

Learning lessons bulletin

Complaints investigations issue 4

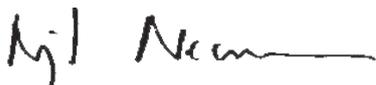
Use of Force **Learning from PPO complaints relating to the use of force on prisoners.**

My office has an important role to play in independently investigating allegations of physical abuse of detainees by staff. These investigations can ensure staff are held accountable for any misbehaviour but, equally, can provide reassurance that the use of force by staff in a particular case was appropriate and necessary for the preservation of security and safety. Accordingly, complaints about use of force are among the most serious issues that come to my attention and are also some of the most complex to investigate.

Given the nature of prisons, the use of force must always be available to staff. But the physical restraint of prisoners is only lawful if it is reasonable, necessary, involves no more force than required and is proportionate to the seriousness of the circumstances. In my view, use of force should always be a measure of last resort, to be deployed only when all other avenues and opportunities for de-escalation have been exhausted.

In complaints about this issue, the question of whether force was used or not is rarely in dispute. The most usual question my investigations have to answer is whether it was justified and met the rigorous tests required by the law. Given the particular vulnerability of detainees – and the risk of malicious allegations against staff – in the closed and hidden world of custody, there is no more important an area to be subject to objective and independent scrutiny.

This bulletin draws a number of lessons to be learned about the use of force. These include the need for staff to demonstrate clearly that force was reasonable, necessary and proportionate; the importance of proper record keeping; the retention of relevant CCTV evidence; the undertaking of thorough internal investigations; and ensuring the involvement of the police where a prisoner requests it. Learning these lessons may assist in minimising unnecessary use of force and thus better protect both prisoners and staff.



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Policy and Law

The requirements of the law on the use of force¹ in prison are set out in detailed operational policy in Prison Service Order (PSO) 1600. This covers the circumstances in which force is legitimate, the considerations before its use and the way its use must be recorded and reported. PSO 1600 states that, where force is used, Control and Restraint (C&R) is the approved method and should be used whenever possible. Control and Restraint requires three officers, using techniques set out in a separate training manual.

¹ The use of force includes personal protection, the use of a baton and the use of ratchet handcuffs, as well as arm and wrists locks and Control and Restraint techniques.

PSO 1600 states that “**use of force will be justified, and therefore lawful, only:**

- **If it is reasonable in the circumstances**
- **If it is necessary**
- **If no more force than is necessary is used**
- **If it is proportionate to the seriousness of the circumstances.”**

Staff should always try to diffuse conflict, where possible, and importantly the policy says that the “**best defensive weapon that staff have is their verbal and non-verbal communication skills”**.”

PSO 1600:

Reasonable: Factors to be taken into account when deciding what is ‘reasonable’ will be things such as the size, age and sex of both the prisoner and member of staff concerned in the use of force and whether any weapons are present.

Necessary: It is not enough that a prisoner be given a ‘lawful order’ to do something and has refused to do so. It is important to take into account the type of harm that the member of staff is trying to prevent: risk to life, risk to limb, risk to property or risk to the good order of the establishment. It is clearly easier to justify force as necessary if there is a risk to life or limb.

Proportionate: There should be a reasonable relationship of proportionality between the means employed and the aim pursued. Action taken is unlikely to be regarded as proportionate where less injurious, but equally effective alternatives exist.

Is force necessary?

Often the incident immediately prior to the use of force was the prisoner’s refusal to comply with an order. PSO 1600 is clear that this alone is insufficient grounds to initiate force. Force should only be used when it is necessary to prevent harm and it is important to take into account the harm that the member of staff is trying to prevent – risk to life, limb, property or the good order of the establishment. The PSO goes on to say that it is clearly easier to justify force as necessary if there is a risk to life or limb. Our investigations suggest that this is not understood by all staff or managers and that the simple fact of non-compliance is too often seen as adequate justification for the use of force.

Case study 1

During the lunch hour, while prisoners were locked in their cells, staff went to Mr A’s cell and told him that he was required to move to another wing. He was willing to move but asked to be allowed to pack his own possessions because some of his property had gone missing last time he had been moved. He was told that this was not possible and was given a direct order to move. When he refused, he was restrained using C&R and moved forcibly.

Our investigation established that, prior to the use of force, Mr A was sitting on his bed talking to staff and, although he had been refusing to move, he had not been aggressive or threatening. Force was used solely to enforce compliance with the order. We considered that there was no reason why Mr A should not have been allowed to pack his property and we were satisfied that, if he had been able to do so, he would almost certainly have moved voluntarily. He posed no risk to staff or property and, as other prisoners were locked in their cells at the time, he posed no risk to the good order of the wing. We concluded that the use of force had not been justified as there had been a “less injurious, but equally effective” alternative.

No more force than necessary is used

Most complaints about alleged assaults by staff are in the context of a restraint. By their very nature, C&R techniques involve force and will be painful if the prisoner is not compliant with the instructions they are given by staff. Being forcibly restrained is likely to be traumatic and to be experienced as an assault. However, this does not necessarily mean that the use of force was unjustified or excessive. One area where we have expressed concern is the use of pain

compliance techniques. There are specific, approved techniques for pain compliance such as the Mandibular Angle Technique, which uses a pressure point below the ear. The justification for such techniques is to end resistance quickly. However, their use on young people is particularly controversial and the Ombudsman has been very critical where it cannot be demonstrated that a non-painful alternative could not have achieved the same outcome. Whatever the prisoner's age, in the Ombudsman's view, it is best practice for use of force in general, and pain compliance in particular, to only be used as a last resort when all other avenues have demonstrably been exhausted.

Case study 2

A young offender, Mr B, refused an order to go into his room. He became aggressive and C&R was used to place him in the room. The Ombudsman concluded that the use of force had been justified but expressed concern that a pain inducing technique was used in the course of the restraint. Although Mr B was resisting strongly, staff were wearing full protective clothing at the time of the restraint and the Ombudsman considered that the risk of serious physical harm was minimal. In the circumstances, the Ombudsman was not satisfied that a pain compliance technique was either necessary or proportionate.

Use of Force paperwork

Mr B's case also illustrates another common issue. Following any use of force the staff involved are required to complete a Use of Force form, including a written account (known as an Annex A statement) recording the reasons for the use of force and describing the incident. It is important that these statements contain a detailed account of what happened and why, since they may be the only evidence available. Although the member of staff recorded that he had used a pain compliance technique on Mr B, he provided virtually no explanation for its use, and most of the other staff involved did not mention it at all in their statements. As a result, there was insufficient evidence to justify the use of a pain inducing technique. In general, the Annex A statements seen by the Ombudsman give a detailed account of what happened

during the restraint – for example, which member of staff took control of which part of the prisoner's body – but often lack sufficient detail about why it was thought necessary to use force. For example, staff may employ vague stock terms such as “non-compliance” or “de-escalation” without explaining whether the lack of compliance was physical or merely verbal, or exactly what was done to try to de-escalate the situation. Without this detail the statements may not provide sufficient evidence to justify the use of force.

Strip searching

Another theme that emerges from the complaints is the use of strip searching by force. A strip search is one of the most intrusive actions that can be taken against a prisoner. For this reason, Prison Service policy² rightly requires that such searches should only take place where there are high risks, serious concerns, and good reasons to suspect that a prisoner has secreted items. It does not follow that, because force has been used, a strip search is automatically justified. The decision to strip search, and especially to do so by force, must always be considered and justified separately from the decision to use force on the prisoner.

Case study 3

Mr C was strip searched by force following a restraint in a high security prison. The investigation found no evidence to suggest that a risk assessment was conducted to consider whether it was necessary to do a strip search – there was no suggestion that Mr C was concealing a weapon, for example – and the Ombudsman concluded that it was most likely that it was done as a matter of routine. There was also no evidence that a risk assessment was carried out to consider whether it was necessary to strip search Mr C *by force*, or that any attempt was made to secure his compliance first, and the Ombudsman concluded that it was most likely that this was also done as a matter of routine. Staff did not appear to recognise that the decision to use force, the decision to strip search and the decision to strip search by force were three separate decisions. Each needed to be justified and the reasons recorded.

² PSO 1700, which refers to such searches as “full searches”

CCTV and video evidence

An important source of evidence following use of force may be CCTV or video footage. A planned use of force should always be recorded on video. Although it may not always be possible for the video to capture everything that happens, video has the advantage of including sound recording. Sound can often provide useful evidence about the behaviour of prisoners and staff, even when the visual record is obscured. For example, it may be possible to hear if staff are talking calmly and professionally and trying to take the heat out of the situation, or if they are shouting and getting angry. Where the use of force is unplanned – which is often the case – CCTV evidence can be especially important. However, all too often we have to investigate cases where the CCTV footage has not been retained.

This tends to have happened for one of two reasons. First, prisons may destroy CCTV recordings routinely after a set period, for data protection reasons, without giving sufficient thought to whether there is an on-going complaint or whether it might be required as evidence in future. Secondly, CCTV footage may be destroyed because it is not thought to be relevant. This typically happens where the use of force took place in a cell where there is no CCTV coverage. However, although the actual use of force may not have been captured on CCTV, the events before and after the incident may have been captured and can provide valuable evidence about the behaviour of staff and prisoners.

Case study 4

Staff said they had used force because Mr D had become very aggressive when he arrived in the segregation unit, and had then lunged at them when placed in his cell. Mr D disputed this and said staff had attacked him even though he was compliant. The restraint itself took place in the cell and was not captured on CCTV. However, there were CCTV cameras on the landing. The footage from these would have shown Mr D's behaviour when he arrived in the unit and immediately prior to being placed in his cell, but unfortunately the recording was destroyed. In the absence of any evidence to support Mr D's account, the Ombudsman did not uphold his complaint.

Case study 5

CCTV footage provided useful evidence when Mr E complained about use of force by staff. Footage from immediately after the use of force showed a member of staff slapping one hand into the other in what appeared to be an aggressive gesture. Although this was not conclusive in itself, taken together with other evidence it contributed to our finding that the officer concerned had not behaved in a professional manner during the use of force. Timings from the recording also showed that, contrary to what was recorded on the use of force forms, staff could not have spent minutes trying to de-escalate the situation before resorting to force. The Ombudsman therefore upheld Mr E's complaint.

Other evidence

Where there is no CCTV or video evidence, it can be particularly important to consider whether there is any relevant circumstantial or hearsay evidence. For example, if a complaint is made about the behaviour of a particular member of staff, it may be appropriate to consider whether similar complaints have been made about that individual in the past that could suggest a pattern of behaviour. In the case of Mr E, the investigation found that the officer he complained about was the subject of a significant number of complaints, both before and after the incident in question. The officer was also on poor performance procedures at the time of the incident because of concerns about his behaviour. This evidence contributed to the decision to uphold Mr E's complaint.

Unless such material is taken into account, often the only evidence in investigations into complaints about the use of force can be the prisoner's account of the incident versus the accounts given by staff. In such cases, there may be no option but to conclude that there is insufficient evidence to reach a view about what happened, which is unsatisfactory for both prisoners and staff.

Internal investigations

When a prisoner makes a formal complaint about a use of force incident the prison should carry out an internal investigation in line with Prison Service policy³. Given the potentially serious nature of the complaint, the Ombudsman's view is that this should normally be a formal investigation, involving interviews with the prisoner and the staff involved, as well as a review of the Use of Force paperwork, any photographic or medical records of any injuries sustained, and any available CCTV or video footage. It may also be necessary to interview witnesses.

The records seen by the Ombudsman show some of the internal investigations undertaken are excellent. However, too often, they are flawed in one of two ways. First, there are investigations which are simply inadequate. There may be no record kept of who was interviewed, what they said, or why the investigator reached the conclusions they did. In the case of Mr B, for example, although the Ombudsman was told that his complaint had been investigated, there was no evidence at all to show that this had happened.

The other key flaw is that, while investigations may have been very thorough in terms of evidence gathering, some fail to address the key issues of whether the use of force was reasonable, necessary and proportionate. In the case of Mr A, for example, the prison carried out a very thorough investigation. This examined all the evidence and interviews were conducted with everyone involved, including with potential witnesses identified by Mr A. However, the investigator then went on to conclude that the use of force was lawful simply because Mr A had refused to obey a lawful order. They did not consider whether force had been necessary to prevent harm, in accordance with PSO 1600. In this case, as in others, it appeared that the investigator had focused on looking for evidence that Mr A had been "assaulted" in the sense of being kicked or punched, without appreciating that the use of force without adequate justification may itself constitute an assault in law.

Another concern is that, in some cases, the prisoner is never told the outcome of the investigation at all (which is clearly unsatisfactory), or is given inadequate information. In Mr A's case, he was simply told in writing that the prison was satisfied that there was insufficient evidence to support his complaint that he had been assaulted. As a result, Mr A formed the impression that the prison had not taken his complaint seriously or conducted a full investigation. This was not the case. In the Ombudsman's view, it would have been preferable for a manager to have sat down with Mr A and told him what the investigation had involved and explained why the conclusion had been reached.

Police involvement

Prisoners who believe that they have been assaulted by staff frequently request police involvement. The Ombudsman accepts that it is reasonable to ask prisoners to submit such requests in writing to avoid wasting police time, but, once a written request has been made, it is important that it is passed to the police without delay.

Case study 6

Mr F submitted a COMP1 form complaining that he had been restrained unnecessarily the day before, and that this constituted an unlawful assault by staff. He asked to see the Police Liaison Officer (PLO) to report the alleged assault. He was told in reply that he needed to submit a written application to see the PLO. The Ombudsman considered that Mr F's request on his COMP1 form had constituted a written application and that his request should have been facilitated without further delay.

Requiring him to make a separate written application placed unnecessary bureaucratic barriers in the way of his access to the PLO. Although the investigation did not find that Mr F suffered any detriment in this case, the requirement to make a separate application was an unnecessary delay which could have hindered the retention and collection of any evidence.

³ PSO 1300

Lessons to be learned

Lesson 1 – Ensuring force is necessary.

It is important that staff and managers understand that a refusal to obey a 'lawful order' is not, in itself, sufficient to justify the use of force. Force should only be used where it is *necessary* to prevent a risk of harm. Staff should also be clear about what harm they aim to prevent; force is more likely to be justifiable where there is a risk of serious physical harm to the prisoner or others.

Lesson 2 – Ensuring no more force than necessary is used.

Pain compliance techniques in particular should only be used where there is a clear justification, and this must be set out in detail in the Use of Force paperwork.

Lesson 3 – Ensuring sufficient detail on Use of Force forms.

The Annex A statements must provide sufficient detail to justify the use of force. It is particularly important that the events leading up to the use of force are described, and that a clear explanation is given of why force was necessary. Attempts to de-escalate the situation should be described in detail. If de-escalation was inappropriate or impossible, the reasons for this should also be made clear.

Lesson 4 – Ensuring strip searching is justified.

A decision to strip search must always be considered and justified separately from the decision to use force.

Lesson 5 – Ensuring CCTV and video evidence is retained.

When a prisoner makes a complaint about a use of force, it is important that any relevant video or CCTV footage is retained until the prisoner has had the opportunity to pursue all internal and external avenues of complaint. Relevant footage includes footage of events before and after the incident, even where the use of force itself has not been captured on film.

Lesson 6 – Using all the available evidence.

Circumstantial and hearsay evidence (including previous complaints about individual members of staff) should be considered where appropriate.

Lesson 7 – Conducting internal investigations.

Complaints about use of force will generally require a formal investigation. A written record should be kept of the evidence considered, who was interviewed and what they said, and the reasons for any conclusions. It is important that the investigation considers the key issue of whether the use of force was necessary, reasonable and proportionate. A manager should inform the prisoner about the investigation and conclusions, preferably in person.

Lesson 8 – Ensuring prompt police involvement when requested.

Where a prisoner requests police involvement after a use of force, this must be facilitated without delay. It is reasonable to ask prisoners to make such requests in writing, but a request included in a COMP1 complaint should be treated as a written application.

The Prisons and Probation Ombudsman investigates complaints from prisoners, those on probation and those held in immigration removal centres. The Ombudsman also investigates all deaths that occur among prisoners, immigration detainees and the residents of probation approved premises. These bulletins aim to encourage a greater focus on learning lessons from collective analysis of our investigations, in order to contribute to improvements in the services we investigate, potentially helping to prevent avoidable deaths and encouraging the resolution of issues that might otherwise lead to future complaints.

The Prisons and Probation Ombudsman's vision is:

To be a leading, independent, investigatory body, a model to others, that makes a significant contribution to safer, fairer custody and offender management.

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