for each prisoner, including the maximum permitted value, and a description for each item. This list also shows some additional items, including watches and jewellery, allowed in with the express permission of a Governor by way of request docket.

Governor's Order 13-1 issued on 7 September 2005: Letters and Parcels Entering the Prison (see Annex D) which outlines the items of clothing not allowed to be handed in at Visitors' Reception.

Notice to Staff 61/07 issued on 31 May 2007: (see Annex E) which advises staff that the prisoner clothing store was moved from the main Reception area to the Visitors' Reception area on 7 May 2007.

During a walk-through of the Visitors' Reception process my Investigating Officer noted the 'post box' which was referred to in this complaint. This is a square style post box, about one foot square, sitting on the floor of the Visitor's Reception area, with a smaller than normal post slot. My Investigating Officer confirmed from staff that this 'post box' was only designed to accept letters no wider than about one half inch. A normal paper back book would not fit into the post slot. I also confirmed that although the odd newspaper usually got through for onward transmission to the letter censors and then the prisoner, books are not allowed to be handed in at the Visitors' Reception area. The only alternative for visitors is to use the external Royal Mail service to post books into prisoners.

I can fully understand the security reasons as to why the decision to stop visitors bringing food parcels in for prisoners was taken. I can also appreciate why electronic storage media, such as CDs, is not allowed. However, I could not understand the reasoning behind refusing paperback books to be accepted at Visitors' Reception. It was encouraging to note that the staff spoken to in the course of this investigation would concur with my point of view. I took into account that many families of prisoners have to cope with limited financial resources and that the cost of posting items into prison places an additional and avoidable burden on them. I therefore concluded that visitors should be allowed to hand deliver paperback books at Visitors' Reception, in addition to the normal clothing parcels. **I upheld Mr K's complaint and made the following recommendation:**

I recommend the Prison Service should allow visitors to hand deliver paperback books at Visitors' Reception for onward transmission via the Letter Censors to their respective prisoner. Attached to this recommendation I suggest an allowance of four paperback books per visit in order to keep the processing arrangements to a manageable level.

Prisoner's Mail

During the last year I received a number of complaints from prisoners at Maghaberry Prison about delays in receiving mail and the role played by the Letter Censors Office at Maghaberry Prison. In addition I observed that since my Office began investigating prisoner complaints I received a total of 14 complaints from a number of prisoners relating to delays in receipt of mail and problems with letter censors. As a result I decided to carry out one overall investigation into this matter, endeavouring to ensure that all the complaints made by each individual prisoner were fully considered.

The prisoners complained to me about a range of issues including:

- delays in receiving mail from family members and friends;
- not receiving mail from family and friends;
- delays in receiving important legal documentation through the prison mail system; and
- delays in receiving daily newspapers, magazines and periodicals.

To begin it was essential to find out more about the process for the receipt of incoming mail into the prison. My investigator attended the prison and spoke with management and staff to establish the full process that was followed. I also established as part of this and previous investigations that the Letter Censors Office is usually staffed by two officers, however if there is a need for staff in other parts of the prison then one of these officers may be deployed elsewhere. The Prison Service also confirmed at this stage that the Letter Censors receive and send out 100s of pieces of mail on a daily basis. Furthermore a backlog of mail to be censored often occurs due to the fact that mail is not sorted at weekends.

I concluded in a previous investigation relating to the Letter Censors that the staffing levels were not adequate to deal with the volume of mail coming into the prison. I also included the following recommendation to the Prison Service.

"I recommend the Prison Service consider a review both of the staffing levels in the Letter Censor's Office and a thorough review of the arrangements for processing mail to ensure mail is processed as promptly as is reasonable."

An example of a response by the Prison Service to a prisoner's Internal Complaint is as follows:

"Unfortunately there have been operational difficulties in regard to the staffing of the censor office. This in turn has led to delays to the mail in and out. Whilst every effort is being made to prevent these delays I cannot guarantee that delays to the mail will not occur in the future."

I found this response to be disappointing and unacceptable especially given the fact that following each previous investigation into the problems with prisoner's mail and Letter Censors, I was given assurances by the Director of the Prison Service that the system

would be improved. I consider that the delivery of letters and cards to a prisoner is an important avenue of communication which enables a prisoner to properly maintain contact with friends and family whilst completing a prison term. I believe that the effective handling of prisoners' mail contributes to the lessening of tensions that can arise within prisons.

As part of this investigation my investigator wrote to the Prison Service to clarify the staffing complement to the Letter Censors Office, whether or not there was currently a full staffing complement and to establish if the Letter Censors was part of a Diminishing Task Line¹. The Prison Service provided the following information:

- there are normally two officers working in censors Monday - Sunday;
- the staffing complement for censors is two staff. However one of the staff is required to do meal break relief for another area within the prison;
- we are currently below our Target Staffing Level (TSL); and
- the Letter Censors is part of the diminishing task line.

It was clear from the information provided that the problems that have been highlighted in previous complaints remained current and that prisoners would continue to experience delays in receiving important mail. This is unacceptable and for this reason I considered it appropriate to carry out comparative research with other prison establishments throughout the UK. My investigator made contact with a random selection of six high security prison establishments throughout Scotland and England to establish how the Letter Censor duties are managed and to compare staffing complements.

Of all the establishments surveyed I found that only one employed prison officers to work in the Letter Censors who could be redeployed to other duties as and when required. The remainder of the establishments had either dedicated Civilian or Ordinary Service Grade Support Officers (OSG) working in the Letter Censors who could not be deployed to other duties within the prison.

From the information gathered as part of this and previous investigations I concluded that the current arrangements in place for managing the Letter Censors were insufficient. I further concluded that it is unacceptable for the Prison Service to continually cite 'operational difficulties' with regard to the staffing of the Letter Censors as justification for delays in prisoner's mail.

I also made the following recommendation to the Prison Service.

I recommend that the Prison Service review the current management of the Letter Censors Office and take steps to change the status from a diminishing task line and to ensure a dedicated staff complement at all times that cannot be redeployed to perform other duties.

I also asked the Director to give careful consideration to this recommendation and in doing so take account of the good practice of employing civilian or OSG Support Grade officers to carry out the very important role of letter censors that is in operation in other prison establishments. At the time of writing I am pleased to report that this recommendation was accepted and the Prison Service have taken steps to employ OSG staff to manage the Letter Censors Office on a full time basis.

¹ Diminishing Task Line - an area where the staffing complement can be regularly drawn from to fulfil duties in other areas.

Property And Cash

In his complaint Mr G stated that when he was transferred from a prison in England he was told he could not take all his property with him due to airline weight limit restrictions. It was agreed that his remaining property would be sent on at a later date. Unfortunately there was some confusion over who was responsible for the cost of sending the remaining property and this caused a delay. The Northern Ireland Prison Service agreed to meet the cost and three parcels containing Mr G's property sent from England. Mr G said when his property arrived at Maghaberry Prison some items were missing and he asked for the property to be found or replaced.

My investigator visited the Reception in Maghaberry Prison to obtain a copy of Mr G's property card, however, despite several searches by staff, Mr G's property card could not be located. Its whereabouts remain a mystery. A duplicate property card was produced however this did not help in establishing what property Mr G brought with him to Maghaberry Prison from England. My investigator corresponded with the prison in England in an effort to locate a property card for Mr G. It was confirmed at this stage that all such records usually accompany the prisoner on transfer. However a copy of the Reception Property Book was found confirming that Mr G signed for two pairs of trainers.

My investigator remained in communication with the prison in England where they managed to locate a list of items belonging to Mr G in storage. My investigator then wrote to the Governor outlining the circumstances and arranged that the property be released and forwarded to Mr G at Maghaberry Prison. My Investigator met again with Mr G at which point he advised that he was still missing some items of clothing.

When Mr G transferred from England to Maghaberry a property card should have been created listing all the property he brought with him. However despite several searches by staff in Maghaberry Reception the original property card could not be found. I therefore had no way of establishing what property Mr G brought with him. However, based on the previous detailed information provided by Mr G, which I was able to corroborate with the English Prison Service, I concluded that Mr G did have the missing items while in England. Also, as Mr G's property card was misplaced in Maghaberry I believed the Northern Ireland Prison Service should consider reimbursement for the missing items of clothing.

I upheld this complaint and recommended Mr G be compensated for the items of missing clothing. I also made a recommendation for the Northern Ireland Prison Service to exercise the necessary diligence with regard to the completion and retention of prisoner's property records.

CHAPTER 5

DEATHS IN CUSTODY

INVESTIGATIONS

THE REMIT OF THE PRISONER OMBUDSMAN

From 1 September 2005 the remit of my Office was extended as required by the Secretary of State to deal with investigation of deaths in Prison Service Custody. There is now a standing commission from the Director of the Northern Ireland Prison Service for me to investigate all such deaths. My Terms of Reference are set out at Annex B. My remit embraces deaths from natural causes, accidental deaths, homicides, and those that were apparently self-inflicted. I also have discretionary power to investigate deaths of former prisoners where the circumstances may be relevant to the care they received while in prison.

I am notified automatically of each death by the Prison Service Operations Directorate. On each occasion I appoint an Investigation Team. The arrangements which follow broadly mirror those which have applied in England and Wales since 2004. I employ my own staff as investigators but I also have at my disposal contract staff to cover holiday periods or special circumstances, and I use the services of independent experts. The latter option has been especially relevant in relation to clinical issues.

I believe that my investigation of these sad events provides greater transparency to the investigative process following deaths in prison custody. I am independent of the Prison Service as are my investigators and my investigation reports assists the State in complying with Article 2 of the European Convention of Human Rights requirements. The Police continue to be notified of all such deaths, as is required by law, and any investigation they may undertake has primacy. The Coroner's role also remains unchanged.

All deaths in Prison Service custody are to be regretted and can be traumatic for all involved - the custodians of people detained as well as the deceaseds' relatives and families. It is important that good practices and procedures are in place to ensure that deaths in custody are kept to an absolute minimum. It is also crucial that any investigation is conducted in an open and transparent manner to ensure confidence in the system. As well as dealing with the needs of friends and family of the deceased, there must be a fair, thorough and independent investigation, protecting the rights of staff and others subject to criticism.

I believe that the added independence from this extension to my remit leads to more robust investigation which in turn facilitates the learning of lessons should service failures be identified.

1 September 2005 - 31 March 2008

Since my Office received the standing commission to investigate deaths of prisoners in custody there has been a total of 12 deaths, the most recent occurring on 18 February 2008. Of these 12 deaths, I have completed my investigations and reported on five, with a further two near conclusion at the time of writing. All other investigations are ongoing.

All prisoners who died were male with four under the age of 30 years, seven between 31-50 years and one over 50 years. Six of the prisoners were in custody at Magilligan Prison with the remaining six in custody at Maghaberry Prison at the time of death. However, of these, two prisoners died while released on Temporary Home Leave with a further two dying while in the care of outside hospitals. It is important to note

that Inquests have not been completed in some of these cases and the causes indicated, whilst supported by pathology findings are not necessarily legally confirmed. I have listed the causes of death as follows:

Natural Causes	4
Fresh Water Drowning	1
Drugs related	2
Suicide	2
Accidental	1 (as a result of a fall outside of prison)
Head Injury	1 (as a result of an assault outside of prison)
Legionella Disease	1

I am currently conducting a joint investigation along with the Health and Safety Executive for Northern Ireland into the death of one prisoner apparently as a result of Legionella contracted in the prison healthcare unit. The prisoner was already suffering from a terminal disease and had been transferred from Magilligan Prison to the care of Causeway Hospital, Coleraine at the time of his death.

Helping the Prison Service and associated service providers learn lessons from deaths in custody is a major objective in my investigations. My other objectives are to ensure that the family of the deceased has the opportunity to raise any concerns and that these are taken into account and to assist the Coroner's inquest.

On reflecting over the last three years in office I have provided some examples of issues emerging from my investigations and areas where I have made recommendations to the Prison Service.

KEY ISSUES EMERGING FROM DEATH IN CUSTODY INVESTIGATIONS

Prisoner Healthcare Management

As part of my investigations into deaths in custody I often employ the services of independent experts to carry out a full Clinical Review of the healthcare provided by the Prison Service during their time in custody. As a result I have been able to report both on good practice and on service failures and make recommendations to the Prison Service. For example my recommendations have included the urgent need for robust clinical governance for prison healthcare, issues around the need for improved recording and prescribing of medication and concerns about carrying out healthcare observations within a prison context.

One of my more recent investigations into the death of a prisoner who died at Maghaberry Prison after having been discharged from an outside hospital the previous day, is highlighting problems with the exchange of critical information between hospital and prison. In order for Prison Healthcare staff to provide continuity of care it is essential that they should be in possession of all information relating to a prisoner's healthcare needs. I therefore included recommendations for the Prison Service in conjunction with its new Health and Social Service Trust partners, to review current procedures in place for the exchange of information between Healthcare staff in prisons and the Hospital Trusts to include transfer of information about a prisoner's health and medical care required after being discharged from hospital.

Drug Abuse

I have reported in my two previous Annual Reports that the use of illicit drugs in prisons is a major problem. I regret to say that this remains the case. Although only likely to be established as the direct cause of death in two of the deaths in custody investigations which I have been conducting, the illicit use of drugs has been a feature in six of the remaining cases.

I have therefore included recommendations in all these cases to assist the Prison Service in detecting, preventing and tackling through interdiction and treatment policies and procedures the continuing problem of drugs misuse in prisons. This issue was also addressed as part of my Review of the use of Passive Drugs Dogs which I reported on in my Annual Report 06/07. I believe that the Prison Service needs full support in its considerable efforts to address this problem and am pleased to report that most of the recommendations I have made have been accepted for implementation. One outstanding recommendation which I have made regarding the blocking of mobile phone signals in prisons would, if implemented, save lives and substantially reduce access to drugs in prison.

Multidisciplinary Working

The prisoner journey through the custodial system involves an increasing range of people and disciplines. This complex mix is being significantly added to by the transfer of delivery of prisoner healthcare to Health and Social Care Trusts which took place on 1 April 2008.

I formed the view during my first two years in Office that greater emphasis needed to be given to the management both of multidisciplinary working and of competing roles required of prison staff. A particular challenge for the Prison Service is to ensure that the correct balance is struck between the different roles which prison officers have to play. The most obvious area where conflict can occur is between the traditionally dominant security role and that of personal officer aka key worker. Failures related to a proper understanding of the role of prison officers have emerged in death in custody investigations. For example in one case some officers advised my investigators that they were unaware that the deceased who had been in their care suffered from a life threatening chronic illness.

I remain of the view that prison staff must see themselves as important members of a multidisciplinary team delivering offender management. It seems to me that with progressive normalisation in the community the ongoing shift in emphasis given to the role of prison staff from custodian to re-integrative work must continue to be encouraged. In the particular context of prisoner healthcare the contribution of prison officers is crucial. It is important therefore that specialist healthcare staff include such officers in the execution of care plans.

This is another area where I have made recommendations to the Prison Service relating to improving upon existing policies or the development of new policies and procedures. Again, I am pleased to report that the Prison Service has accepted most of these recommendations and, where appropriate, has provided an Action Plan for implementation.

Prisoner Safety

ACCESS TO CELLS IN LIFE THREATENING SITUATIONS

In my two previous Annual Reports I spoke about issues around the need to review access arrangements to prisoners in cells in circumstances of extreme emergency. I am disappointed to report that I have identified this as a problem in more recent investigations. While I fully appreciate the need for the Prison Service to act with security of staff and prisoners in mind, I believe that it is vital that procedures are in place for the emergency unlocking of cells to allow immediate entry by officers if considered necessary for the preservation of life. I have made recommendations relating to this to the Prison Service.

CLINICAL OBSERVATIONS

In a more recent investigation I discovered that the manner of observations on a prisoner in the Healthcare Unit do not differ significantly from those carried out for the safety of prisoners in normal prison location. Again, I do appreciate the need to maintain the element of security, however, I do not believe that healthcare and especially clinical observations can be effectively carried out through a flap in a cell door. I also believe that arrangements for observing prisoners within the prison healthcare unit need to allow for observations specific to the needs of individual inpatient prisoners to be effectively carried out. This view has been supported by an independent medical expert. I am therefore including recommendations relating to this to the Prison Service.

Overall Conclusions

Although I do not have access to reliable statistical comparisons I have formed the view that the rate of deaths in custody within the Northern Ireland Prison Service is comparatively low. In particular the suicide rate is low a remarkable fact given the poor mental health of many prisoners.

My overall impression of prison healthcare services is that despite examples of excellent care to some very ill prisoners it was impossible for the Prison Service to continue to ensure the standard of care required for a challenging prisoner population. I therefore welcome the transfer of prisoner healthcare to the Health and Social Services Trusts. However as history has repeatedly demonstrated management at the boundaries where different agencies are providing care within a context such as prisons assumes critical importance. The marrying of operational philosophies and the integration of strategic purposes will be crucial if real improvements are to be achieved. All of this calls for robust monitoring of the implementation of the new healthcare arrangements and this must include an accessible, efficient and independently managed complaints service. I therefore reiterate my disappointment that I have not been involved in the development of such a complaints process and to my knowledge prisoners have received no information either on my removal from the complaints process or on any new process available to them. In particular arrangements for future death in custody investigations will need to be clarified.

Good Practice

As I have stated I have opened 12 investigations into deaths in prison custody since my Office opened in 2005. However, I am very aware of the number of further deaths that are prevented each year by prison staff. The truth is that prison staff and the Prison Service in general receive next to no public acknowledgement for the lives they save. It is now clear that the obligation upon the state to conduct independent investigations into life-threatening situations in prison (further to Article 2 of the European Convention on Human Rights) can apply to near-deaths as well as to apparent suicides. The circumstances triggering an Article 2 - compliant investigation have yet to be fully established by the courts but as my counterpart in England and Wales has now moved into this realm it surely only is a matter of time before the NIPS follow suit.

CHAPTER 6

SPECIAL INVESTIGATIONS

PAVA – Incapacitant Spray

The Northern Ireland Prison Service (NIPS) is committed to maintaining a safe working environment for staff, prisoners and others. As part of the strategic management of violence or its threat within NIPS, and bringing Northern Ireland into line with Prison Services elsewhere in the U.K. (HMPS) it has been decided that NIPS will conduct a trial of a hand held incapacitant spray known as PAVA for a 12 month period, or up to 10 operational uses. HMPS has had access to PAVA sprays since May 2005. The local trial which commenced in April 2007, aims to assess the operational effectiveness of PAVA as a tactical aid in safely resolving specific violent and potentially life-threatening situations.

During the trial, PAVA is to be issued to certified Control and Restraint Instructors within the Northern Ireland Prison Service who should have successfully completed a course approved by NIPS in the use of PAVA. The spray is only to be used in serious incidents involving general disorder that presents a real threat to the health and safety of staff, prisoners or others in the vicinity; and, exceptionally, for planned cell removals where significant violence is threatened, and there is a substantial risk to the health and safety of staff and/or others.

PAVA is a device which temporarily disables a violent (or potentially violent) subject, thereby allowing staff to safely deal with a situation. It is a synthetic, stable compound that has been extensively tested, operationally and medically, by both government and private agencies as to its effectiveness and lack of long term harmful effects. It has passed these tests and has been approved for use by the Department of Health, the Home Office and the Association of Chief Police Officers. It has also been tested by NIPS Control and Restraint instructors. PAVA is used by police forces throughout GB as well as by HMPS.

It is Northern Ireland Prison Service policy that the use of force should only be undertaken as a last resort, after all other attempts to resolve or de-escalate the situation have failed, or would be deemed to be unsuccessful in the circumstances prevailing. In all circumstances, the application of force must be absolutely necessary, reasonable, and proportionate to the threat or situation.

Prisoner Ombudsman Oversight

I agreed with the Director of the Northern Ireland Prison Service to investigate and to report on all instances where PAVA is deployed and/or used. The remit of such investigations will include confirming whether or not the spray was used in the correct manner as set out in the NIPS “Policy & Guidance for the Deployment of PAVA hand-held incapacitant spray” and to provide a written report, making recommendations where necessary.

PAVA use 2007/08

I therefore had a duty to investigate and report on the circumstances and events surrounding the deployment of PAVA on 19 July 2007 at Maghaberry Prison in response to a prisoner wrecking his cell and offering violence to staff after being awarded a period of cellular confinement following an adjudication.

The incident was a response to the prisoner being awarded Cellular Confinement after adjudication, and subsequently wrecking his cell and offering violence towards staff. The prisoner was located in the Special Supervision Unit (SSU) at Maghaberry Prison and during this time wrecked his cell, including the delph sink, which he broke into large shards with which he subsequently armed himself and threatened to attack any member of staff who entered his cell. The incident was risk assessed and classified to be High Risk, owing to the possibility of injury to staff or the prisoner and as a result the deployment of PAVA incapacitant spray was recommended.

Although I am pleased to report that PAVA was not used on this occasion I was required to carry out a full investigation of the circumstances leading to the deployment and to consider whether or not it was in line with the NIPS “Policy & Guidance for the Deployment of PAVA hand-held incapacitant spray”. I also reviewed Rule 46 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995 governing the authority for use of PAVA.

The NIPS policy states that PAVA will only be issued during a serious incident or exceptionally in the context of a planned cell removal on the authority of the Director or the Deputy Director of Operations. To enable me to establish whether or not it was reasonable to authorise the issue or use of PAVA in relation to the incident on 19 July 2007 it was necessary to take account of the guidance contained in the policy for Serious Incidents and Planned Cell Removals.

A Serious Incident may be defined as:

“An incident where there is a significant risk of injury, or worse to staff, prisoners or others; or
An incident that endangers the good order and/or discipline of the establishment or area, and the situation cannot be dealt with by means other than staff physical intervention.”

CONCLUSIONS

Taking the above definition into account I was satisfied from reviewing all the records relating to the incident on 19 July 2007 that there was a significant risk of possible injury to staff or the prisoner himself. The prisoner had wrecked his cell and armed himself with pieces of broken delph from his cell sink which he had threatened to use as weapons against staff. It was also evident from the records and from viewing the video footage that the prisoner was highly agitated and was making verbal threats of his intentions to attack staff. **I therefore concluded** that staff were correct in treating this incident as a Serious Incident.

A planned cell removal can be defined as a situation where a subject refuses to leave his cell, or other place that he attempts to remain in against instructions, authority and approval of staff. The use of PAVA will only be considered in planned cell removals where there is a risk of significant violence and the use of other methods of resolution have failed, or would be judged to fail in the circumstances. Based on the information available in the records and from viewing the video footage I further concluded that staff acted correctly in assessing the level of risk to be sufficient to consider the possible use of PAVA spray.

I was pleased to report that a comprehensive risk assessment was completed in writing before the decision was taken by the Deputy Director of Operations to issue PAVA. I closely reviewed this Risk Assessment and the Pre-Use Report that was completed and can confirm that consideration was given to all of the essential areas recommended within the policy.

My investigator also established that a video conference was held between the appropriate parties where in-depth discussion took place about the incident and to consider the risk assessment. My investigator also confirmed that all other relevant paperwork was completed as required by the policy.

I concluded based on all of the evidence presented to me that the decision to authorise the deployment of PAVA on 19 July 2007 was reasonable and taken in full compliance with the relevant Prison Rules and Policy.

From reviewing all of the information available including the video footage **I further concluded** that all staff involved acted professionally and demonstrated a high degree of interpersonal skills in de-escalating the incident and bringing the matter to a conclusion without having to use any level of force. With this in mind I commended the Senior Officer and his staff from the SST who acted professionally in bringing this incident to a peaceful close without recourse to any use of force.

FUTURE USE OF PAVA

As I have stated the PAVA trial was to be conducted over a 12 month period, or 10 operational uses, whichever came first. During the pilot, PAVA was requested twice but its use was only authorised on one occasion. This has therefore provided limited information to enable a meaningful evaluation of the pilot. At the time of writing my Annual Report Ministerial approval was granted to extend the pilot using the same conditions as before for a further year commencing on 25 April 08. On the conclusion of this extended trial, the operational effectiveness of PAVA will be evaluated, and the procedures for the operational deployment will be revised if necessary. I am pleased to confirm that I have agreed that the oversight role for the Prisoner Ombudsman will be extended to cover this new trial.

CHAPTER 7

PRISONER SURVEY

My Office publishes a newsletter called 'Inside Issues' for distribution to prisoners. I consider this an important way of maintaining awareness of the Prison Ombudsman and a method of updating prisoners on types of complaints received and outcomes. In my Summer 2007 edition of 'Inside Issues' I asked prisoners to complete a survey to help my Office gather information on how we could improve their knowledge and understanding of and accessibility to our services. In my Winter 2007 edition I was able to report back to prisoners on the outcome of this survey.

THE FINDINGS

Of the total responses, 95% were received from male prisoners and 5% from female prisoners. In addition 71% of respondents were aged between 30-59, 19% aged between 21-29 with 5% aged between 18-20 and 5% aged 60 years or over.

The majority of respondents (71%) were housed at Maghaberry Prison with a further 14% being from 'Separated Accommodation' at Maghaberry Prison. The remaining 15% of respondents were spread evenly from Hydebank Wood Female Prison, Hydebank Wood Young Offenders Centre and Magilligan Prison.

43% of respondents had submitted a complaint to my Office. With regard to the total number of respondents who did not complain to my Office I can confirm that:

- 10% were not aware of the role of the Ombudsman;
- 10% reported that they did not think it was worthwhile complaining to the Ombudsman;
- 17% reported that they did not know how to complain to the Ombudsman or would need help in doing so;
- 25% did not have access to Ombudsman material;
- 38% felt they did not have any reason to complain to the Ombudsman, with either the Prison Service resolving the complaint internally or not having a complaint at all.

Of those who had submitted a complaint, 63% reported they would use the services of the Prisoner Ombudsman again, 26% said they would not and 11% reported that they were unsure.

OUR RESPONSE

On reflecting on some of the outcomes of this survey it is clear that we need to address some of the issues highlighted. As part of our communication strategy fresh information packs about the Prisoner Ombudsman's Office have been provided to the Prison Service for distribution to all new prisoners during induction. We are also in the process of designing information for prisoners with special needs to include Foreign Nationals, Young Offenders and those with literacy problems or learning difficulties. I also believe it is important for my investigators to continue on occasions to 'walk around' prison landings to allow prisoners ad hoc opportunities to discuss issues informally or bring to their attention matters of concern without always in the first instance having to submit a formal complaint.

It is pleasing that 63% of complainants reported that they would use the Prisoner Ombudsman's services again. The intractable nature of a large number of prisoner complaints makes it difficult to improve upon this percentage. However, both through improving response times and the quality of feedback to complainants we will continue to strive to do so.

ANNEX A

THE PRISONER OMBUDSMAN FOR NORTHERN IRELAND

TERMS OF REFERENCE

1. The Prisoner Ombudsman, who is appointed by the Secretary of State for Northern Ireland, is independent of the Northern Ireland Prison Service and reports to the Secretary of State.

2. The Ombudsman will investigate complaints submitted by individual prisoners and ex-prisoners who have failed to obtain satisfaction from the NIPS complaints system and who are eligible in other respects.

3. The Ombudsman will normally act on the basis only of eligible complaints from those individuals described in paragraph 2 (above) and not on those from other individuals or organisations.

4. The Ombudsman will be able to consider the merits of matters complained of as well as the procedures involved.

5. The Ombudsman will be able to investigate all decisions relating to individual prisoners taken by NIPS staff and decisions involving the clinical judgment of healthcare staff.

6. The Terms of Reference do not cover:

- policy decisions taken by a Minister² and the official advice to Ministers upon which such decisions are based;
- the merits of decisions taken by Ministers, except in cases which have been approved by Ministers for consideration by the Prisoner Ombudsman;
- the personal exercise by Ministers of their function in the certification of tariff and the release of mandatory life sentenced prisoners;
- actions and decisions outside the responsibility of the NIPS such as issues about conviction and sentence; cases currently the subject of civil litigation or criminal proceedings, and the decisions and recommendations of outside bodies such as the judiciary, the police, the Director of Public Prosecutions, the Immigration Service, the Probation Service, the Sentence Review Commissioners, Life Sentence

Review Commissioners, Remission of Sentences Commissioners, Loss of Remission Commissioners and their secretariat;

- actions and decisions taken by contracted-out service providers; and
- the actions and decisions of people working in prisons but not employed in NIPS.

Submitting Complaints and Time Limits

7. Before putting a grievance to the Ombudsman, a complainant must first seek redress through appropriate use of the NIPS complaints procedures. Complainants will have confidential access to the Ombudsman and no attempt should be made to prevent a complainant from referring a complaint to the Ombudsman.

8. The Ombudsman will consider complaints for possible investigation if the complainant is dissatisfied with the reply from the NIPS or receives no final reply within six weeks.

9. Complainants submitting their case to the Ombudsman must do so within 30 days of receiving a substantive reply from NIPS. However, 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 NIPS.

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

Determining Eligibility of a Complaint

11. The Ombudsman will examine complaints to consider whether they are eligible. To assist in this process, where there is some doubt or dispute as to the eligibility of a complaint, the Ombudsman will inform NIPS of the nature of the complaint and, where necessary,

NIPS will then provide the Ombudsman with such documents or other information as the Ombudsman considers relevant to considering eligibility.

12. The Ombudsman may decide not to accept a complaint or to continue any investigation where it is considered that, the complaint is vexatious or repetitious or frivolous or no worthwhile outcome can be achieved or the complaint raises no substantial issue. The Ombudsman is also free not to accept for investigation more than one complaint from a complainant at any one time unless the matters raised are serious or urgent.

Access to Documents for the Investigation

13. The Director of the Northern Ireland Prison Service will ensure that the Ombudsman has unfettered access to NIPS documents. This will include classified material and information entrusted to that service by other organisations, provided this is solely for the purpose of investigations within the Ombudsman's terms of reference and subject to the safeguards referred to below for the withholding of information from the complainant and public in some circumstances.

Local Settlement

14. It will be open to the Ombudsman in the course of investigation of a complaint to seek to resolve the matter by local settlement.

Visits and Interviews

15. In conducting an investigation the Ombudsman and staff will be entitled to visit all NIPS establishments, for the purpose of interviewing the complainant, employees and other individuals, and for pursuing other relevant inquiries in connection with investigations within the Ombudsman's Terms of Reference and subject to the safeguards set out below.

Disclosure of Sensitive Information

16. In accordance with the practice applying throughout government departments, the Ombudsman

² A personal Ministerial decision is one where the Minister makes a decision either in writing or orally following the receipt of official advice or signs off a letter drafted for their signature.

will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so. Such circumstances will arise when disclosure is:

- against the interests of national security;
- likely to prejudice security measures designed to prevent the escape of particular prisoners or classes of prisoners;
- likely to prejudice the safety of staff;
- likely to be detrimental on medical or psychiatric grounds to the mental or physical health of a prisoner or anyone described in paragraph 3 of those terms of reference;
- likely to prejudice the administration of justice including legal proceedings; or
- of papers capable of attracting legal professional privilege.

There is an agreed protocol between NIPS and my Office covering this issue.

17. NIPS staff providing information should identify any details which they consider needs to be withheld on any of the above named grounds with a further check undertaken on receipt of the draft report from the Ombudsman.

Draft Investigation Reports

18. Before issuing a final report on an investigation, the Ombudsman will send a draft to the Director of NIPS, to allow the Prison Service to draw attention to points of factual inaccuracy, to confidential or sensitive material which it considers ought not to be disclosed, and to allow any identifiable persons subject to criticism an opportunity to make representations.

Recommendations by the Ombudsman

19. Following an investigation all recommendations will be made either to the Secretary of State or the Director of NIPS, as appropriate, to their roles, duties and powers.

Final Reports and Responses to Complaints

20. The Ombudsman will reply to all those whose complaints have been investigated, sending copies to NIPS, and making any recommendations at the same time. The Ombudsman will also inform complainants of the response to any recommendations made.

21. The Ombudsman has a target date to give a substantive reply to the complainant within 18 weeks from accepting the complaint as eligible. Progress reports will be given if this is not possible.

NIPS Response to Recommendations

22. The NIPS has a target of four weeks to reply to recommendations from the Ombudsman. The Ombudsman should be informed of the reasons for delay when it occurs.

Annual Report

23. The Ombudsman will submit an annual report to the Secretary of State, following the end of the financial year. The report will include:

- a summary of the number of complaints received and answered, the principal subjects and the office's success in meeting time targets;
- examples of replies given in anonymous form and examples of recommendations made and of responses;
- any issues of more general significance arising from individual complaints on which the Ombudsman has approached the NIPS; and
- a summary of the costs of the office.

ANNEX B

TERMS OF REFERENCE FOR INVESTIGATION OF DEATHS IN PRISON CUSTODY

1. The Prisoner Ombudsman will investigate the circumstances of the deaths of the following categories of person:

- Prisoners (including persons held in young offender institutions). This includes persons temporarily absent from the establishment but still in custody (for example, under escort, at court or in hospital). It excludes persons released from custody, whether temporarily or permanently. However, the Ombudsman will have discretion to investigate, to the extent appropriate, cases that raise issues about the care provided by the prison.

2. The Ombudsman will act on notification of a death from the Prison Service. The Ombudsman will decide on the extent of investigation required depending on the circumstances of the death. For the purposes of the investigation, the Ombudsman's remit will include all relevant matters for which the Prison Service is responsible, or would be responsible if not contracted for elsewhere. It will therefore include services commissioned by the Prison Service from outside the public sector.

3. The aims of the Ombudsman's investigation will be to:

- Establish the circumstances and events surrounding the death, especially as regards management of the individual, but including relevant outside factors.
- Examine whether any change in operational methods, policy, and practice or management arrangements would help prevent a recurrence.
- In conjunction with the DHSS & PS, where appropriate, examine relevant health issues and assess clinical care.
- Provide explanations and insight for the bereaved relatives.
- Assist the Coroner's inquest in achieving fulfilment of the investigative obligation arising under Article 2 of the European Convention on Human Rights, by ensuring as far as possible that the full facts are brought to light and any relevant failing is exposed,

any commendable action or practice is identified, and any lessons from the death are learned.

4. Within that framework, the Ombudsman will set terms of reference for each investigation, which may vary according to the circumstances of the case, and may include other deaths of the categories of person specified in paragraph 1 where a common factor is suggested.

Clinical Issues

5. The Ombudsman will be responsible for investigating clinical issues relevant to the death where the healthcare services are commissioned by the Prison Service. The Ombudsman will obtain clinical advice as necessary, and may make efforts to involve the local Health Care Trust in the investigation, if appropriate. Where the healthcare services are commissioned by the Health Service, the Health Service will have the lead responsibility for investigating clinical issues under their existing procedures. The Ombudsman will ensure as far as possible that the Ombudsman's investigation dovetails with that of the DHSS & PS, if appropriate.

Other Investigations

6. Investigation by the police will take precedence over the Ombudsman's investigation. If at any time subsequently the Ombudsman forms the view that a criminal investigation should be undertaken, the Ombudsman will alert the police. If at any time the Ombudsman forms the view that a disciplinary investigation should be undertaken by the Prison Service, the Ombudsman will alert the Prison Service. If at any time findings emerge from the Ombudsman's investigation which the Ombudsman considers require immediate action by the Prison Service, the Ombudsman will alert the Prison Service to those findings.

7. The Ombudsman and the Inspectorate of Prisons will work together to ensure that relevant knowledge and expertise is shared, especially in relation to conditions for prisoners and detainees generally.

Disclosure of Information

8. Information obtained will be disclosed to the extent necessary to fulfill the aims of the investigation and report, including any follow-up of recommendations, unless the Ombudsman considers that it would be unlawful, or that on balance it would be against the public interest to disclose particular information (for example, in exceptional circumstances of the kind listed in the relevant paragraph of the terms of reference for complaints). For that purpose, the Ombudsman will be able to share information with specialist advisors and with other investigating bodies, such as the DHSS & PS and social services. Before the inquest, the Ombudsman will seek the Coroner's advice regarding disclosure. The Ombudsman will liaise with the police regarding any ongoing criminal investigation.

Reports of Investigations

9. The Ombudsman will produce a written report of each investigation which, following consultation with the Coroner where appropriate, the Ombudsman will send to the Prison Service, the Coroner, the family of the deceased and any other persons identified by the Coroner as properly interested persons. The report may include recommendations to the Prison Service and the responses to those recommendations.

10. The Ombudsman will send a draft of the report in advance to the Prison Service, to allow the Service to respond to recommendations and draw attention to any factual inaccuracies or omissions or material that they consider should not be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations. The Ombudsman will have discretion to send a draft of the report, in whole or part, in advance to any of the other parties referred to in paragraph 9.

Review of Reports

11. The Ombudsman will be able to review the report of an investigation, make further enquiries, and issue a further report and recommendations if the Ombudsman considers it necessary to do so in the light of subsequent information or representations, in particular following the inquest. The Ombudsman will send a proposed published report to the parties referred to in paragraph 9, the Inspectorate of Prisons and the Secretary of State for Northern Ireland (or appropriate representative). If the proposed published report is to be issued before the inquest, the Ombudsman will seek the consent of the Coroner to do so. The Ombudsman will liaise with the police regarding any ongoing criminal investigation.

Publication of Reports

12. Taking into account any views of the recipients of the proposed published report regarding publication, and the legal position on data protection and privacy laws, the Ombudsman will publish the report on the Ombudsman's website.

Follow-up of Recommendations

13. The Prison Service will provide the Ombudsman with a response indicating the steps to be taken by the Service within set time frames to deal with the Ombudsman's recommendations. Where that response has not been included in the Ombudsman's report, the Ombudsman may, after consulting the Service as to its suitability, append it to the report at any stage.

Annual, Other and Special Reports

14. The Ombudsman may present selected summaries from the year's reports in the Ombudsman's Annual Report to the Secretary of State for Northern Ireland. The Ombudsman may also publish material from published reports in other reports.

15. If the Ombudsman considers that the public interest so requires, the Ombudsman may make a special report to the Secretary of State for Northern Ireland.

ANNEX C

GUIDE TO PRINCIPLES OF GOOD COMPLAINT HANDLING - BRITISH & IRISH OMBUDSMAN'S ASSOCIATION

Key Principles

BIOA member schemes are independent of management control from organisations within their remit and are committed to our key objectives, which include the need:

- to formulate and promote standards of best practice; and
- to encourage efficiency and effectiveness.

In furtherance of these objectives BIOA has identified seven key principles which support schemes in our work and which people can rely upon when using our services. These are: clarity of purpose, accessibility, flexibility, openness and transparency, proportionality, efficiency, and quality outcomes.

In many cases, it is not possible to satisfy completely the needs and wishes of complainants. Incorporating these principles into the complaint-handling process will minimise unresolved issues or feelings of grievance. It may also make the organisation complained against less defensive, and increase the likelihood of achieving both resolution and organisational learning for the future.

Clarity of purpose A clear statement of the scheme's role, intent and scope.

Accessibility A service that is free, open and available to all who need it.

Flexibility Procedures, which are responsive to the needs of individuals.

Openness and transparency Public information, which demystifies our service.

Proportionality Process and resolution that is appropriate to the complaint.

Efficiency A service that strives to meet challenging standards of good administration.

Quality outcomes Complaint resolution leading to positive change.

(The above Key Principles have been extracted from the British and Irish Ombudsman's Association - Guide to Principles of Good Complaint Handling - 2007.)

