law & practice

PRISONERS

Recent developments in prison law



Hamish Arnott, **Nancy Collins** and **Simon Creighton** continue the series of updates on the law relating to prisoners and their rights.

This series of articles appears twice-yearly.

DEATHS IN PRISON

The obligation of the state to investigate, and account for, deaths in custody under article 2 of the European Convention on Human Rights ('the convention') is now well-established. However, the requirements of investigations following deaths in custody continue to be subject to scrutiny by the courts.

■ **Edwards v UK**
14 March 2002,
App No 46477/99
The applicants were the parents of Christopher Edwards who was killed by Richard Lindford, a prisoner who was suffering from a severe mental illness, while being held on remand in HMP Colchester in November 1994. They argued that the UK government had breached article 2 of the convention, by failing to take steps to protect their son's life, and failing to hold an effective, official investigation into the circumstances surrounding their son's death. They also complained that the government had failed to comply with article 13. They argued that article 13 requires both the payment of compensation where appropriate, and a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life. The applicants also raised arguments under articles 6 and 8 of the convention, claiming that they had been deprived of effective access to court to bring civil proceedings, and that the lack of independent investigation and their lack of access to court, as parents of the deceased, amounted to a failure to respect family life.

In finding that there had been a breach of the positive obligation to protect life under article 2, the court noted that information was available to the authorities which demonstrated that Richard Lindford was a real and serious risk to Christopher Edwards when placed in his cell. The court observed that information was available to the authorities which should have prevented them from placing him in the same cell as Christopher Edwards. The court held, unanimously, that the failure of the agencies involved, medical, police, prosecution and court, to pass on information about Richard Lindford to the prison authorities and the inadequate nature of the prison screening process, amounted to a breach of the state's obligation to protect the life of Christopher Edwards.

The court also found that there had been a breach of the procedural obligation to carry out an effective investigation into Christopher Edwards' life. There was no inquest in this case and, owing to the fact that Richard Lindford pleaded guilty to manslaughter, the criminal proceedings against him did not involve a full hearing. While noting that a relatively extensive inquiry had been held into Christopher Edwards' death, the court concluded that this had not complied with the requirements of article 2. The inquiry had no power to compel witnesses (and two prison officers had declined to attend) and had sat in private. The applicants were only entitled to attend three days of the hearing, were not legally represented and could not question witnesses. Accordingly, the court found unanimously that there had been a violation of the procedural obligation of article 2.

The court also held unanimously that there had been a breach of article 13, due to the lack of means available to the applicants which would lead to a determination of their allegations that the authorities failed to protect their son's right to life. Furthermore, the applicants did not have a means of obtaining an enforceable award of compensation for the damage they suffered, which was held to be an essential element of a remedy under article 13 for bereaved parents.

■ **R (Amin) v Secretary of State for the Home Department**
[2002] EWCA Civ 390,
27 March 2002
The Court of Appeal considered the procedural requirement under article 2 in relation to two deaths in custody: (i) the death of Zahid Mubarek, who was killed by his cellmate who had a history of violent and racist behaviour; and (ii) the death of Colin Middleton who hanged himself in HMP Bristol when suffering from mental instability.

In considering the Mubarek case, the court concluded that the nature and quality of investigations held, in accordance with the procedural obligation in article 2, could vary in light of the circumstances of a particular case. In particular, the court rejected the claimant's argument that all investigations should fulfil the requirements of publicity and family participation, as identified in *Jordan and others v UK* (App Nos 24746/94, 28883/95, 30054/96 and 37715/97).

The court concluded that the procedural obligation under article 2 had been fulfilled in this case. It referred to the internal Prison Service inquiry, in which the family were expressly invited to be involved. While there was no doubt that the Prison Service was at fault, the primary responsibility for Zahid Mubarek's death had been established by his cellmate Stewart's conviction for murder, and there was no basis for prosecuting any member of the Prison Service. The family could now bring civil proceedings, and the Commission for Racial Equality was investigating the racial aspect of this death. Accordingly, there was no need for a distinct public inquiry, and the state had not violated article 2.

In the case of Middleton, the court considered the ability of a jury at coroners' inquests to reach a verdict of neglect. In *R v Coroner for North Humberside and Scunthorpe ex p Jamieson* [1995] QB 1, the Court of Appeal decided that neglect could rarely, if ever, be a permissible, free-standing verdict of a jury at coroners' inquests. It was argued that where a coroner knew that an inquest was being used to fulfil the state's procedural obligation under article 2, s/he should construe the Coroners Rules 1984 SI No 552, in accordance with Human Rights Act (HRA) 1998 s6(2)(b) and thus ensure that a verdict of neglect could be given. In these circumstances, a verdict of neglect could act as a means of identifying a failure in the system adopted by the Prison Service to reduce the incidence of suicide by inmates. Alternatively, it might identify a failure of an individual prison officer to perform his/her duties properly.

The court accepted the claimants' arguments, and held that a coroner could allow a jury at an inquest to make a finding of neglect if that would serve to identify a failure in the system which could serve to reduce the risk of repetition of circumstances giving rise to that death.

PAROLE AND LIFERS

■ **R (Baxter) v Secretary of State for the Home Department**
[2002] EWHC 779 (Admin)
This case underlined again the difficulty which mandatory lifers face in challenging decisions by the Home Secretary not to accept recommendations of the parole board ('the board'). The claimant is an elderly man who has served considerably longer than his tariff period. A number of recommendations for a move to an open prison in preparation for

release had been made by the board and rejected owing to concerns about aspects of his offending behaviour. The board's reports were equivocal, with only a minority recommending a progressive move. Turner J found that the reasons given for the decision were sufficiently detailed and, as such, the decision fell well within the discretion afforded to the Home Secretary.

PRISON CONDITIONS

One of the particular issues in prison law litigation since the coming into force of the HRA, has been the interplay between the restrictions described in *Golder v UK* (1975) 1 EHRR 524, as 'the ordinary and reasonable requirements of imprisonment', and proportionality. An example of the court giving a wide interpretation of the ordinary requirements of imprisonment was *R (Mellor) v Secretary of State for the Home Department* [2001] 3 WLR 533, where a prisoner was refused facilities for artificial insemination. The Court of Appeal refused the prisoner's claim for judicial review accepting the Prison Service's argument that the loss of conjugal rights and the opportunity to start a family were, effectively, part of the sentence of imprisonment.

■ **Hirst v Secretary of State for the Home Department**

[2002] EWHC 602 (Admin)

This contains a more sophisticated analysis of the issue. It is an important case that significantly enhances the rights of prisoners to contact the media in an extension to the principle identified by the House of Lords in *R v Home Secretary ex p Simms* [2000] 2 AC 115, and in the face of conflicting European Commission of Human Rights ('the commission') authority (*Bamber v UK* App No 33742/96 [1998] EHRLR 110).

The claimant for judicial review was a lifer who had long campaigned for prisoners' rights, and had been instrumental in the setting up of the Association of Prisoners. Following the setting up of that organisation, he gave interviews on the telephone to journalists and was issued with a warning. He subsequently gave a telephone interview to the media in relation to litigation he was conducting and was disciplined. On transfer to another prison, he made an application to the governor that he be able to make telephone calls to the media on matters of legitimate public interest relating to prisons or prisoners. In his application, he conceded that this could only be done with appropriate safeguards (such as allowing the governor to check the credentials of the reporter concerned and the ambit of the interview, and to allow only prerecorded interviews which could be monitored by the prison).

The application was refused by the Home Secretary, who stated that telephone interviews with journalists would only be allowed in 'wholly exceptional' circumstances, as prisoners could correspond in writing with the media on issues of penal policy. The Prison Service policy on use of telephones, chapter 4 of Prison Service Order (PSO) 4400, states that calls to the media will only be allowed in exceptional circumstances for legitimate purposes. The prisoner challenged the decision on the basis that it breached his right to freedom of expression under article 10 of the convention.

The judge (Elias J) accepted that, in a case such as this, the concept of proportionality had to be applied against the backcloth of the prison environment. Accordingly, when considering whether there had been a breach of article 10 there were two potential justifications that could be advanced by the prison authorities. First, that the restrictions were an inherent part of the sentence of imprisonment, and, second, that they were necessary to preserve good order and discipline in prisons and so fell within the scope of the aims of article 10(2). The judge held that the approach to proportionality will vary depending upon which basis is chosen. Reviewing recent authorities including *Mellor*, the judge concluded that in the former cases:

> *where the state has deliberately chosen to deprive prisoners of their rights as part of their punishment, the courts will not readily interfere with that decision, particularly where it reflects the democratic will, but even then they may still do so where the denial of the right is disproportionate to the penal objective. Whether this is so will depend largely upon the significance of the particular right interfered with.*

On the facts of this case, as Lord Steyn in *Simms* had not suggested that prisoners' right to speak to journalists about penal issues was lost as part of the sentence of imprisonment (in contrast with the right to 'join in a debate on the economy or on political issues'), the judge held that the decision fell to be justified strictly by reference to one of the article 10(2) aims. In light of the realistic proposals put forward for exercise of the right by the prisoner, and of supporting evidence from respected journalists on the occasional need for direct interviews with prisoners, the judge was not satisfied that the authorities could not exercise sufficient control over contact with the media (the justification relied on by the commission in declaring the application in *Bamber* inadmissible).

The judge concluded that the policy contained in PSO 4400, where calls to the media will only be allowed exceptionally, was not, in itself, unlawful although its practical application was insufficiently flexible as there appeared to be an assumption that sending information by letter will virtually always meet the prisoner's objective. Accordingly, he declared that to deny prisoners, in all circumstances, the right to contact the media by telephone to comment upon matters of legitimate public interest relating to prisons and prisoners was unlawful. The Prison Service is to appeal the judgment.

■ **R (Potter and others) v Home Secretary**

[2001] EWHC Admin 1041

Prisoners challenged a policy at HMP Frankland that sex offenders who denied their guilt, and so could not attend a sex offender treatment programme (SOTP), could not be granted 'enhanced' status under the Incentives and Earned Privileges Scheme (IEPS, see PSO 4000). This had been the subject of a challenge to an earlier version of the IEPS in *R v Home Secretary ex p Hepworth and others* (1997) 25 March, unreported). In that case, Laws J (as he then was) rejected the challenge even though the policy appeared to be a blanket policy with no allowance for exceptions. He stated that challenges in areas such as the awarding of privileges to prisoners for good behaviour would need 'something in the nature of bad faith or what I may call crude irrationality' to be successful.

The prisoners in the challenge to the Frankland policy argued that following the coming into force of the HRA, and the dicta of Lord Cooke criticising the traditional *Wednesbury* approach in *R v Home Secretary ex p Daly* [2002] UKHL 26, [2001] 2 WLR 1622, that *Hepworth* was no longer correct. The judge (Moses J) refused the claims, even though he accepted that the primary argument should focus not on whether the schemes were irrational but whether the decisions to require the prisoners to attend an SOTP in order to gain enhanced status were unfair in face of their denial of guilt.

The judge held there was no such unfairness as there was Prison Service evidence that not every sex offender who denied guilt would be expected to complete an SOTP, for example, where the offences were linked to traumatic events in the prisoner's own past. Accordingly, it was

wrong to characterise the policy as a 'blanket ban'. As the policy set out in PSO 4000 made it clear that attitudes to sentence planning would be taken into account in making decisions under the IEPS, there was nothing unfair or inappropriate about encouraging participation in a course that may reduce the risk of re-offending by granting privileges to those who undertake such courses.

The judge also rejected the HRA arguments. The policy did not breach article 6 by forcing a prisoner to admit guilt and compromise an appeal, as there was obviously a choice whether to pursue an appeal, or to seek the benefits of the IEPS by doing offending behaviour work. Although the enhanced level of privileges allowed extra and longer visits, to deny these as a penalty for failing to address offending behaviour did not breach the right to family life under article 8. The IEPS acts as a means for encouraging the objectives of imprisonment by a system of rewards that mitigates the effects of punishment. The judge also held there was no discrimination against the prisoners, as sex offenders under article 14, as against other kinds of prisoners, as those who could not attend an SOTP were not comparable to those who may attend other courses and achieve enhanced status despite their denial of some other offence.

The Prison Service did concede in the proceedings that the National Framework for IEPS, set out in PSO 4000, did require prisoners to be able to retain enhanced status on transfer from one prison to another pending the first assessment at the new prison.

CATEGORISATION

■ **R (Williams) v Secretary of State for the Home Department**
[2002] EWCA Civ 498
In one of the most important decisions on category A prisoners since the current review system was established in 1994, the Court of Appeal has upheld an appeal by a category A prisoner concerning the fairness of his review. A discretionary life sentenced prisoner who remained category A after the expiry of his tariff, sought to challenge the fairness of the category A review procedure which maintained him as a category A prisoner despite recommendations by the board for him to be downgraded.

The case had complicated facts, the application having been brought by a prisoner who had escaped from Parkhurst and who sought to allege bias in the review process due to his notoriety. Without digressing into the complex factual background, the Court of Appeal made a number of important findings. The first two appear, at first sight, to be detrimental to the claimant's case. They were that:

■ a category A review is not a process which affords the protection of article 5(4) of the convention as article 5(4) rights are safeguarded by the parole board review process; and

■ there is a distinction to be drawn between the test of dangerousness applied by the category A review committee and the board, as the former must look at how a released prisoner might behave if unlawfully at large whereas the board looks at a structured and supervised release into the community.

Despite reaching these conclusions, Lord Phillips MR expressed concern at the quality of the material prepared for the category A review and the apparent disparity between this material and that available to the board. Even though article 5(4) was held not to apply, he felt that the court could not ignore the fact that it is virtually impossible for a life sentenced prisoner to be released from category A conditions and that the applicant is a post- tariff discretionary lifer. He further noted that the Prison Service's own evidence was that despite having a policy which allowed for further disclosure over and above that contained in the standard gist disclosed at category A reviews, there were no cases where such disclosure had taken place.

On the facts of this case, it was held that the fairness required further disclosure together with an oral hearing, Lord Phillips commenting that:

On the basis of reports which had not been available to the Discretionary Lifer Panel or been made available to the appellant or his legal advisers, the review team reached conclusions adverse to him which were seriously damaging to his prospects of release. In rejecting the application for an oral hearing, the review team misdirected itself by elevating the theory of the DLP's statutory jurisdiction disproportionately above the practical realities, and overemphasising the differences between its own functions and those of the DLP, without sufficiently recognising the link between them.

Comment: The judgment represents the first major step forward in ensuring greater openness and fairness in the review process for category A prisoners. Although it has direct application to only a small number of prisoners – those discretionary lifers who remain category A after having completed their tariffs and who have been recommended for downgrading by the parole board – it is the first occasion, since the process was introduced in 1994, where the review process in its general application has been impugned. Although the case does not overrule the earlier Court of Appeal decision in *McAvoy* [1998] 1 WLR 790, the court was clearly concerned that the apparent safeguards which satisfied the Court of Appeal on that occasion did not translate to practical application.

■ **R (McLeod) v HM Prison Service**
[2002] EWHC 390 (Admin)
This case concerned the requirements of fairness when removing a prisoner serving a determinate sentence from open to closed conditions. The claimant had been removed from open conditions following allegations that he had been involved in drugs, taxing and bullying, allegations which he strongly denied. His application for parole was subsequently refused. The case was largely an appeal to symmetry with the position for discretionary lifers established in the case of *R (Hirst) v Home Secretary* (2001) *Times* 22 March, CA (see June 2001 *Legal Action* 12) and the claimant sought to argue that:

■ the decision to reallocate could take place before the decision on re-categorisation was made;

■ there should be an opportunity to make representations prior to the decision being made; and

■ fairness required further disclosure of the details of the allegations behind the decision.

On the facts, Newman J found that there was no unfairness with the decision itself and that the parole refusal was not founded on the re-categorisation decision. Notwithstanding those findings, he did not consider that the principles in *Hirst* were applicable. He took the view that the Court of Appeal had specifically stated that the requirements of fairness were more stringent for discretionary lifers given the direct impact on liberty and did not apply, as of right, to determinate prisoners. He further considered that the procedures applied in PSO 0900, which were followed in this case, were adequate to meet the general requirements of fairness in the administrative process and that, accordingly, a system which allowed for reasons to be given and a right of appeal after the event was adequate in the circumstances.

Following this judgment, Newman J refused an application for permission about very similar decisions made in respect of two other determinate prisoners: *R (Angle) v Governor of HMP Ford* (2002) 5 March.

Comment: These two decisions underline the different approach that the court will take to those serving life sentences, who have no fixed date of release, and those serving determinate sentences with a statutory release date. The requirements of fairness in the

administrative process will almost inevitably be applied to a higher standard in respect of decisions which have the potential to impact on liberty, particularly when the right to the review of detention falls within the ambit of article 5(4). The unfortunate consequence of this is that determinate sentenced prisoners will often be left in a highly disadvantageous position with virtually no entitlement to see material on which decisions are based.

ACCESS TO THE COURTS

R (Ponting) v Governor of HMP Whitemoor and Home Secretary
[2002] EWCA Civ 224
Here the Court of Appeal considered the vexed question of prisoners' access to computers. The prisoner, a litigant in person in a number of actions, had been granted access to a computer, word processing package and printer. The access was subject to restrictions set out in a compact which limited his use of the computer to his cell at certain times and subject to the storage, inspection and supervision of materials on it.

The Prison Service's evidence was based around the argument that the needs of security made such restrictions necessary. It argued that the restrictions were both necessary and proportionate and, therefore, a justifiable interference with the claimant's article 6 and 8 rights.

The Court of Appeal accepted that article 6 was engaged on the facts without making any universal finding of principle on this issue. Importantly, the court held that the *Daly* test, as opposed to the *Wednesbury* test, should be applied in this case (which had not been done at first instance).

Having made these findings, the court proceeded to examine each of the particular restrictions complained of by the claimant. Although the court had accepted that the justifications advanced by the Prison Service should be subject to a high level of scrutiny, it held back from substituting its own judgments for that of the prison authorities on the ground that the decision involved an assessment based on expertise in running prisons rather than a hard edged legal question. The point which caused the court most difficulty was whether the claimant should be deprived of using his computer in the daytime, but the majority deferred to the expertise of the Prison Service on this point (with Clarke LJ dissenting).

Comment: The decision demonstrates the continuing difficulty in challenging the merits of decisions made by the prison authorities, even where it is accepted that convention rights are in issue and the *Daly* approach should be adopted. It is often difficult to obtain any independent evidence to undermine assertions made by prison staff about the needs of security and, in the absence of such evidence, the courts will clearly revert to the traditional, deferential role adopted in such cases. Notwithstanding the decision to dismiss the claim, however, the judgment does contain important comments on the increasing requirements of the prison authorities to make technology available to prisoners to ensure equality of arms and proper access to the courts pursuant to article 6.

■ **R (Cooper) v Governor of HMP Risley**
[2002] EWHC 125 Admin
In contrast to *Ponting*, a prisoner, representing himself, sought to argue that the facilities provided by the prison were inadequate for the purposes of his many legal cases. The claimant had previously obtained the right to have access to a computer and now sought to extend this to the provision of further reference materials and access to the internet. Unfortunately, the court held that he had not provided any evidence to justify the necessity for such access and dismissed the claim without having to delve too deeply into the reasons advanced by the Prison Service for refusing his requests.

Comment: While the claimant had represented himself very capably to the court, he would clearly have benefited from more direction to his evidence and legal arguments to overcome the initial threshold which would have allowed a closer scrutiny of the decision to be undertaken.

SENTENCING AND PRISON ISSUES

In two recent judgments, the Court of Appeal has considered the factors to be taken account by sentencing courts when deciding whether impose to custodial sentences.

■ **R v Mills**
[2002] EWCA Crim 26
In this case, the court considered the factors to be taken into consideration when sentencing mothers who have committed non-violent offences. The appellant was given a custodial sentence having been found guilty of giving false employment details to enable her to gain credit from credit companies. On allowing her appeal against her sentence of two terms of eight months to be served concurrently, Lord Woolf said that the court should have considered the:

■ limited impact that prison life would have on an offender (in terms of deterring her from re-offending) given the shortness of the sentence;
■ consequences to the children of their mother being sent to prison; and
■ difficulty for the Prison Service of accommodating short sentences due to the recent increase in the female prison population.

The sentence was quashed and replaced with a six-month community order.

■ **R v Kefford**
[2002] EWCA Crim 519
Here the Court of Appeal noted the recent significant increase in the prison population. The court expressed concern about the ability of the Prison Service to tackle a prisoner's offending behaviour and thus reduce the risk of reoffending given the overcrowded conditions. It also noted the cost of maintaining a prisoner for a year (£36,651). The court stated that those who were responsible for imposing sentences had to take into account the impact on the prison system of the present number of prisoners in the prison estate. It was noted that prison sentences remain appropriate for those who commit offences involving violence or intimidation or other grave crimes. However, prison sentences were not necessarily appropriate for other offences, such as fraudulent obtaining of undue credit, in particular where there was no previous record of offending. In appropriate cases, courts should consider the benefits of imposing community punishment orders, possibly combined with a curfew order, to illustrate that crime does not pay and to ensure that the offender repays his/her debt to society. Courts should also note that there are limits to what can be achieved during a short period of custody.

LIFE SENTENCES

■ **R v Drew**
[2001] EWCA Crim 2861
The defendant had been given an automatic life sentence pursuant to Criminal Courts (Sentencing) Act 2000 s109. He had argued that in light of his mental illness there were 'exceptional circumstances' so that a life sentence should not have been imposed. This argument was rejected in view of *R v Newman* [2000] 2 Cr App R (S) 227, which held that mental illness alone could not constitute exceptional circumstances. On appeal, he argued that the imposition of a life sentence in these circumstances breached article 3 (prohibition on inhumane and degrading treatment) and article 5 (right to liberty) of the convention.

Giving the reserved judgment of the court, Kennedy LJ said that despite the stigma of a life sentence and the fact that the courts had previously encouraged the

use of hospital and restriction orders under the Mental Health Act 1983, it had always been open to parliament to say that, in defined cases, there was an assumption that the offender presented such a serious and continuing danger to the safety of the public that a hospital order with a restriction order would afford inadequate protection, and there must therefore be a sentence of life imprisonment.

The court stated that given that life sentences afford the public greater protection, the assumption that a life sentence should be imposed was rebuttable, and that as there was no evidence to show that an offender sentenced to life imprisonment would not receive appropriate medical treatment, it was impossible to see how the introduction of the statutory assumption could be said to have infringed the appellant's convention rights.

EUROPEAN COURT OF HUMAN RIGHTS

In two recent judgments, the European Court of Human Rights (ECtHR) has found violations of the right to respect for prisoners' correspondence under article 8.

■ **Puzinas v Lithuania**
14 March 2002,
App No 44800/98, ECtHR
The prisoner's correspondence with the commission and the Council of the Baltic States had been screened before he was given access to it, and a letter to his wife accusing prison staff of theft had been censored. In all instances, the correspondence had been opened in the prisoner's absence. The domestic authority for the interference was an article of the Prison Code stating that convicted prisoners' correspondence 'shall be censored'. The state gave no further justification for the interferences with his correspondence, and so although the court held that they had a legal basis and a legitimate aim, they could not be seen as necessary in a democratic society.

■ **A B v The Netherlands**
29 January 2002,
App No 37329/97, ECtHR
A prisoner held in the Netherlands Antilles complained about the censoring of his correspondence with the commission and the stopping of correspondence with his lawyers. Again, the relevant domestic rules governing prisoners' correspondence did not privilege correspondence with convention bodies or prisoners' lawyers and so although the interferences had a legal basis, in relation to correspondence with the commission, there was no legitimate aim nor necessity for the interference. The stopping of the correspondence with the lawyer who was advising the prisoner in his application to Strasbourg, although he was not authorised to practice in the Netherlands Antilles and was a former prisoner himself, also breached the convention as article 8(2) could not justify a complete ban.

The prisoner also complained about the facilities for communications within the prison. Although the prisoner was only allowed to send two or three letters a week, but could receive letters at all times, the court held that his contacts with persons outside prison had not been unreasonably restricted. It also held that article 8 cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where the facilities for correspondence are available and adequate, and where access to telephones is allowed, the needs of security will permit significant restrictions on its use. This is a reminder of how reluctant the ECtHR is to find breaches of article 8 where levels of contact with the outside world are in issue.

In light of the Netherlands' failure to take remedial action about conditions in the prison concerned, despite numerous adverse findings by domestic courts and criticism by the Committee for Prevention of Torture, the court rejected the state's contention that the prisoner had failed to exhaust domestic remedies by not raising his complaints in the domestic courts. As domestic procedures for challenging conditions had not been shown to be effective, this meant that article 13 had also been breached.

REVISED PRISON COMPLAINTS SCHEME

Given the Court of Appeal's recent decision emphasising the need to make use of complaints procedures and other forms of alternative dispute resolution before resorting to litigation (*R (Cowl and others) v Plymouth City Council* [2001] EWCA Civ 1935, [2002] 1 WLR 803) (see page 15 of this issue), it is important for those advising prisoners to be aware of the Prison Service's own complaints procedure.
This has recently been substantially changed though the introduction of PSO 2510, which replaces the existing Request/Complaint manual introduced in 1990. The key changes to the existing system are:

■ Complaints are treated separately from requests – the latter are dealt with by application on the wing, and only if the matter is not dealt with adequately at that stage does the matter become a complaint.
■ Complaint forms will be freely available for prisoners to pick up on the wing and, when completed, posted into a locked box to which a designated officer has sole access. This should resolve the common problem of prisoners being refused complaint forms.
■ The response to a complaint (except reserved subjects, such as category A decisions and appeals against disciplinary findings of guilt, which must still be dealt with at headquarters level) is in three stages, all within the prison, and the 'appeal' to headquarters is abolished. The prisoner can then complain to the Prisons and Probation Ombudsman.

The time limit for lodging a complaint remains three months. The PSO introduces new forms to be used:

■ COMP 1 for the first stage (to be answered at prison officer level);
■ COMP 1A for stages 2 and 3 (to a senior officer and the governor respectively);
■ COMP 2 for confidential access complaints (where, because of the nature of the complaint, the prisoner wishes to raise the issue directly with the governor or area manager); and
■ ADJ1 for challenging findings of guilt in prison disciplinary matters (which are reserved subjects that, accordingly, have to be dealt with by Prison Service headquarters).

The main practical change is that the majority of complaints will be dealt with solely by the prison concerned, following which the prisoner can consider either judicial review proceedings or a complaint to the Prisons and Probation Ombudsman. Under the ombudsman's terms of reference, they can only accept complaints which are made within one month of the prison's final response to the prisoner's complaint. Which route is more appropriate will depend on the subject matter of the complaint. The new system is being phased in from April to October 2002 and so, when advising prisoners, it will be necessary to find out whether the prison concerned is operating the new system.

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