



The
**Prisoner
Ombudsman**
for Northern Ireland

**PRISONER OMBUDSMAN INVESTIGATION INTO A COMPLAINT MY00518/10
FROM A PRISONER ABOUT BEING LOCKED DOWN FOR 23 HOURS A DAY
IN THE SEPARATED ACCOMMODATION IN
ROE HOUSE MAGHABERRY PRISON**

11 JUNE 2010

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Introduction to the Investigation

Prisoner C's Complaint

Prisoner C, a separated prisoner located in Roe House Landing 4, made his complaint to the Prisoner Ombudsman on 4 May 2010. His complaint was that he was being locked down for 23 hours a day. Prisoner C had taken his complaint, as required, through the Prison Service's two stage Internal Complaints Process (ICP).

Another prisoner, Prisoner D, made a complaint about the regime and conditions in Roe House on the same day as Prisoner C and further complaints from other prisoners in Roe House have been received during the course of this investigation.

Much of the content of the complaints received is similar and because it will take several weeks to interview each of the prisoners and complete investigations and reports, it was decided to use the Prisoner C investigation to examine many of the issues and concerns raised across complaints, and produce an early investigation report.

Some of the other complaints raise specific issues about specific events and the investigation into these matters will continue. All complainants will be given an opportunity, on the back of the Prisoner C report, to discuss with an investigator which elements of their complaints they believe still require investigation.

I have not, as yet, received any eligible complaints in connection with the arrangements for and treatment of Roe House prisoners' family visitors. I have been made aware that I may receive some complaints from family visitors in due course.

Investigation Methodology

CCTV for Roe House landings 3 and 4 and Bush House landing 1 was analysed.

Interviews were carried out with Prisoner C, and Prison Service staff and governors.

All relevant Prison Service Policies, Governor's Orders, Prisoner C records and the Compact for Separated Prisoners were considered as part of the investigation. A full list of all of the documents reviewed is at Appendix A.

Prison Rules

The Prison Rules relevant to this investigation were:

Prison Rule 7- Application of these rules during an emergency

7: (1) *Where there is an emergency affecting the safe and secure operation of a prison, or prisons, the Department of Justice may declare an emergency and direct that these rules shall only have effect to the extent consistent with action taken with regard to that emergency.*

(2) *Where any constable or other person, not being an officer, is employed by reason of any emergency to assist the governor of a prison by performing duties ordinarily performed by an officer, any reference in these rules to an officer, except in parts XIV and XV, shall be treated as including a reference to a constable or other person so employed.*

Prison Rule 35(4)- Laying of disciplinary charges

35(4): *A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication, if the governor considers that it is necessary, but may not be held separately for more than 48 hours.*

Prison Rule 55 - Exercise and Association

55: (1) *Every prisoner shall be given the opportunity of association for not less than one hour each day which may be taken as exercise in the open air, weather permitting.*

(2) *Where on any day a prisoner participates in exercise consisting of sport or physical training indoors, or is engaged in outside work the requirement that association be taken as exercise in paragraph (1) shall not apply.'*

Prison Rule 81- Hygiene

81: (1) *Every prisoner shall be allowed adequate access to sanitation facilities and water for health and cleanliness and will be provided with an appropriate range of toilet articles, which shall be replaced as necessary.*

(2) *Every prisoner shall be required to keep himself clean by washing at proper times and by having a hot bath or shower at least once a week unless excused by the governor or a registered nurse or a health care officer.*

(3) *Every male prisoner may be required to shave as necessary for health and cleanliness.*

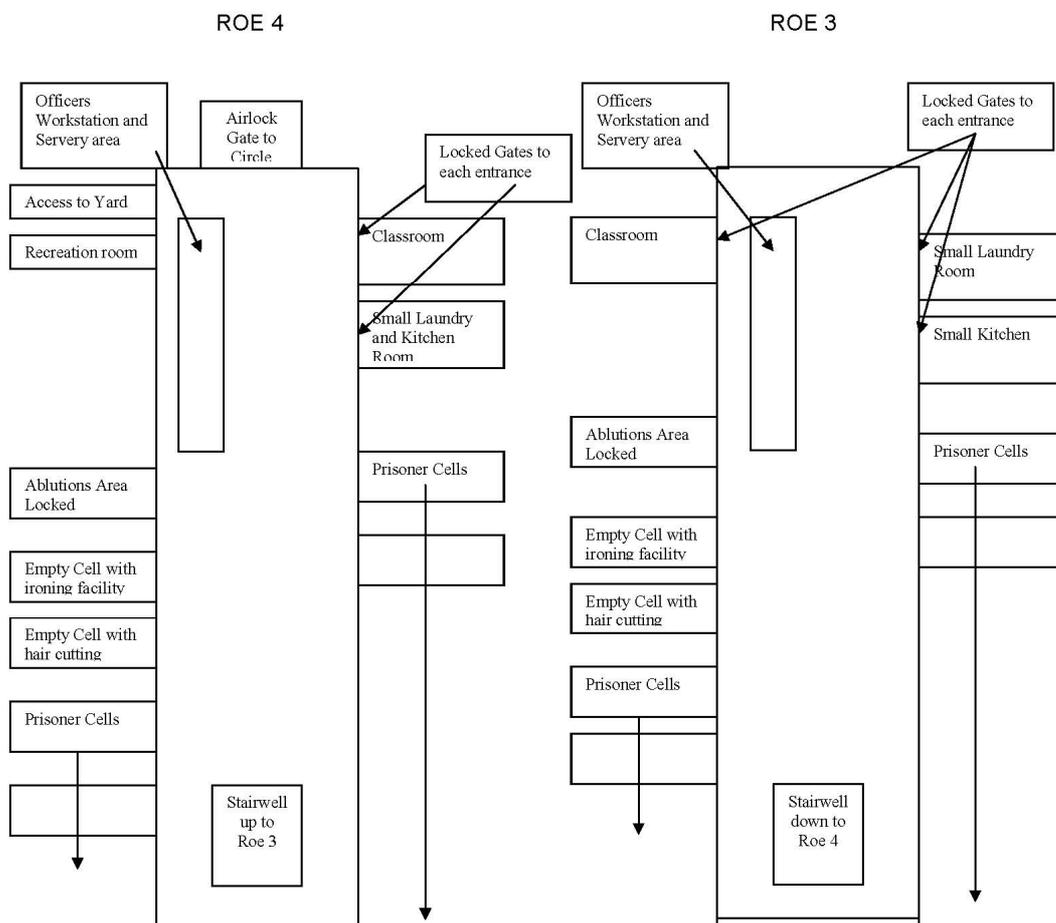
(4) *A prisoner's hair shall not be cut without his consent unless a registered nurse or a health care officer considers it necessary for the sake of health and cleanliness.*

(5) *A governor may require that a prisoner cover or restrain his hair at such times as are necessary for the protection of health and hygiene.*

(6) *Every prisoner shall keep his cell, utensils, books and other articles issued for his use, and his clothing and bedding, clean and neatly arranged.*

Layout of Separated Landings in Roe House

A diagram of Roe 4 and 3 follows to assist the reader to understand the layout of the landings:



Roe 4

Roe 4 is the downstairs landing. It has an integrated small laundry and kitchen room; one empty cell with hair cutting facilities, one empty cell with ironing and in cell sanitation facility, one classroom, one ablutions area. Access to the integrated recreation room and exercise yard area is through a controlled movement ‘slider’ near the officers’ workstation on Roe 4.

Roe 3

Roe 3 is the upstairs landing. It has one small laundry room, one small kitchen room, one empty cell with hair cutting facilities, one empty cell with ironing and in cell sanitation facility, one classroom, one ablutions area. Prisoners housed in Roe 3 have to go down the main stairwell to the Roe 4 landing to access the integrated recreation room and exercise yard area.

Interview with Prisoner C

At interview, Prisoner C was asked about all of the events he believed were relevant to gain an understanding of his complaint.

He made the following points, which are explained throughout the report.

- Prior to the first withdrawal of cooperation by the POA in February 2009, the arrangements specified in the Separated Prisoner compact were generally being applied. This changed when the POA action commenced. In the period before Christmas 2009, there was reduced association and additional lockdowns every week.
- After the first POA action was over, prisoners continued to be unlocked at 9am whereas previously unlock had been at 8.15am, when prisoners were given their milk and those on morning association were allowed to proceed to the recreation room. The later start reduced the time that prisoners not on association had to eat breakfast.
- After the POA action was over, landings were always locked down for one of the nights each week that they should have been on association. On evenings when they lost their association, prisoners would be locked down at 4pm and education and use of the phone was not permitted. Prior to the POA action, landings had rarely been locked down on their planned association night.
- After the action, morning and afternoon regime was more or less as it always had been, but sometimes inter-cell association and gym time was affected.
- It has always been the case that the 2pm unlock takes place nearer to 2.30pm.
- Lunch would be served from 12pm to 12.40pm but, because of controlled movement, it would be 12.10pm when all prisoners who had been on morning association in the recreation room arrived back on the landing and it was a good day when lunch extended to 12.40pm. At best, it gave 40 minutes to feed 16 people. Depending on the number of officers on duty, prisoners were taken down to lunch one or two at a time and, again depending on the number of staff on duty, were allowed to eat one, two or three at a time. Because separated prisoners in Roe House would not eat in cells with toilets, they eat in the small kitchen and are locked in.

- On 29 June 2009, Prisoner C raised an internal complaint about meal arrangements and prisoners missing meals but this did not resolve the difficulties.
- In July 2009, Prisoner C raised a further complaint about “eating conditions on the landing,” complaining that he and other prisoners were missing meals. The complaint went as far as Governor level, but no response was received.
- On 22 March 2010, Prisoner C raised a further complaint and was advised by a Governor that a meeting would be sorted out to discuss his complaint.
- When the POA action was over, prisoners not on association could have inter-cell association and take showers or use the laundry room during the afternoon always providing there are the staff numbers. Only two prisoners at a time can be involved in any of these.
- Everyone also got one chance to use the gym. This could be during association or inter-cell time, depending on whether it was your turn for association. At any one time there can only be 16 in the gym so the 32 prisoners on Roe 3 and 4 attend in two groups. One week your group is offered gym in the morning, the next week, the afternoon. Two officers supervise 16 prisoners in the gym.
- Education was offered in the morning, afternoon or evening, depending on the class teacher and prisoners, whether on association in the recreation room or inter-cell association, could opt in. Prisoners on unscheduled lockdown cannot attend education.
- From the start of the second withdrawal of POA cooperation in March 2010 there were more evening lockdowns. In the eight days to Easter Sunday, Roe 4 did not get evening association for eight consecutive days. Roe 3 did get some nights out.
- During day time lockdowns, prisoners were sometimes permitted to have inter-cell association and sometimes not. It seemed to depend on the officers on duty.
- Morning unlock continued to be at 9am or later.
- Showering / laundry was available some days but not on others, depending upon the staff. Some officers were more flexible than others. This was very variable.

- During the second POA action, prisoners were only allowed to eat their food one at a time whereas previously often two, and sometimes three, were allowed to eat together. Also, because of delays for prisoners getting back in from the yard it was 12.10pm before all prisoners who were on morning association were back in their cells, and prisoners could start to be unlocked for lunch. Prisoners felt officers deliberately slowed the process down. Lunch was also terminated at 12.30pm instead of 12.40pm as previously. This meant that, at the most, five or six prisoners could get their lunch. The others were offered a boxed meal in cell but refused. Exactly the same thing happened at breakfast. Also, because of extra lock-downs, 32 prisoners might need feeding in the evening, instead of the usual 16, and maybe 12 (six on each landing) would actually get their food. The remainder would have no meal. Prisoners were missing one, and sometimes two, meals a day.
- During the POA action, prisoners locked down in the morning would be taken one at a time to shower. Only one prisoner would be allowed to shower at a time, whereas previously two would have been allowed.
- On nights that prisoners are scheduled to be locked down when they should have association, each is let out for five/six minutes to use the telephone. Sometimes, during the action, use of the phone was not permitted because officers said they were short staffed. When prisoners were locked down on evenings when they were due association, no phone calls were allowed.
- The second industrial action was worse than the first and brought all this to a head. The Prison Service was not operating to the Compact. The food provision was the straw that broke the camel's back and led to the protest. The failure to address prisoner concerns was also a problem.
- Around three weeks before Easter, Prisoner C and another prisoner from Roe House met with two Governors to discuss the problem with the food. The Governor said that a Maghaberry Prisoner Forum was being set up and they would come back to Prisoner C. At the meeting the Governor's said that they could not discuss controlled movement.
- The protest took place on Easter Sunday in the recreation room and involved 28 prisoners.
- During the protest a phone was given to prisoners and a negotiation was set up. Prisoners thought that they were dealing with the Prison Service in good faith.
- The conditions in Roe House are not bad. The problem is with the regime and the strip searching arrangements.

- There are issues around education but not ones that would lead to a protest.
- It is not denied that strip searching has to be done. The problem is the removal of boxer shorts. Previously, in the Maze, you were allowed to pull out your shorts and shake them. Also, it is my understanding that Republican prisoners in Portlaoise Prison are still allowed to shake their boxer shorts, rather than remove them. Requiring prisoners take their boxers down makes them feel degraded and humiliated. Having your mouth searched is also degrading. When prisoners go to the recreation room / yard, they have a rub down search. It is when attending visits, legal visits and when cell searches are carried out that strip searches take place. Since the protest, prisoners have refused to remove their boxer shorts and have their mouths checked and are offered closed visits. Prisoners are refusing closed visits.
- At Easter, the protesting prisoners identified a number of smaller issues to the negotiator. They were then told that the negotiation was being stood down and staff were coming in. They were surrounded by staff and the police, and then the prisoners said that they were coming out.
- After the protest, thirteen prisoners were taken to the Special Supervision Unit (SSU). Fifteen prisoners were left in Roe and put in empty cells. Prison Rule 7 was applied.
- On the second day, the prisoners were told that Prison Rule 35(4) was being applied, giving 48 hours to investigate.
- After 48 hours, the prisoners in the SSU were brought back to Roe and placed on a restricted regime of 23 hour lockdown. They were given seven days to seek legal advice before adjudications. In his complaint, Prisoner C said that the 23 hour lockdown constituted a punishment and that he believed that it was his basic human right to be presumed innocent until the charges against him had been considered at adjudication.
- When prisoners are currently offered gym or the astro-turf, this has to be instead of the one hour exercise in the yard.
- Prisoners are allowed a five minute phone call each day and legal and family visits. Sentenced prisoners are allowed one family visit each week and remand prisoners are allowed two visits.
- Prisoner C was one of the first to be adjudicated. He was brought to the SSU for the adjudication but refused to attend because he was not told when the adjudication would be. He knew that it had been put back seven days but did not know when it would be, he was just fetched from his cell. Prisoner C's solicitor

had asked for information from the Prison Service. His solicitor received a fax saying that the request was being dealt with. No reply had been received at the point when Prisoner C was taken over for his adjudication.

- Prisoner C was found guilty and awarded 11 days cellular confinement and 18 days loss of tuck shop, TV, gym and crafts. He was permitted to have a radio and reading material after two days. Eight days cellular confinement took place in the SSU and Prisoner C was then brought back to Roe House to complete his punishment. Prisoner C and another prisoner lost their privileges including TV for longer than everyone else.
- Since Easter Sunday prisoners have been blocking the observation flaps on their cell doors and pouring fluid (urine) under their doors as a way of continuing their protest without confrontation.
- Meals are, for now, being accepted in cell, otherwise prisoners would not eat.
- Prisoners are being selected for searches more than would have been the case previously. Prisoners are refusing searches, because they will not remove boxer shorts and have their mouths examined and are being charged and punished. Prisoner C went to adjudication on Monday 10 May, in connection with damaging his cell, but as the police are now involved, the adjudication did not go ahead. Prisoners are also being adjudicated for pouring urine out of their cells. Prisoner C believes that he has around 20 adjudications outstanding. Some punishments are allowed to run concurrently.
- Prisoners damaged their cells because of an incident where another prisoner was taken to the SSU by the Search Team in circumstances which the other prisoners felt there was no justification for. The prisoner in question was never a threat to officers. Prisoners believe that the Prison Service think that this prisoner is one of those spearheading the protest. Prisoners felt frustrated and this led to them damaging their cells.
- The 23 hour lockdowns are because of the cycle of cellular confinement punishments that prisoners are in.
- Since Easter, only eight prisoners are allowed in the yard for association at one time. Previously 16 were allowed. There are four one hour sessions each day to accommodate 32 prisoners – so prisoners get one hour.
- When prisoners are subject to cellular confinement they are being allowed one hour exercise each day. They are offered use of the gym or astro-turf but this has to be taken instead of exercise. Prisoners are allowed one five minute phone call each day, are offered to use the shower, but don't always get it, and have been

allowed their visits. Family visits are now being affected because of urine being poured under the door. Education is not offered.

- When prisoners are not subject to cellular confinement, the regime is as above but prisoners are also offered education. Prisoners are refusing education because the Prison Service "*messed with*" education when unscheduled evening lockdowns were occurring before Easter. Prisoners have been told they will not go back to normal regime until they are compliant and so there has been no return to association, apart from the exercise hour in the yard.
- Prisoners do not know when they are or are not on punishment because every day is now the same. Because prisoners are refusing education, it is no longer offered.

Findings of the Investigation

Compact for Separated prisoners

The Steele Review, published in September 2003, recommended that republican and loyalist prisoners with paramilitary affiliations should be accommodated separately from each other, and from the rest of the prison population, on a voluntary basis. As a result of the recommendations, prisoners are able to apply to enter separated conditions. Separated republican prisoners are housed on landing 3 and 4 in Roe House. Separated loyalist prisoners are housed on landing 1 and 2 in Bush House. The 'Compact for Separated Prisoners', developed by Northern Ireland Prison Service, sets out the regime to be delivered.

In agreeing to the Steele recommendations, it was a Prison Service requirement that prisoner and officer safety must be paramount. To this end, prisoners in separated accommodation are required to cooperate with supervised or controlled movement. Adjustments have been made to what is required since 2004. The current position provides for a situation where three separated prisoners can be moved from one location to another if there are five officers in the area; two prisoners can be moved if there are four officers in the area; and there must be three officers in the area for one prisoner to be moved.

Whilst prisoners are always moved between locations in accordance with the above requirements, 16 prisoners and at times more, are allowed to associate when locked in the recreation room and yard area, which is covered by CCTV, and three prisoners at a time can be locked in the kitchen / laundry room and ablutions (shower) areas. Prisoners can also use an empty cell with ironing facilities and another with hair cutting facilities. Up to 16 prisoners are permitted to use the gym with two PE officers and up to twelve prisoners will be allowed to use an astro-turf pitch with two PE officers.

Decisions to agree to prisoner requests to enter separated conditions are taken on the basis of a number of criteria including *"being a member or supporter of a proscribed organisation connected with the affairs of Northern Ireland"* and a requirement that the move will not prejudice the safety of the prisoner, the safety of others or prejudice the maintenance of security or good order and discipline.

Since the separated regime was introduced in 2004, the facilities for separated prisoners have been improved to take account of the fact that separated prisoners cannot access facilities elsewhere in the prison, including workshops where training and work experience are delivered. Current separated facilities in each house include: two classrooms; an astro-turf pitch; a fully equipped gymnasium; a recreation

room with showers, telephones, cardio vascular fitness equipment, a food servery unit and an exercise yard leading from the recreation room.

Since 2004, the Prison Service has progressively developed and enhanced the regime for separated prisoners which is described in the Separated Regime Booklet and Compact. The regime provides for daily association, use of the exercise yard, education and use of facilities. Prisoners may also take up to five gym sessions per week and two astro-turf football sessions each week. This is more than the normal integrated prison population would generally receive. Both Roe landings are able to use the gym together, subject to the maximum number. Prisoners from both landings also attend education classes together.

POA Withdrawals of Cooperation

Whilst there have been other instances of withdrawal of cooperation, the investigation considered the POA action from 16 February 2009 to 29 July 2009 (referred to from here as “the first POA action”) and from 15 March 2010 to 9 April 2010 (referred to from here as the “second POA action”).

Both the first and second POA action significantly affected the prison regime. Because officers remained outside the prison until their shift start time, the prison day was pushed back by around half an hour. An insistence on moving all prisoners one prisoner to one officer where previously several prisoners might have, for example, been taken to the gym or workshops, had a significant effect. Refusal to work overtime and voluntary additional hours meant increased lockdowns right across the prison establishments.

Prisoners throughout the Prison who are covered by the Progressive Regimes and Earned Privileges Scheme (PREPS) which is intended to motivate prisoners by rewarding good behaviour, full cooperation with sentence plans and remaining drugs free, with extra privileges such as extra evening association, lost sessions of association that they had earned.

It was, in fact, the case that because of the operation of controlled movement in Roe House and Bush House and the self contained facilities in the separated complex, the separated prisoners were in some respects, less affected by the POA action than other areas across Maghaberry.

Events During and after the first POA action, Roe House

Prior to the first POA action from 16 February 2009, it would appear that the provisions of the Separated Prisoner Compact were generally being applied in Roe and Bush Houses.

Throughout the first POA action, prisoners in Roe House were unlocked later in the morning and were locked down on some of the three nights each week that each landing, in line with the provisions of the Compact, was due to have association.

An enhancement to the Compact in 2007 had included a provision for separated prisoners due morning association, to have access to the recreation room from 8.30am. However, Prisoner C said that before the first action, unlock would take place at around 8.15am when prisoners were given their milk and prisoners on morning association could then go to the recreation room. After the first POA action, Prisoner C said that the morning unlock continued to be at around 9am. It was suggested to the investigation that this was because some prisoners preferred a later start. Prisoner C said that if the milk was dropped off at the earlier time, those prisoners who wanted to go the recreation room early had the opportunity to do so.

After the first POA action, the morning and afternoon regime on Roe 3 and 4 generally continued to be delivered in line with the provisions of the Compact. However at times the availability of inter-cell association and use of the gym and astro-turf pitch were affected by staff shortages, and prisoners did continue to be locked down, often once a week.

The investigation found that whilst the POA action was part of the reason for additional lockdowns, there are a number of other reasons for staffing shortfalls, which is why lockdowns and other regime restrictions continued when the action was over. Most of these relate to current working practices and agreements that impact upon the efficient deployment of staff and the flexibility to redeploy quickly when needed. Whatever the original reason(s) for these agreements and practices, many of them are not supportive of today's requirement for the delivery of a purposeful, rehabilitative regime. Examples include:

- A custom and practice that means that staff have 15 minutes after their paid start time to actually get "on post" and will not be deemed late until after this time.
- An arrangement that whilst staff are paid until 1pm, they leave their landings at 12.45pm and prisoner lunches need, therefore, to be completed by this time.
- An arrangement that whilst staff are paid from 2pm, they can return from lunch up to 2.15pm / 2.20pm without being deemed late.
- A safe staffing levels agreement that specifies the number of officers that must be in each work area and removes the possibility of a dynamic risk assessment that would determine the actual requirements at different points in time, taking into account a range of factors that impact upon risk. Low risk prisoners do not need the same level of supervision as high risk prisoners.

- An agreement whereby group managers, each with responsibility for a number of residential houses, manage the deployment of their own staff within their group only. This means that there is no central overview of sickness / holiday absence etc and no centralised planning of lockdowns. There is, therefore, no prison wide forward planning of staff deployment, management of annual and other leave, sickness absence cover etc. The agreement provides for each group manager to change the shifts of an officer if 72 hours notice is given. However, requests for the movement of staff between groups can only ever be submitted and considered on the day that the assistance, for that day only, is required. So even if a group manager knows in advance that he or she will have problems covering staff absence the following day, week or month, there is no action that can be taken pro-actively to mitigate the impact of this outside of his or her own group.
- An arrangement whereby staff due to retire in the near future can take all their accumulated annual leave before they go.
- Shift patterns that do not ensure that officers are at work at the times they are needed in the numbers they are needed.

It is important to point out that there are officers who are always at their posts at normal start and finish times.

A reduction in overall staffing levels and the removal of overtime, in response to savings targets, without adjustments to existing agreements, working practices and shift arrangements has led to a high dependency on voluntary additional hours to plug operational gaps. All of these hours have to be “given back” to officers to take on top of annual leave and sick leave so the problem of staff shortages rolls over and becomes worse.

Additional lockdowns is a way of responding to staff shortages. During a lockdown, “fire watch” cover, which involves leaving one officer to cover every two landings in a residential house, and an officer in the house control room (POD) where CCTV screens show all landings, operates. This allows other staff from the locked-down house to be moved to another house in their group (or a different group if a request has been made and agreed that day) in order to provide sufficient staffing for that house to allow prisoner evening association to take place. Staff may also be moved to cover other activities such as “bed watches”, where prisoners taken to hospital, at short notice, require supervision.

Arrangements for Taking Meals in Roe House

Prisoner C said that he and other prisoners in Roe House have had ongoing problems with lunchtime and evening meal provision and eating arrangements. Separated prisoners on Roe 3 and 4 normally refuse to eat in their cells for reasons of hygiene, because a toilet is located in the cell. The Prison Service says that bacteria swab checks have been carried out in cells and show that the cell environments conform to acceptable hygiene standards. They point out also that toilet partitions have been installed in cells to provide a screen around the toilet. The Prison Service has, however, allowed an arrangement for prisoners in Roe House to eat out of cell. Elsewhere in the prison, many prisoners eat in cell but it is the case that, where a suitable area exists for prisoners to eat out of cell, prisoners are given the choice to do so.

Prisoners in Roe who have been in the recreation room in the morning are brought back to their cells around 12pm. Shortly afterwards, prisoners due association in the afternoon are taken to eat in the recreation room. The prisoners who have returned from the recreation room and are due to be locked down during the afternoon, are taken to collect their food from the food servery and then proceed to the kitchen to eat their food.

In line with the policy of controlled movement, if there are five officers on the landing, prisoners can be brought down to eat three at a time and three prisoners can eat locked in the kitchen at one time. As prisoners finish eating, they are returned to their cells and other prisoners are brought to collect and eat their lunch. CCTV confirms that prisoners take, on average five minutes to eat their meals, in order that other prisoners can have their turn to eat. The investigation found variations in the number of prisoners actually moved to lunch and allowed to eat in the kitchen at any one time. This appeared to vary according to the approach of the particular officers on duty. It appears that there are times when, within the controlled movement rules, more prisoners could be taken to eat their meals more efficiently.

Lunch finishes at 12.40pm with officers going off duty to lunch shortly afterwards. Depending upon the time that prisoners on morning association are all back in their cells, in the best scenario, there is 40 minutes for up to 16 prisoners to get their lunch. It is the case, however, that delays in prisoners coming in from, and going out to, the yard generally reduce the time available for lunch. The same arrangement applies at evening meal time. Prisoner C and other prisoners alleged that, sometimes time runs out and prisoners do not get the chance to leave their cell for a meal. They said that when this happens, prisoners are offered a boxed meal to eat in cell, but refuse this. It was established that the possibility of allowing prisoners who did not get out of cell to eat, to ask for their meal to be left in the kitchen for them to re-heat later, had been discussed. It was also established that this arrangement was rejected by the kitchen Principal Officer, because of health and safety concerns

over re-heating food. It was, however, found that prisoners attending court, do have meals left in the kitchen and do re-heat them.

On 29 June 2009, Prisoner C raised an internal complaint saying that *“over the recent past, on numerous occasions, a number of people myself included haven’t been able to get a meal because the officers refuse to feed us until the yards are empty. To alleviate this problem, we all started coming in 10 minutes early but this only formed a queue because officers, on occasions, only let one out at a time so then it becomes 5 past 12 or 5 past 4 before we are all locked. This leaves 20 / 25 minutes to feed 16 men. If only two of us get out to the kitchen this allows two to three minutes to re-heat and eat your meal.”*

Prisoner C went on to suggest that all prisoners could eat in the recreation room without controlled movement being compromised and with no requirement for additional staff. He said that as 60 days each year (12 at Christmas and Sunday Mass) all prisoners were already together in the recreation room, this would not be a security risk.

Responding to Prisoner C’s complaint a governor pointed out that the changes in the exercise yard times (on some days no prisoners had been allowed to eat in the recreation room because of staff cover difficulties) were imposed on management, as a result of the POA action, and that it was hoped this had now been resolved. The governor said that Prisoner C’s comments would be forwarded to the Maghaberry Review Team, put in place after the Pearson report.

Prisoner C completed a further complaint form on 8 July 2009, saying that he was regularly missing meals.

The complaints did not lead to any change to the existing arrangements.

On 22 March 2010, Prisoner C raised a further complaint saying *“we urgently need to discuss eating arrangements due to both increased numbers and the fact that on over five occasions in the past week boxed meals have been offered to most prisoners and this results in prisoners only getting, in some cases, one meal in 24 hours.”*

The complaint was discussed at a Prisoner Forum meeting in Roe House on 24 March 2010 and it is recorded on the complaint form that a governor stated *“there are several ideas around this issue which are being looked at and will keep advised.”*

CCTV confirmed the arrangements for taking meals described above and the short time taken by prisoners to eat their meals. It was also evident from landing records that, at times, prisoners were offered boxed meals and that these were refused. It is, therefore, as explained by Prisoner C, the case that some prisoners were missing

some of their meals. Management responses to complaints and confirmation of the consideration given to allowing prisoners to have meals left in the kitchen, did clearly indicate an acceptance that the current arrangements were causing difficulties.

It was established that prisoners are always offered meals.

Searching Arrangements

Prisoner C and other prisoners in Roe House and elsewhere in the prison, have raised concerns about searching arrangements. Prisoner C complained that, whilst he and other prisoners accept that searching is necessary, they feel that having to fully remove boxer shorts and have an oral examination is degrading and humiliating. Other prisoners from Roe House have complained that Prisoners in Roe are searched more than prisoners elsewhere in the prison and that officers in the visits area pick on certain individual prisoners, deliberately selecting them more frequently for what should be random searches.

Maghaberry Prison's current policy on full body searching is the same for the general integrated prison population and separated prisoners. Following an amendment to the Compact in 2006, prisoners who are moving location within the separated complex, are given one rub down search between leaving their cell and moving to the new location. If they refuse to comply with a rub down search they are returned to their cell, placed on report and will not be allowed to go to the intended destination.

Prisoners attending the visitor's complex are, in common with prisoners from all areas of the prison, randomly selected for a full body search on the basis of a ratio of one search for every six prisoners. Every prisoner in the prison entering or leaving the Special Supervision Unit or prison reception, for example en route to court or a home visit, receives a full body search. Every prisoner, in line with Prison Rules, has a cell search and full body search at intervals of not more than 14 days.

The purpose of searching is to try and prevent drugs and other illicit substances and items being brought into, or passed round the prison. The full body search requires a prisoner to remove their upper clothing and, when they have put this clothing back on, remove all of their lower garments. A check using a hand held metal detector is routinely used. One officer is responsible for the search whilst a second officer observes. During the search, the officer carries out a mouth inspection.

An analysis of prison search records over the last two months confirms that full body searches on separated prisoners were carried out in line with Prison Service policy. Separated prisoners are taken to the visits complex in groups of six. The records show over the period that only one prisoner out of the six was selected for a full body search. The other five prisoners were required to cooperate with a rub down search.

A further analysis of the records of three individual separated prisoners from Roe House, who have expressed concern about being selected more often than others for searches, established that, in 2010, the first prisoner had passed through the visit search box 27 times and had three full body searches, a ratio of 1:9. The second prisoner had passed through the visit search box 81 times and had six full body searches, a ratio of 1:13. The third prisoner had passed through the visit search box 62 times and had six full body searches, a ratio of 1:10.

No evidence was found to suggest that any of these prisoners were being treated differently from other prisoners.

The investigation also found no evidence that, after the protest on 4 April 2010, prisoners attending visits were being selected for full body searches more frequently than previously and than specified in Prison Service policy. It was, however the case that because, following 4 April 2010, some prisoners were taken once or more to the SSU, where a full body search is required on entry and exit, prisoners who were previously rarely or never taken to the SSU, would have received more searches overall than they were used to.

It was the case that, as one other prisoner had alleged, he had, during the month of May 2010 been selected for a full body search on three consecutive occasions when attending family visits. Whilst it is not possible to say conclusively, the evidence suggests that the selection was random and that the prisoner was unlucky that, due to the current system, he was the prisoner entering the search box when a full body search had been designated.

The investigation did find that Maghaberry Prison is currently considering an arrangement that would mean that the Prison Service's Prisoner Information System (PRISM) would randomly generate, on a daily basis, the prisoners to be searched by visits staff that day. The Prison Service is also investigating whether the system could be developed to ensure that, over an extended period, all prisoners were treated equitably. This is to be welcomed.

The investigation looked at how full body searches are carried out in England and Wales and the Republic of Ireland and found that the methodology is the same as that deployed by the Northern Ireland Prison Service.

Events 15 March 2010 (start of second POA action) to 4 April 2010 (day of Roe separated prisoner protest)

The POA second action commenced in March 2010. Prisoners throughout Maghaberry and the other Northern Ireland prisons were affected in the same way as previously, with late starts, one to one movement of prisoners and additional lockdowns.

On 17 March 2010, there was a protest by prisoners in Foyle House who were frustrated because the POA action was making it difficult to purchase goods from the prison shop. Prison Rule 7 was invoked.

Prisoner C and other prisoners in Roe House complained about lockdowns after 15 March and the investigation looked at the number and distribution of lockdowns, over and above Sunday evening, when the whole prison is locked down. It was found that from 15 March 2010 to 4 April 2010, there were lockdowns as follows; Erne House: 3, Braid House: 4, Foyle House: 8 (3 of these resulted from the application of Prison Rule 7 in connection with another incident), Lagan House: 5, Bush House: 5, Roe House: 5, Wilson House: 4. The total lockdowns over 20 days, over and above Sunday evenings, was 34.

It was found, again, that the distribution of managed lockdowns across houses depended on the day to day staffing situation within each group and was not entirely equitable. Roe and Bush, which are part of the same group, had the same number of lockdowns.

Prisoner C alleged that whilst the Compact provides for Roe 4 landing to have association three times a week, Roe 4 had been without any evening association for eight consecutive days in the period leading up to the Easter protest. The investigation was able to establish that Roe 4 was without evening association for seven out of eight days as follows:

23 March:	Roe 4 no evening association	- because Roe 3's turn
24 March:	Roe 4 evening association	
25 March:	Roe 4 no evening association	- because Roe 3's turn
26 March:	Roe 4 no evening association	- association due to Roe 4 but lost because Roe locked down
27 March:	Roe 4 no evening association	- because Roe 3's turn
28 March:	Roe 4 no evening association	- no evening association on Sunday
29 March:	Roe 4 no evening association	- order switches week to week, now Roe 3's turn to be out Monday
30 March:	Roe 4 no evening association	- association due to Roe 4 but lost because Roe locked down

When fire watch cover is implemented in Roe House, all unlocks for showers, use of the laundry, ironing cell and telephone and (usually) education classes, is stopped. Prisoners are warned earlier in the day that there is to be a lockdown so that they may make phone calls and take a shower. This would have been the case for all Roe 3 and 4 prisoners on 23, 25 and 30 March 2010.

Prisoners locked down not under fire watch conditions but because it is not their turn for association, are still entitled to be individually unlocked to use the phone and ablutions area and attend education classes. Prisoner C said that, at times before Easter, prisoners were unable to attend education classes on non-association nights.

The investigation found that, for a period of time, staff were cancelling teachers due to deliver classes. This practice stopped when a governor became aware of it and intervened. A governor also determined that, wherever possible, staff should be borrowed from the Roe 1 and 2 committal and induction landings to allow education classes to go ahead even on lockdown nights.

The Compact permits prisoners in Roe and Bush Houses to have inter-cell association, where two prisoners can spend time together in one cell, during morning and afternoon lockdowns. Prisoners in Roe House are not allowed evening inter-cell association because they refuse to take drugs tests. The refusal to take drugs tests means that separated prisoners in Roe are not on the upper tier privilege level of the Compact, which permits evening inter-cell association.

Prisoner C said that inter-cell association was sometimes not permitted during the day because of the POA action in the period up to Easter. The investigation confirmed that this was the case. Because officers were not working voluntary additional hours, staff sometimes had to be taken from Roe 3 and 4 to support the committal and induction landings on Roe 1 and 2 or to support activities like bed watches. The resulting reduction in staffing levels on Roe 3 and 4 meant that, at times, inter-cell activity was not permitted.

Prisoner C said that the situation at meal times was worse during the POA second action than previously, because prisoners were made to eat one at a time in the kitchen/laundry room, unlike previously where two or three prisoners might be allowed to eat in the kitchen/laundry room and because lunch was terminated at 12.30pm instead of 12.40pm. Limited examination of CCTV suggested that this was not always the case. Prisoners were seen being taken to lunch, and eating lunch, two at a time.

Easter Sunday – 4 April 2010

On Easter Sunday, 4 April 2010, when attending Mass, 28 Roe separated prisoners barricaded themselves in the Roe House recreation room. The prisoners remained in the recreation room until Monday 5 April at 9.42pm. Prisoners left the recreation room peacefully when they were made aware that staff would enter the room to remove them.

During the protest, prisoners caused significant damage in the recreation room.

In line with the requirements of Prison Service policy, the Prisoner Ombudsman is investigating the fact that PAVA incapacitant spray was deployed on 4 and 5 April. In the event PAVA spray was not used.

A full report of the Prisoner Ombudsman investigation into the events of 4 and 5 April will be issued in due course.

Events following Easter Sunday and Monday

After the protest finished at 21.42 on Easter Monday 5 April 2010, 13 of the 28 prisoners involved in the protest were taken to the Special Supervision Unit (SSU). The lack of cells in the SSU meant that the remaining 15 prisoners were taken to empty cells in Roe House.

Prison Rule 7 was invoked on 6 April and the whole prison was locked down.

A Notice to Prisoners was issued explaining to all prisoners that Rule 7 had been invoked across the whole prison because of the incidents in Roe House, that Prison Rules had been suspended and that this had affected the delivery of hot water, telephones and exercise facilities. The note stated that the application of Rule 7 would be reviewed on a daily basis and that the *“restoration of the regime for all will be in several stages and the speed of this will depend on the resolution of the ongoing incident in Roe House.”* The notice stated that the return to normality would be implemented in the following order:

1. Access to hot water and telephones
2. Limited exercise to exercise facilities and recreation facilities
3. Return to full prison regime.

Roe prisoners in the SSU were returned to Roe House on 7 April 2010 and Rule 35(4) was invoked for Roe 3 and 4 prisoners. This provides for a prisoner, who is to be charged with an offence against discipline, to be kept apart from other prisoners for 48 hours whilst an investigation takes place into what has happened. Two of the prisoners being held in empty cells in Roe House were taken to the SSU to be charged. The remaining 13 refused to go and were charged in the House.

Full regime was returned to all locations across the prison on 7 April. A restricted regime was implemented for the Roe separated prisoners. A Notice to Prisoners in Roe 3 and 4 was issued on 7 April outlining the daily temporary routine which was to apply. The notice said that prisoners were not under punishment and should not lose privileges other than those inherent in increased controlled movement and the loss of the recreation room. Prisoners were told that they could use the exercise yard, astro-turf and gym in groups of eight and were told that they could use the landing facilities as an alternative to exercise. The notice detailed a daily timetable providing four sessions of exercise in order that all prisoners would have the opportunity for one session of eight prisoners.

Whilst the notice specifies the conditions for use of the gym and astro-turf pitch, and says that prisoners should not lose privileges, prisoners have said that they were told by landing officers that they had to choose between use of one of these facilities or exercise in the yard. They said that a few prisoners, who chose to use the gym, were unable to attend the exercise yard. On the landing log for the 9 April it is recorded that *“four prisoners on gym list refused to attend.”* Prisoner C said that the prisoners

were intending to attend the gym until they were told that this would have to be as an alternative to the use of the exercise yard.

On some days, it is recorded that various named prisoners have been offered and declined, use of the exercise yard.

All of the prisoners involved in the protest were charged under Prison Rule 38(1), in line with Prison Service policy, in connection with committing "*mutiny and indiscipline*" by "*being in concert with others who took part in protest action in Roe 4 dining hall between 09.52 on 4 April and 21.42 on 5 April 2010.*" Each prisoner was given seven days in which to seek legal advice, before attending adjudication. In the event, Prisoner C was adjudicated on 20 April.

Prisoner C alleged that his solicitor wrote to the Prison Service requesting information in connection with the charge against him and received a fax saying that his request was being dealt with. Prisoner C also said that his solicitor had not received a response by the time he was taken to the SSU to attend the adjudication on 20 April. Prisoner C said that he went over to the SSU but refused to attend the adjudication for the above reason and because he said that he was not given any advance notice as to when the adjudication would actually be held. Other solicitors have written to the Prisoner Ombudsman complaining about access to their clients over this period. The Prison Service has said that, whilst every effort has been made to ensure that legal visits could take place this has been affected by refusals to cooperate with full body searches and prisoner availability being affected by the requirement for prisoners to attend adjudications. Matters related to legal representation are being investigated separately by the Prisoner Ombudsman and a report will be produced in due course.

Prisoner C was awarded 11 days cellular confinement in connection with the protest on Easter Sunday and Monday and lost other privileges for 18 days. All 28 prisoners involved in the protest received 11 days cellular confinement and lost other privileges for between 11 and 18 days. The differences occurred because of different governors chairing the adjudications. Whilst governors have the discretion to make what they deem to be an appropriate award within the maximum permissible, there was not really any grounds for treating prisoners differently.

After the Easter protest, separated prisoners in Roe House blocked the observation flaps in their cell doors and from 7 May began pouring urine under their cell doors. Prisoner C said that, having left the protest peacefully, these actions were seen as a way of prisoners continuing their protest without a confrontation. The blocked flaps mean that officers can only carry out the day and night time body and head count checks on prisoners required by Prison Service policy by opening cell doors. Body checks are carried out, across the prison, to ensure that prisoners are alive and well, and head count checks are carried out to check that all prisoners are accounted for.

The urine poured under doors is very unpleasant for officers and other staff working on the landing and is seeping into all areas of the landings and causing a constant odour. Industrial cleaners are on the landings on a regular basis.

Separated prisoners in Roe 3 and 4 randomly selected for full body searches by visits staff or required to cooperate with cell searches or searches in the Special Supervision Unit, have also, on all but a few occasions, been refusing to remove their boxer shorts. Prison Service management have adopted a measured approach in dealing with refusals. Prisoners are given the opportunity of a closed visit, where they may speak to their family member, friend or legal representative across a glass screen. They are subsequently charged with refusing to fully comply with a full body search. Prisoners have been refusing to accept closed visits and if randomly selected for full body searches have, with the exception of the few occasions where a prisoner has complied, missed family or legal visits.

Prisoner C said that the separated prisoners in Roe believe they should not have to accept closed visits because they say that Roe 3 and Roe 4 landings are drugs free.

The Prison Service said that it is a function of searches to look for other illicit items, as well as drugs and it would not be possible to treat any group of prisoners differently because they say that they are drugs free.

Prisoners in Roe 3 and 4 are also being charged each time they pour urine under their doors. There are currently more than 200 outstanding adjudications, many of which have been adjourned for legal consultation or to facilitate a response from solicitors to requests for information or evidence.

With a few exceptions, prisoners have not attended their adjudications in respect of the protest on 4 and 5 April 2010 or in connection with any of the charges brought since then.

Prisoners are, therefore being adjudicated, and punishments awarded, in their absence.

The Prison Service has been dealing with some of the adjudications in batches and, in line with usual practice, some punishment awards, such as in Prisoner C's case, are being allowed to run concurrently.

Incident on 6 May 2010

On the night of 6 May 2010, separated prisoners on Roe 3 and 4 landings caused significant damage to their cells, which included damaging their sinks and toilets.

Prisoner C said that this action was taken because prisoners were frustrated because, that day, another prisoner had been forcibly taken from his cell in Roe House to the SSU, in circumstances where the other prisoners felt that there was no justification for the Prison Service action. Prisoner C said that the other prisoners believe that the Prison Service is wrongly blaming the prisoner for being one of those spearheading the protest. The Prison Service say that their actions were appropriate and justified.

The Prisoner Ombudsman has been advised by the prisoner who was taken to the SSU that he is taking a complaint through the Internal Complaint Process which he will then bring to her for independent and impartial investigation. The Prisoner Ombudsman will, in due course, report on the findings of the complaint investigation.

Following the cell damage on 6 May, a Notice to Prisoners was issued to Roe 3 and 4 on 7 May announcing a restricted regime. The notice said that, following the damage caused to cells on 6 May, it was necessary to limit the regime and that prisoners would receive the following:

1. Access to telephone
2. Provision of hot water, for tea and coffee
3. Access to showers
4. Access to legal and family visits.

The notice stated that this regime would be kept under review, dependant upon cooperation and behaviour and that the full separated regime would be reinstated as soon as possible. The notice also explained that, due to the in cell sanitation in most cells being damaged beyond use, prisoners would be given access to toilet facilities during the day, but that during the night time a chamber pot would be provided in cells and a supply of hygienic wipes, toilet tissue and air fresheners would be supplied.

The Maghaberry Search Team was deployed on 7 May to take control of Roe 3 and 4 landings in place of normal residential staff, whilst the debris from the damage was cleared. In addition to the limited regime, and the Search Team being deployed, Prison Rule 35(4) was again invoked. Adjudications in connection with the cell damage incident have been adjourned because a police investigation is ongoing.

23 Hour Lockdowns

Prisoner C and other separated prisoners in Roe House have complained that since the events on Easter Sunday and Monday, they have been subject to 23 hour lockdown in their cells or in the SSU.

The investigation found that Prison Rule 7 was applied on 5 and 6 April and prisoners were taken down for 24 hours each day. The limited regime was then implemented from 7 April 2010.

Immediately following the damage to the cells on 6 May, Prison Rule 7 was invoked again and prisoners were locked down for 24 hours. A limited regime was temporarily introduced on 8 May and prisoners were let out to the exercise yard in groups of four. This led to increasing problems for staff who were trying to organise the delivery of the minimum requirements for exercise, organise exercise round scheduled legal and family visits and respond to requests for use of the toilets, use of showers and use of the phone, in circumstances where toilets were no longer available in cell and the recreation room, which has showers and telephones and could have been used during exercise time, was out of commission. Not everyone received their entitlement. The regime was extended shortly afterwards to allow prisoners to go out to exercise in groups of eight, but problems with meeting the demand for prisoner movement have been experienced throughout the period since Easter.

Excepting the situation on the 6, 7 and 8 May 2010, the ongoing situation since 7 April was found to be that, each day, a prisoner's regime is one or other of the following scenarios:

Scenario 1

Days when prisoners are undergoing cellular confinement or have lost privileges as a result of a punishment awarded at adjudication.

Prisoners confined to cell as a punishment or who have lost privileges have been offered one hours exercise each day, in line with Prison Rules. CCTV and landing logs confirm that prisoners are, fairly regularly, staying in the yard for longer than an hour. Prisoners are also entitled, under Prison Rules, to one five minute phone call each day and access to the phone has generally been provided. All prisoners are entitled under Prison Rules to shower once a week but regularly shower more often. Prisoners confined to cell as a punishment have been able to take some showers.

It is unclear whether prisoners undergoing punishment have been offered study based education classes. Prisoners say that they were told that these were only offered as an alternative to exercise. The Prison Service says that this is not the

case. In the event, Prisoner C said that prisoners had made an early decision that they would not attend education classes because they said the Prison Service had “messed with” their classes in the period leading up to Easter.

Prisoners undergoing punishment have not had access to the gym or astro-turf.

All sentenced prisoners are entitled under Prison Rules to one family visit a month, irrespective of their privilege level. Prisoners on remand are entitled to two family visits a month. Prisoners receive additional visits as they move through the PREPS scheme. The compact provides for separated prisoners in Bush and Roe Houses to have one family visit each week. Prisoners are also entitled to legal visits.

Visits did not take place when Rule 7 was invoked, but throughout the period of the restricted regime, all prisoners have been treated as entitled to have their weekly visits and legal visits, subject to complying with full body search requirements when randomly selected by visits staff. It was found that, some prisoners have lost their right to some of their visits as a result of punishments awarded at adjudications. As stated earlier, some problems with legal visits have also been reported.

Scenario 2

Days when Prisoners are not undergoing cellular confinement

Prison Service management have repeatedly said that they want a return to normal regime, but first require material blocking the observation flaps on prisoners’ doors to be removed, full cooperation with full body searches and, the practice of pouring urine under cell doors to cease. The restricted regime has, therefore, continued to apply.

Prisoners not undergoing punishment are being let out of cell for one hour each day to go to the exercise yard. Again, CCTV and landing logs show that prisoners are, fairly regularly, staying in the yard for longer than an hour.

Prisoners on limited association have access to the telephone, shower and other landing facilities, as and when officers are available to provide supervised movement.

It is, again unclear whether prisoners not undergoing punishment have been offered education classes as an alternative to or as an addition to their exercise. As prisoners are refusing to attend education classes, this is not an issue except insofar as education classes offer a further opportunity for prisoners to be out of cell. In March 2010, the prisoners on Roe 3 and 4 attended a total of 117 hours education, which included both study based classes and recreational classes - yoga, leathercraft, guitar etc.

It is recorded in prison records that prisoners are being offered, but are refusing, use of the gym and astro-turf. Prison management have said that use of these facilities is available in addition to exercise. There is, however, some evidence that prison officers applying the restricted regime may initially have thought that Prison Rule 55 was operational. This rule says that where a prisoner takes other exercise consisting of sport or physical training, the requirement that association be taken as exercise, shall not apply.

Ongoing confusion appears to have resulted from a lack of clarity, given the number of punishment awards and arrangements for awards running concurrently, about individual prisoner entitlements. It is also not clear that managers' intentions were fully communicated and understood and it is the case that the challenge of meeting minimum requirements across a range of activities for 32 prisoners, as described above, has limited what can reasonably be offered.

Prisoner C and other prisoners have consistently said that they were initially told that use of the gym and astro-turf had to be taken as an alternative to exercise and, as they have never been told otherwise, have always understood this to be the case. Prisoners have not, therefore, since 4 April, used either facility.

Prisoner C Records and Regime – 4 April to 25 May 2010

Access to Telephone

Prison records show that from 4 April to 20 May Prisoner C has had regular access to the telephone on all days except for four days, 8-10 April and 7 May. At interview Prisoner C said that there were days that he did not ask to use the phone.

Visits

Prisoner C had no visits from 4 to 23 April. It is not clear from records what, if any, visits were requested and refused during this period. From 24 April up to 20 May 2010, Prisoner C had visits as follows: 24 April family visit; 2 May family visit; 5 May legal visit; 6 May family visit; 13 May family visit; 16 May family visit; 19 May family visit; 20 May family visit. Prisoner C lost one family visit as a punishment awarded at an adjudication on 29 April.

Exercise and Education

From mid April 2010 staff in Roe 3 and 4 started keeping detailed logs of prisoner activity taken and refused. The amount of information recorded appears to vary day to day and occasional days are missing.

The records would appear to suggest that almost all separated prisoners from Roe on almost all days since Easter Sunday, except where there was a total lockdown because further protests and damage occurred in Roe 3 and 4, had exercise in the yard.

There is no evidence that Prisoner C attended the gym, used the astro-turf pitch or attended education classes after 4 April.

Adjudications

Prison Records show that Prisoner C has been charged 20 times since the protest started on Easter Sunday.

14 of these adjudications have been adjourned for him to seek legal advice and are still outstanding.

10 of the adjourned adjudications are for protesting by pouring urine under his cell door on 7, 11, 12, 13, 14, 15, 16, 20, 21 and 22 May; two of the adjourned adjudications are for refusing to comply with a full body search by not removing his underwear on 24 and 29 April; one is for not slopping his cell out on 26 April; and one is for damaging his cell on 6 May.

One adjudication held on 20 April to deal with the protest on 4 and 5 April, resulted in Prisoner C receiving 11 days cellular confinement and loss of the following other privileges for 18 days: loss of books, notebooks, paper and pens, evening association, education, use of tuckshop, television, video, hi-fi, gym and sports, cell crafts and musical instruments.

One adjudication held on 29 April 2010, to deal with Prisoner C's refusal to remove underwear as part of a full body search on 20 April, resulted in the loss of one family privilege visit.

Three adjudications held together on 6 May 2010, to deal with an incident where Prison C refused an order to slop out his cell on one occasion on 22 April and failed to comply with a full body search on two occasions on 23 April, resulted in further awards made. These were, however, to run concurrently.

One adjudication held on 12 May 2010 to deal with a further refusal to comply with a full body search on 2 May, resulted in a suspended award.

Taking all awards, including concurrent awards into account, Prisoner C has over a period of 51 days:

- been confined to cell as a punishment on 14 days
- has lost privileges for 30 days, (16 days additional to his confinement to cell)
- was locked down for 24 hours under Rule 7 on 4 days
- was on the restricted regime but with his privileges intended to be restored for 17 days.

In reality there has, for all of the reasons discussed, been little difference in prisoners' regime, between the days they are being punished and the days they are not being punished.

Summary and Conclusions

1. In accepting the Steele recommendations, the Government committed to providing separate accommodation for paramilitary prisoners who, on the grounds of safety, wished to be held apart from prisoners from other paramilitary groups and from prisoners who belonged to no such groups. When putting arrangements for this accommodation in place it was important for the Prison Service to ensure that, as in the rest of the prison (i) staff are in control (ii) prisoners are safe and (iii) staff are safe.
2. The Separated Prisoner Compact specifies the routine, regime and privileges that prisoners can expect when living in separated accommodation. Given that separated prisoners cannot access the prison workshops and other facilities, significant efforts have been made to provide a range of facilities, education and activity programmes within the separated complex. Since the Compact was first introduced in March 2004, the regime has been progressively enhanced. The Prison Service has said that it may be possible, over time, to consider further regime change in response to positive developments in the community, that create a more secure, less threatening environment both outside and inside prison establishments.
3. The Compact also makes clear the requirement for those applying for separated accommodation to conform to the terms of the Compact. One of the terms is that prisoners move to and from facilities under the control of prison officers and arrangements for controlled movement are, therefore, in place. Following an inspection of Maghaberry Prison in 2009, the CJINI/HMCIP reported their finding that the arrangements for moving prisoners around internally on the separated wings “*were unnecessarily restrictive*”. This was a repeat of their finding during an inspection in 2005. I agree with this finding.
4. It is appropriate, and consistent with the approach elsewhere in the prison, that improvements to regime and facilities that can be achieved are objectively assessed and considered in the light of the substantial security arrangements in place in the Maghaberry separated accommodation.
5. Under the current controlled movement arrangements, when five officers are on duty, up to three prisoners are permitted to be in the laundry/kitchen and three in the shower area, at the same time as prisoners are in the ironing cell, hair cutting cell, exercise yard, gym and education classes. The extent to which this movement is realised is variable, depending upon the attitude and helpfulness of the officers on duty. It should be noted that there are officers in Bush and Roe Houses who make particular efforts to make controlled movement work well, but there is no doubt that staff using their discretion also unnecessarily limits what can be achieved.

6. The Separated Prison Compact specifies clearly the regime and facilities that a prisoner moving to separated accommodation may expect. Given the restrictions of separated conditions, prisoners have a reasonable expectation that the regime and facilities specified will, other than for exceptional reasons, be available.
7. Throughout the rest of Maghaberry prison, prisoners are included in an earned privilege scheme where, in return for good behaviour, full cooperation with the provisions of their sentence plan and remaining drugs free they can access privileges, extra sessions to associate with other prisoners and a greater number of family visits. They also have a reasonable expectation that, if they do everything that is asked of them, their privileges will be delivered in line with the scheme.
8. There appears to be general agreement that up until February 2009, the Compact for Separated Prisoners was working reasonable well. Since then, it has worked less well and it would seem that there are two key reasons for this.
9. The first reason is that the Prison Service has a significant number of agreements and working practices that impact upon the ability to deploy staff efficiently and effectively. Requirements to make efficiency savings over the past few years have led to an overall reduction in main grade and support grade staff and the removal of overtime working, without the Prison Service addressing the need for adjustments to these agreements and practices. This has led to increased prisoner lockdowns and other regime restrictions, across all areas of the prison. In this regard, I note that the Chairman of the Prison Officers Association has publically stated, on a number of recent occasions, that the POA accepts the different needs of changing times and, if asked, is willing to work creatively with the Prison Service to develop a service that is fit for purpose.
10. The second reason is that the POA implemented “withdrawals of cooperation” across all prisons, from 16 February 2009 to 29 July 2009 and from 15 March 2010 to 9 April 2010, in response to disputes with prison management. These significantly affected regime and access to facilities for all prisoners.
11. Prisoners in separated accommodation were, in some ways, less affected by the withdrawal of cooperation than other prisoners, because controlled movement was in place in Roe and Bush Houses. The delivery of the Compact was, nevertheless, adversely affected.
12. After the first POA action, the regime of the separated prisoners continued to be affected by lockdowns and staff shortages on a fairly regular basis, for the first reason described above.

13. The ongoing arrangement for separated prisoners in Roe House taking meals was that, because the prisoners said that they would not eat in cells with toilets, for reasons of hygiene, prisoners chose to eat their meals in small landing kitchens. Prisoners entitled to association ate in the recreation room. Because of the time available to take meals and the requirement for controlled movement, prisoners generally ate their meals in less than five minutes in order that everyone could eat, and, on occasions, prisoners missed meals. Eating arrangements have been a source of frustration for an extended period. Prisoner C raised complaints in June 2009, July 2009 and March 2010 in connection with eating arrangements and prisoners missing meals. At a meeting on 24 March 2010, prison managers indicated that options for resolving difficulties were being looked at.
14. It is in everyone's interests that local arrangements for resolving prisoner difficulties and concerns that may arise, work well. I would encourage the development of the Prisoner Forums as a way of ensuring that there is local discussion about, and resolution of, problems. It is also very important that Prisoner Forums, in all Houses, operate on the basis of mutual respect.
15. Separated prisoners, in Roe, and other prisoners, are also unhappy that full body searches require prisoners to remove their boxer shorts and undergo an oral inspection which they say prisoners find embarrassing and humiliating. I am aware that many prisoners share the concern about the removal of boxer shorts. It has also been alleged that a small number of officers are, on occasions, insensitive or even inappropriate when carrying out searches. It is very difficult to establish whether this is or not the case and it would be completely contrary to Prison Service training. Prisoner C said that officers had never made an inappropriate comment to him, or behaved in an appropriate way towards him during a search, but he was aware that other prisoners have said they have experienced this.
16. Some separated prisoners in Roe are also unhappy with the frequency of searches and believe that individuals may be unfairly selected more often than other prisoners for searches. The investigation found no evidence to support this.
17. It is important to note that the purpose of searches is to prevent drugs or other illicit substances or items being brought into prison or passed between prisoners. The availability of drugs, in particular, is a very serious problem in Northern Ireland prisons as evidenced in a number of recent Prisoner Ombudsman death in custody reports, including one into the tragic death of a young man in Magilligan Prison in 2009. The investigation found that the procedure for fully body searches in England, Wales and the Republic of Ireland, is exactly the same as in Northern Ireland. The investigation also found evidence that illicit items are hidden in the mouth, in the groin area and taped to the buttocks.

18. The second POA action commenced on 15 March 2010 and this resulted in further disruption to regime and lockdowns across the prison. The absence of a prison wide approach to allocating lockdowns meant that they were not entirely equitably distributed.
19. In the 30 days from 5 March 2010 to 4 April 2010, the date of the Roe separated prisoner protest, there were 34 lockdowns, over and above Sunday lockdowns, across the whole prison. Roe House was locked down for five evenings. Because of the dates of the lockdowns, because evening association is alternated between Roe 3 and Roe 4 landings and because everyone is locked down on Sunday night, this resulted in a situation where Roe 4 landing did not receive evening association for seven nights out of eight. The Compact provides that separated prisoners should receive association three evenings a week.
20. In the same period, day time inter-cell association and access to facilities and education, all of which are provided for in the Compact, were at times affected by the POA action.
21. On 4 April 2010, 28 prisoners in Roe House commenced a protest in the recreation room after Easter Mass. It would appear to be the case, whatever has happened since, that it was primarily frustration with ongoing shortfalls in the delivery of the regime specified in the Compact and unhappiness with the arrangements for taking meals, exacerbated by the lockdowns in the weeks before Easter, that led to the protest.
22. The protest ended on 5 April when prisoners, having been made aware that officers would enter the room to remove them, opted to come out peacefully. During the protest, substantial damage was caused to the recreation room, putting it out of action. The events of 4 and 5 April will be reported fully as part of the Prisoner Ombudsman investigation into the deployment (but not use) of PAVA spray.
23. Immediately following the protest, Prison Rule 7 was applied and on 6 April and 7 April 2010, prisoners were confined to cell 24 hours a day. Family and legal visits were, therefore, not permitted. All of the 28 prisoners involved in the protest were charged and received punishments of cellular confinement and loss of privileges. Loss of privileges included loss of the use of the gym and astro-turf pitch. Prisoner C received 11 days cellular confinement and 18 days loss of privileges. There was a variation in the punishments awarded by different governors.

24. Following the Easter Sunday protest, prisoners blocked the observation flaps on their cell doors. This meant that officers had to open cell doors to carry out the safety checks and checks on prisoner well being, required by Prison Rules. From early May, prisoners have also been pouring urine under their cell doors in the evening which has been very unpleasant for staff working on the landings. Prisoner C said that these actions were seen as a way of continuing the prisoner protest, without confrontation. Prisoners have also refused to cooperate with requests to remove boxer shorts during full body searches.
25. From 8 April, prisoners were informed that a limited regime would apply until such times as they unblocked the door observation panels and cooperated with full body searches. This was extended in May to a requirement for prisoners to stop pouring urine under their cell doors.
26. On 6 May, prisoners caused significant damage to their cells. In many instances this meant that sinks and toilets could no longer be used. Prisoner C said that the action was taken when another prisoner was forcibly removed to the Special Supervision Unit, in circumstances that the prisoners believed to be unjust. The Prison Service say that their actions were appropriate and justified. The prisoner has indicated that he will be bringing a complaint to the Prisoner Ombudsman for independent investigation.
27. Following the damaging of cells, Rule 7 was again invoked and prisoners were on 24 hour lockdown on 7 May and 8 May.
28. Prisoners are being adjudicated for refusing to cooperate with full body searches and for pouring urine under their doors. They are not attending the adjudications. Prisoners have not been adjudicated for blocking their door observation panels.
29. Under Prison Rules, all prisoners are entitled to, and have received since 7 April, when not subject to Prison Rule 7, at least one hour a day exercise. CCTV shows that, fairly regularly, prisoners exercise for longer than one hour.
30. Visits have, excepting when Rule 7 was applied, mostly continued in line with Prison Service policy and the usual arrangements operating in Roe House. Management and staff have tried to ensure that visits take place as planned. Visits have been missed where prisoners selected for random full body searches have refused to cooperate and, where loss of visits has been made part of a punishment award. Prisoners have reported some difficulties with legal visits which are being investigated.

31. Actual total time out of cell has been influenced, day to day, by use of the telephone, longer than one hour exercise periods, use of the shower and attendance at family and legal visits. It is not, therefore, true to say that prisoners have been locked down for 23 hours every day but it is fair to say that their time in cell has been more than 22 hours on most of the 57 days to 31 May and has been 23 hours on many.
32. There has been confusion about whether or not prisoners, on days when they are not subject to cellular confinement or loss of privileges as a punishment, should have been allowed use of the gym and use of the astro-turf pitch, over and above their one hours exercise. Whilst management state that this was their intention, it is far from clear that this is what was implemented. Difficulties in managing the overall requirements for prisoner movement; uncertainty about what was intended and which Prison Rule was being applied; and the implementation of cellular confinement punishments and loss of privilege punishments for each prisoner, appear to have contributed to confusion. Prisoners have been offered and have refused the use of these facilities, but it does seem to be the case that it was prisoners' understanding that if they accepted use of these facilities, it would have to be as an alternative to their association in the exercise yard.
33. It is also unclear whether education classes, which were consistently offered to prisoners, had to be taken as an alternative to exercise. Prisoner C says that prisoners were told, shortly after the protest, that this was the case. In the event, prisoners, as part of their protest, decided that they would not attend classes because they said the Prison Service had "*messed with*" their classes in the period leading up to Easter.
34. As a result of:
- headcount and body checks, carried out for safety purposes, taking longer
 - normal day time association not taking place
 - 32 prisoners requiring use of landing toilets, and phones
 - the recreation room showers and phones being out of action
 - legal and family visits needing to be planned around four exercise sessions
 - Industrial cleaners, at times, stopping movement,
- and, all of the above being subject to the rules of controlled movement, it is the case that management of activity has been challenging and has undoubtedly impacted, at different times, on the access to facilities of individual prisoners.
35. The Prison Service has repeatedly made it clear that normal regime will be restored as soon as normal discipline is restored.

36. The recreation room has been available for use during the one hour exercise / association time since week commencing 24 May but prisoners have said that they will not use it, cooperate with repairs to their cells or stop the other actions being taken which are breaches of discipline, until the matters raised in their complaints are addressed.
37. There are more than 200 adjudications pending and this is rising. Prisoner C has more than 20 outstanding adjudications. He has been adjudicated five times in his absence and, in the 51 days from 4 April to 25 May was confined to cell as a punishment for 14 days and lost his privileges for 30 days.
38. Where prisoners have lost privileges this has included the loss of newspapers and books. It was agreed at a Senior Management meeting at Maghaberry on 6 August 2009, that the loss of newspapers and books as a punishment following adjudication, should not occur unless their abuse was central to the offence. The loss of these items was, therefore, not appropriate.
39. Prison discipline is essential for maintaining good order and protecting the safety of all prisoners and staff. It is fully in line with Prison Rules that prisoners are adjudicated and receive punishment awards for breaches such as blocking their cell door observation panels and pouring urine under the doors.
40. Individual prisoner adjudications have, since 4 April, been organised in batches and punishment awards made have, in line with Prison Service practice, been allowed to run concurrently and retrospectively. Given the substantially restricted regime of Prisoner C and other separated prisoners from Roe House, for the 57 days to 31 May, it is the case that had it been possible for all adjudications to have been processed, the punishment awards would very largely have been served.

Recommendations to the Northern Ireland Prison Service

In making the following recommendations, effective dates have been included to allow for the need to put in place the necessary arrangements.

The Compact for Separated prisoners

I could recommend that, in all but exceptional circumstances, the regime specified in the compact is fully delivered and, in particular, that the separated landings in Bush and Roe Houses are not locked down when they are due association. I am, however, aware that, given the realities described in this report and the fact that the summer holiday period is imminent, this could only be achieved by allocating additional lockdowns to other prisoners, who equally deserve the right to the evening association they have earned through cooperation with the PREPS scheme. I therefore make the following recommendations:

Recommendation 1

I recommend that the 2007 variation to the Compact for Separated Prisoners allowing prisoners to access the recreation room from 08.30am is implemented from Wednesday 16 June 2010. This will become effective for separated prisoners in Roe House when there is a return to normal regime following a return to normal discipline.

This recommendation extends to separated prisoners in Bush House who are also covered by the Compact.

Recommendation 2

I recommend that the Prison Service immediately commences a review of arrangements for allocating lockdowns due to staffing problems, in order to ensure that there is an equitable distribution across the whole prison. The arrangements should, in respect of Roe and Bush Houses, also take account of the dates allocated, in order that one landing is not disproportionately affected.

Recommendation 3

I recommend that steps are taken to ensure that the movement of prisoners in Roe and Bush Houses operates to the maximum allowed by the current controlled movement arrangements. I further recommend that, with immediate effect, this is audited by random selection of CCTV, at least once a month, by someone nominated by the Governing Governor, with a view to identifying opportunities to further refine the approach.

Recommendation 4

I recommend that, by W/C 19 July 2010, arrangements have been put in place for discussions to commence with the POA to address all of the issues in connection with agreements, working practices and shift patterns that impact upon the efficient and effective deployment of staff, and prevent the consistent delivery of a purposeful regime and the commitments in the PREPS scheme and Separated Prisoner Compact. I further recommend that, in the light of recent industrial relations difficulties, there should be at least one impartial, external person with experience of employee relations and change management, involved in the discussions.

Recommendation 5

I recommend that the piece of work described above should dovetail into the Prison Review contained in the Hillsborough Agreement and recently prioritised by the new Justice Minister.

Recommendation 6

I recommend that a review of the separated prisoner regime should also be included in the Prison Review and that the review team should examine the evidence considered by the CJINI / HMCIP when it concluded in 2006 and 2009 that the arrangements for the movement of separated prisoners “*were unnecessarily restrictive*”. The Review Group should be asked to consider the views of all interested parties and report its findings in respect of this matter, and any action required as a result of its findings.

Arrangements for Eating Meals

Recommendation 7

I recommend that, from Wednesday 16 June 2010, revised breakfast, lunch time and evening meal eating arrangements are implemented, permitting prisoners in separated accommodation in Roe and Bush Houses, who wish to do so, to eat their breakfast, lunch and evening meal in the secure recreation room. Prisoners not due morning association should be required to leave the recreation room, after breakfast at 9.30 and proceed to education, other scheduled activity or return to their cell. Prisoners not due afternoon / evening association should return to their cells as soon as staff return from their meal breaks. Prisoners not due association should leave the recreation room promptly at the times specified.

The only exception to this arrangement will be on evenings when Roe and Bush Houses are locked, because there are some practical difficulties in supporting the movement of prisoners back to their landings. Local management have expressed their willingness to try and resolve this through the Roe House Prisoner Forum and I believe that this is helpful and the best way to proceed.

This recommendation will become effective for separated prisoners in Roe House when there is a return to normal regime, following a return to normal discipline.

Full implementation of this recommendation will require modification of the recreation room. This can be organised immediately or in a few weeks time and will be discussed locally.

Recommendation 8

I recommend that three prisoners from Roe and Bush Houses will receive a half day training in food handling in order to be able to serve prisoner meals in the recreation room, in support of the new arrangements for meals.

Recommendation 9

I further recommend that elsewhere in the prison as and when possible, prisoners not currently eating out of cell are given the opportunity to do so.

Full Body Searches

I note that the CJINI / HMCIP when reporting an unannounced full follow-up inspection of Maghaberry Prison in January 2009, repeated an earlier recommendation that prisoners entering the SSU should not be fully body searched without an individual risk assessment.

Recommendation 10

I recommend that arrangements are put in place, by the end of June 2010, for an independent prison wide review of the full body searching arrangements to examine each of the circumstances in which full body searches are carried out, including entry and exit to the SSU and to the video link suite, and to check that the method and frequency of searches is necessary, proportionate and individually risk assessed where appropriate. Recommendations from the review should be implemented immediately.

Recommendation 11

I recommend that, as soon as practicable, the Prison Service will implement an arrangement whereby the Prisoner Information System (PRISM) will randomly generate, on a daily basis, the prisoners to receive full body searches by visits staff. In the meantime, with immediate effect, the Governing Governor of Maghaberry should implement a monthly audit and review of all full body searches carried out, in order to check that arrangements are operating in a way that is fair and equitable.

Recommendation 12

I recommend that all staff are reminded of the need to carry out full body searches in a way that is respectful and, as much as possible, protects the dignity of those being searched. This is true for all prisoners, but the need for sensitivity may be especially important for prisoners with particular needs such as those with learning difficulties, mental health problems or other vulnerabilities.

Recommendation 13

I further recommend that, by the end of June 2010, for a three month pilot period, every prisoner undergoing a full body search is offered the use of a clean bath towel at the point that they are required to remove their underwear. Prisoners who choose to accept a towel should be allowed to wrap the towel around them whilst their lower half clothing is examined. The prisoner should be asked to fully open the front of the towel to facilitate a front half visual check before turning and hold the towel in front of themselves whilst a rear view visual check is carried out. The prisoner may then use the towel to assist with the protection of modesty whilst dressing. The pilot should be evaluated at the end of the three month period and the evaluation should include prisoner feedback.

Adjudications

I note that all prisoners in Roe House have been adjudicated in connection with the protest on Easter Sunday and served the punishments awarded to them. I also note that, for the reasons described in this report, prisoners in Roe House have, for more than 69 days, to 11 June 2010, the date of the publication of this report, been undergoing cellular confinement or operating a regime very similar to cellular confinement.

Recommendation 14

I recommend that a line should be drawn in respect of the outstanding adjudications of separated prisoners in Roe House in connection with the period from 4 April 2010 up to 11 June 2010, the date of the publication of this report. This recommendation is made on the basis that, given the Prison Service practice of batching adjudications and letting punishments run concurrently and retrospectively, the separated prisoners in Roe House have, in effect, served the punishments that would be awarded to them. Ongoing adjudications for incidents prior to 4 April 2010 and breaches of discipline, at any time following 11 June 2010, should be adjudicated in line with Prison Service policy. This recommendation assumes full acceptance by the Northern Ireland Prison Service, of all the recommendations in this report.

Recommendation 15

I recommend that all adjudicating governors are reminded that books and newspapers should not be removed as a punishment following an adjudication unless their abuse was central to the offence under consideration.

I further recommend that the loss of notebooks, drawing pads, pencils and pens should be subject to the same arrangement.

Restricted Regime

Recommendation 16

I recommend that separated prisoners in Roe House not undergoing cellular confinement as a punishment, but subject to the current restricted regime pending a return to normal discipline, should be offered attendance at education classes and the use of the gym and astro-turf, for the number of times each week specified in the Compact, over and above their hour each day in the exercise yard. This will ensure that time out of cell is increased.

My Office has now introduced a process whereby all recommendations made are tracked to ensure full implementation. These recommendations will, therefore, be monitored.

PAULINE MCCABE

PRISONER OMBUDSMAN FOR NORTHERN IRELAND

11 June 2010

APPENDIX A

The following Prison Service Policies, Governor's Orders, documents and records were considered as part of the investigation:

Prison Service Rules 7, 35(4), 55, 81
Prison Service Standing Orders 4.7 Association
Compact for Separated Prisoners February 2004
Separated Regime Compact 1 July 2006
Enhancements to the Separated Regime since March 2004
Governor's Order 3-1 When Prisoners will be Searched 7 September 2005
Governor's Order 3-12 Preservation of Evidence 7 September 2005
Governor's Order 7-10 Managing Prisoners on Dirty Protest 7 September 2005
Governor's Order 3-3 Rubdown Searching 13 November 2005
Governor's Order 3-7 Hand Held Metal Detectors 13 November 2005
Governor's Order 3-2 Full Searching of Prisoners 22 August 2006
Governor's Order 3-9 Cell Searches 17 July 2007
Policy for Management of Special Supervision Unit 1 August 2007
Governor's Order 7-2 Determinate Sentenced Prisoner Regime 6 June 2008
Governor Order 7-4 Separated Prisoner Regime 6 June 2008
Governor's Order 3-10 Fabric Checks 3 October 2008
Governor's Order 7-19 Body Checks/Roll Checks 10 February 2010
Notice to Prisoners - Roe House Disruption 4 and 5 April 2010
Notice to Prisoners – Regime Provision for Roe Separated Prisoners 7 April 2010
Search Procedure Notice 56/10 1 May 2010
Notice to Prisoners - Cell Communication Alarm 2 May 2010
Notice to Prisoners on Roe 3 and 4 - Interim Regime 7 May 2010
CCTV for Roe 3 and 4
CCTV for Bush 1
Prisoner C Records and Internal Complaint documents
Class Officer Journals for Roe House April 2010 to date