

# Learning Lessons Seminar 2016

## Complaints investigations

Wednesday 31<sup>st</sup> August, 2016

**Nigel Newcomen**

**Prisons and Probation Ombudsman**

# Housekeeping

- Fire exits
- No fire drills
- Lunch at 1.15pm in the Dining Room
- Slides will be emailed
- Taxis

# Agenda

- |       |   |
|-------|---|
| 10.30 | Introduction  |
| 10:40 | <b>Property</b><br>What PPO investigations involve, case studies and Learning Lessons<br>Policy update from NOMS<br>Q&A     |
| 12:00 | <b>Use of force</b><br>What PPO investigations involve, case studies and Learning Lessons<br>Policy update from NOMS<br>Q&A |
| 13:15 | Lunch   |
| 14:00 | Table discussion  |
| 14.45 | Feedback to panel and discussion  |
| 15:30 | Next steps and close  |

# Introduction

- Delighted to welcome delegates from prisons, NOMS HQ and, of course, PPO staff
- PPO created in 1994 to independently investigate prisoner complaints. Took on investigation of deaths in custody in 2004
- Our vision is to carry out independent investigations to make custody and offender supervision safer and fairer
- This is the third annual series of seminars designed to use learning from individual PPO investigations and thematic reviews to support prison staff to improve safety and fairness

# Introduction

- Purpose of independent complaint investigation:
  - Allow prisoners a legitimate means to ventilate concerns and frustrations
  - Help safeguard against unfairness in prison
  - Provide prisoners with a means of redress
  - AND, conversely, provide a means to affirm the appropriateness of the actions and decisions of staff
- This seminar focuses on learning from complaints to the PPO
  - both individual complaints and thematic studies
- And complaints from both ends of seriousness spectrum:  
property and use of force

# Introduction - property

- Property complaints are the most common complaints to the PPO (29% of all investigations) – and the most likely to be upheld (60%)
- The high uphold rate illustrates that prison staff too often get the management of prisoners' property wrong despite perfectly good national policies and procedures
- This causes frustration to prisoners, wastes staff and investigator time and costs public money in compensation (which also damages the public credibility of prisons)
- If lessons can be learned and property complaints managed more efficiently, effectively and locally, a great deal of time and money could be saved – and unnecessary tension with prisoners avoided

# Introduction – use of force

- Prisons are coercive places and use of force inherent part of prison life, although ought to be a last resort after de-escalation attempted
- PPO investigations important safeguards against physical abuse of prisoners **BUT** also a way of affirming appropriateness of staff action
- Can only affirm if force reasonable, necessary and proportionate (and therefore legal)
- In judging, this typical issues: de-escalation should be attempted at all stages, avoid pre-disposing C&R teams to use force, roles within C&R teams should be clear, there should be proper healthcare examinations, and use of force statements should be independent of one another
- Learning lessons can improve safety of both prisoners and staff



# Property Complaints

**Wendy Martin, Assistant Ombudsman**

**Nana Acquah, Quality Assurance Manager**

**Christine Stuart, Senior Research Officer**

# Property overview (1)

- Greater than 1 in 4 of all eligible complaints
- Almost all from male prisoners
- All types of prisons
- Most about clothes and electrical items. Increasingly canteen.
- Mostly relatively low value.
- In 2015/16 average compensation recommended was £138 / median was £90

# Property overview (2)

- The complaints we see are often dealt with very poorly by prisons
- Highest uphold rate
- An area where the PPO makes a real difference to prisoners' lives
- Most property complaints could be avoided by following procedures
- Most property complaints could have - and should have - been resolved by prisons without involving the PPO.

# What does the PPO do? (1)

- Type of cases - lost / damaged / no longer allowed
- Transfer cases/Cell clearance
- Request info - further details from complainant and property cards + cell clearance paperwork from prisons
- Review the evidence and policies (PSI 12/2011 in particular)
- Property cards key issue

# What does the PPO do? (2)

## Outcomes

- Uphold - usual remedy is compensation
- Valuing property
- Mediation where possible
- Letter, record of investigation or formal report

## Case Study One – fill in the property cards properly

- Damage caused to Xbox and 33 Xbox games by the prison writing his prison number on the games.
- The investigator spoke to the complainant, looked at complaint forms, spoke to staff at the prison.
- Our considerations -Prison marking games was not unreasonable to deter theft. The Prison had changed procedures so no longer permanently marked games. The Prison did not comply with property PSI and list all the Xbox games. Complainant unable to return Xbox or games.
- Complaint upheld - compensated £80
- *List games individually to comply with PSI and mark property without permanently damaging it*

## Case Study Two – check property and confirm status before transit

- The complaint - Iphone damaged in transit
- The investigation reviewed the complaint forms and property cards for time in Birmingham The prison could not provide a cell clearance certificate or any evidence that the cell had been secured.
- Our considerations - Phone was in stored prop, then when seen again, it was damaged,
- PSI 02/2012 – Para 2.7.5: *A complaint about loss of or damage to property which is upheld must at some stage be considered by a member of staff of sufficient seniority to authorise compensation. Any compensation will be paid by the establishment where the loss or damage occurred (or by those responsible for transferring the prisoner if the loss or damage occurred in transit).*
- Complaint upheld - compensated £80

## Case Study Three – complete cell clearance paperwork

- The complaint – property missing after wing move. The complainant had self harmed and had to be moved.
- The investigator reviewed complaint forms and property cards.
- Consideration – the majority of property that was claimed to be lost was on the property cards, only part of the property card was found. There was no cell clearance paperwork.
- Complaint upheld - compensation of £125 and memo to staff reminding them to complete cell clearance paperwork.



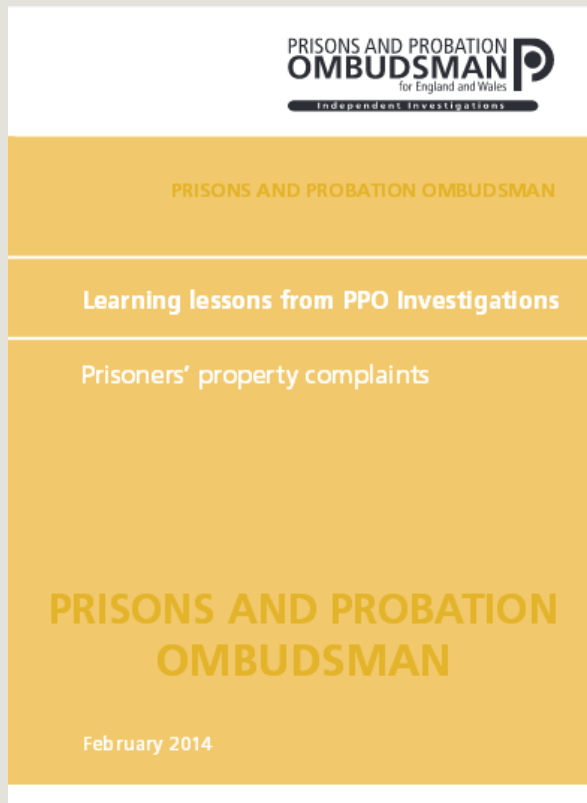
## Case Study Four – not allowed

- Proportionality in considering the national policy
- The complaint – PS2 and TV taken away because he was downgraded to the basic IEP level
- The investigator reviewed the complaints form, Pnomis notes, and IEP policy PSI 30/2013
- The consideration – national policy said PS2 for enhanced prisoners only
- Complaint not upheld
- Head of Residential took into consideration the extenuating circumstances

# Learning lessons from complaint investigations

- Our investigations often identify areas for improvement and result in recommendations being made to a specific establishment or individual
- But there is also much to be learned from collective analysis of our investigations
- The learning lessons team work to collect standardised information about investigations, so that we can look for trends and identify common themes

# PPO thematic report: property complaints



Published February 2014

A review of property complaints made by prisoners, to identify common themes and concerns

Available online:

<http://www.ppo.gov.uk/?p=3723>

# PPO Thematic Report: Property

- Consistently, and increasingly so, one of the most common complaint categories.
- 29% of complaint investigations completed in 2015/16 were related to property.
- 60% these complaints were upheld/mediated in favour of complainant, compared to only 32% of non-property cases
- The report considered 315 eligible property complaints
- In 77% of complaints which were upheld/mediated in favour of complainant, we recommended compensation

# Lesson: responsibility

- **Accept responsibility where processes have not been followed.**

If a prison has signed an in possession property disclaimer, this does not absolve the prison of all responsibility for prisoners' property.

- **Respond to complaints effectively**

Staff should have financial authority to offer compensation. This will avoid unnecessary complaints coming to the PPO.

- **Manage prisoners' possessions as required by the PSI**

Proper handling and packing of items, particularly valuables, will reduce the likelihood of loss or damage.

# Lesson: record keeping

- **Prisons should ensure that all paperwork is correctly completed.**

Records should be thorough and legible. This includes, property cards, cell clearance certificates and prisoners' signatures on relevant paperwork.

- **Try and use photography to record stored valuable items and other property.**

To reduce compensation claims and more efficiently resolve complaints, prisons should consider the wider use of photography to document property.

# Lessons: religious items and destroying property

- **Prisons should follow volumetric control instructions for religious items.**

Staff should be aware of PSI 51/2011 when making decisions about volumetric control.

- **Use proportionality when destroying items.**

Prisoners should be given the opportunity to hand property out. Property should only be destroyed in line with the PSI.

# **NOMS policy update**

**Carolyn Lund**

**Head of High Security Prisons Group (NOMS)**





**High Security  
Prisons Group**

Innovate | Support | Assure

# NOMS Property Update

Why do we keep getting it wrong and how do we fix it?



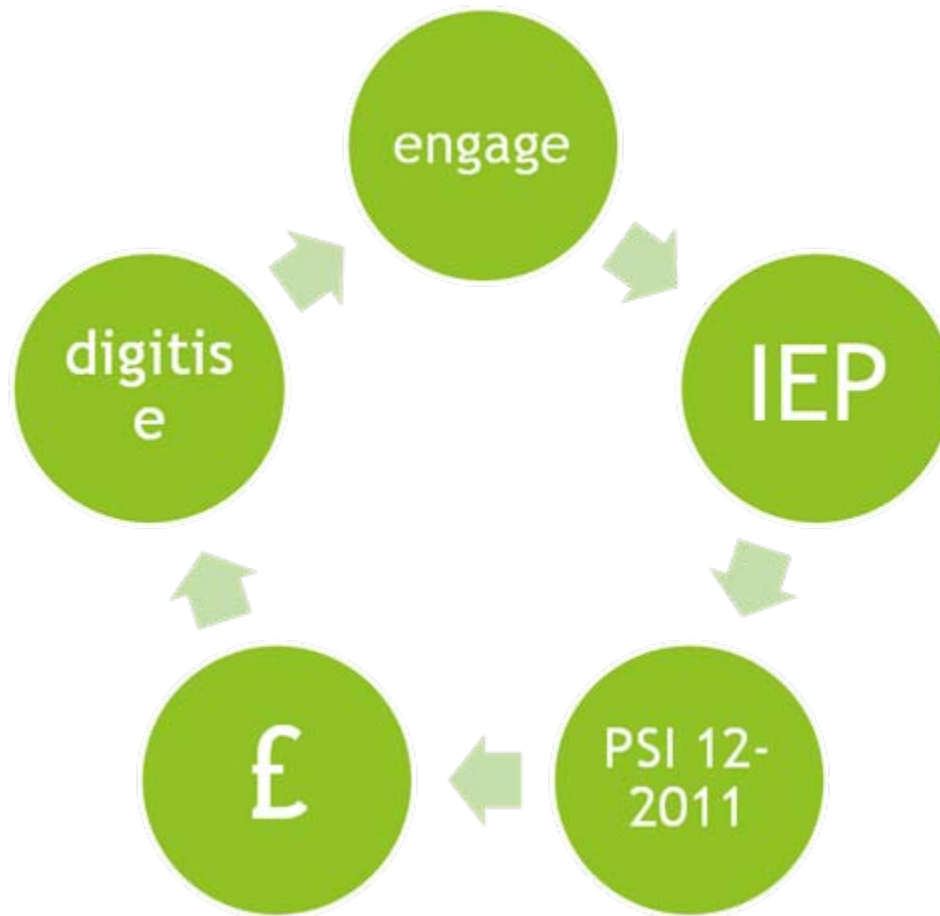
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## Since 2015.....

- ▶ PPO and Litigation attention has been significant
- ▶ High Security account for about 70% of all property litigation cases nationally
- ▶ 15% of all HSE complaints are property related
- ▶ Since 2015 we've spent £270k (and rising) on prisoner property claims
- ▶ Focused on damage, reasonable access and paperwork (no surprises there)

# Opportunities to improve



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# Complaints by prisoners about use of force

**Michael Dunkley**

Assistant Ombudsman (Complaints), Serious Complaints Team Leader

**Martina Ryan**

Investigator, Serious Cases Team

**Tori Buttercase**

Research Officer

# Complaints received

- In each of the past two years, the PPO has received over 80 complaints of assault by prison staff. Most of these are complaints about unnecessary and/or disproportionate use of force
- Most of these are a complaint about unnecessary and or disproportionate use of force
- No real pattern apparent in location or prisoner – more planned removal complaints, than spontaneous use of force

# The PPO's capability

## The Serious Complaints Team

- Set up three years ago to improve PPO's capability in dealing with allegations of assault and other 'serious' complaints
- Capability now being improved across all five investigator teams
- Training of investigators
  - Accredited investigator training
  - Use of force instructor refresher training (four days at Kidlington or Doncaster)
- Looking at how to improve medical capability

# Use of Force policy PSO 1600

Use of Force justified only if it is:

- Reasonable in the circumstances
- Necessary
- No more force than is necessary
- Proportionate

Use of force *must* be a last resort

# Investigating an ‘assault’ complaint (1)

- Initial evidence gathered – UoF paperwork incl F213, Camera footage, photos of injuries, medical records, response to complaints, internal investigation
- Face to face interviews always with complainant, almost always with staff involved
- Key check points between investigator and manager, and peer reviews
- Use of Force ‘advisor’ consulted if necessary



## Investigating an ‘assault’ complaint (2)

- High reliance on ‘objective’ evidence – recorded footage, plus medical, photos of injuries but caveats
- Use of Force statements critical, to know why officers made key decisions
- Judgements on ‘borderline’ cases can be difficult
- Try to adopt a ‘realistic’ approach, not ‘text book’
- Average case (there isn’t one) takes 3 months to complete

# Use of Force: Case Study A

- Prisoner A had been told he was moving wings but raised with staff that he was at risk from another prisoner on the new wing
- C&R team arrived at his cell door; he said he would not move, instead stating “take me to the block”
- As soon as he said this door was opened and he was restrained
- At no stage was the prisoner aggressive or posing a risk of harm, either prior to the restraint or during
- One officer said that the prisoner had picked up a pen and could have used this as a weapon – however the camera footage did not support this account
- PPO findings
- Supervising Officer far too quick to initiate force; mistaken belief that non-compliance was sufficient justification
- The prison could have pre-empted problems; by addressing the prisoners concerns about the move (the other prisoner of concern had moved wings)

# Use of Force: Case Study B

- Prisoner B had smashed up his cell in the segregation unit; needed to be moved
- Cell was in a dangerous condition, water, glass, excrement
- Officers initiated force after non-compliance and continued erratic behaviour by the prisoner
- PPO findings
- Force was justified as there was a distinct possibility of a weapon; officers were consistent that this was their major concern
- Officers dealt with a very difficult situation well
- However
- We were concerned that at the briefing the Supervising Officer had instructed the C&R team to give the prisoner “just one last chance” to comply, before initiating restraint
- This mitigates against the team treating the situation on the circumstances before them, and doing their best to de-escalate
- Recommendations were made for SO to have additional training

# Use of Force: Case Study C

- Prisoner C was unaware he was to be moved from his cell until a kitted team arrived at his door
- Although the prisoner complied with instructions passed through the cell door by the Supervising Officer, poor communication between the SO and No. 1 resulted in the prisoner being unnecessarily restrained
- Once the team had entered the cell the SO removed himself from the scene and could not observe what was happening in the cell
- On more than one occasion during the restraint the prisoner complained that he could not breathe, however no one reacted to this
- PPO findings
- The SO communicated badly with the kitted team outside the cell door
- The SO relinquished his responsibilities to the No 1 Officer (whom he “trusted”)
- The healthcare nurse had also not put himself in a position to effectively monitor the health of the prisoner

# Use of Force: Case Study D

- Prisoner D disobeyed an order not to have a shower
- The officer, who was alone with the prisoner, initiated restraint because the prisoner was abusive to him and 'pushed past' him to get to the shower
- A one-on-one struggle resulted, lasting a number of minutes, during which both the officer and prisoner sustained minor injuries
- Once other officers arrived the prisoner was successfully restrained
- PPO findings
- Blatant disregard for lawful order by prisoner
- But Officer had better options than to initiate one-on-one force, which is always very hazardous and needs to be avoided if at all possible
- He should have let the prisoner take his shower and dealt with this via charge for disobeying lawful order
- Or waited until other officers arrived, so correct C&R could have been used if necessary

## Use of Force: Case Study E

- Prisoner E was subject to use of force and complained that he was not seen by a healthcare practitioner until several hours later
- A nurse had visited the cell, but on the advice of officers did not enter. She made a cursory observation of the prisoner through the hatch and reported that he had no injuries
- He was seen again a few hours later, who again did not enter the cell, and reported a “few cuts around his mouth”
- Photographs taken of the prisoner some time later showed extensive injuries; by that time it was not possible to determine whether or not these were the result of C&R
- PPO findings
- Both medical ‘examinations’ had been inadequate; although recognises that it is sometimes unsafe to enter the cell
- The PPO takes a view that if it is not possible to enter the cell in the immediate aftermath of a Use of Force, an attempt should be made after a reasonable amount of time (perhaps 2 to 3 hours)

# A word about Annex As

- Too often the PPO sees Annex As that have clearly been copied
- Not the odd sentence or two.... Often several WHOLE PARAGRAPHS
- Policy is clear that these have to be filled in individually and separately, giving solely the individual officer's account
- We know paperwork is a pain!
- But copying Annex As, brings the process into disrepute, raises credibility issues, and means we haven't got the officer's individual account, made at the time, when we come to investigate the complaint

# Learning Lessons bulletin: use of force – further lessons



## Use of force – further lessons

This Learning Lessons Bulletin examines the use of force on prisoners by prison staff. It is the Ombudsman's second bulletin on this topic.

In some ways it is reassuring that there are relatively few complaints to my office about alleged physical abuse of detainees by custodial staff. In 2014-15, of 2,303 eligible complaints received and accepted for investigation, only 50 involved such allegations.

They are, however, among the most serious and important complaints that I receive, as they go to the heart of the humanity and legitimacy of the prison system. Ensuring independent investigations into allegations of physical abuse is, therefore, essential to maintaining safety and giving assurance of the proper treatment of those in custody. My investigations also ensure that staff are held to account for misbehaviour and I have had to recommend disciplinary action on a number of occasions. Equally, in other cases, my investigations have provided assurance that use of force by staff was appropriate and their behaviour exemplary in difficult circumstances.

Prisons can be violent places and recorded levels of prisoner-on-prisoner and prisoner-on-staff assaults are at an all time high. Staff face enormous challenges in keeping order and control, so use of force must always be an option. However, it is only lawful if it is reasonable, necessary, involves no more force than is required and is proportionate to the seriousness of the circumstances. In my view, use of force should always be a measure of last resort, deployed only once all avenues of de-escalation have been exhausted.

In complaints about the issue, whether force was used is rarely in doubt, but there can be questions about whether it was justified and the tests of lawfulness met. The learning in this bulletin builds on that in a Learning Lessons Bulletin on use of force published in January 2014, and is intended to contribute further to ensuring safer custody.

Nigel Newcomen CBE  
Prisons and Probation  
Ombudsman

### Background

Prison Service policy on the use of force is set out in Prison Service Order (PSO) 1600: Use of Force, which says that:

"the use of force is justified and therefore lawful, only if:

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

PSO 1600 makes clear that it is important to consider the type of harm that the member of staff is trying to prevent, as this will help to determine whether force is necessary in the particular circumstances they are faced with.

'Harm' may cover all of the following risks:

- risk to life or limb
- risk to property
- risk to the good order of the establishment

Published April 2016.

Built upon the previous bulletin (January 2014) that explored learning from complaint investigations relating to the alleged use of force on prisoners.

Available online:

<http://www.ppo.gov.uk/document/learning-lessons-reports/>



## PPO bulletin: use of force – further lessons

- In 2014-15 there were 2,303 eligible complaints.
- Approximately, 2% relate to alleged physical abuse by staff.

## PPO bulletin: use of force – further lessons

- Most complaints about alleged assaults are following a restraint.
- Typically, both complainant and staff agree force was used.

# Previous lessons from 2014 remain valid

- Force to be used only when necessary
- Ensure no more force than is necessary is used
- The Use of Force forms should have sufficient detail
- Decisions to strip search are separate and need to be justified
- Retain CCTV and video evidence
- Use all available evidence – including past allegations
- Conduct a thorough internal investigation
- Ensure prompt police investigation if requested

## Lesson: C&R teams

- **The arrival of C&R team in a planned removal should be treated as new situation:** C&R team should make attempts to de-escalate situation without force and not deem it inevitable based on prisoners previous non-compliance.
- **Roles of Supervising Officer and Number One Officer are different:** Supervising Officer must use dynamic decision making whilst monitoring the prisoner and communicate changes to the situation with Number One Officer.

# Lesson: last resort

- **C&R briefings should not be prescriptive:** Briefing should not pre-dispose team to believing force is inevitable.
- **One on one use of force is risky:** increases risk of injury to staff and prisoner. Force is a last resort and not a response when authority is flouted.

# Lesson: post incident procedures

- **Healthcare must examine prisoner following use of force:** speaking with the prisoner through the hatch is not sufficient.
- **Annex A forms must be written independently and promptly:** forms with similar accounts raise questions about credibility.

# **NOMS policy update**

**Kirsty Payne**

**Use of Force Lead, Security Policy Unit**



National Offender  
Management Service

# Use of Force Policy

Kirsty Payne

NOMS Security Group





# Current Policy

- PSO 1600
- PSI 30/2015
  - Published November 2015
  - Updates key aspects of PSO 1600 including
    - Self defence
    - Batons
    - Training requirement for operational staff
    - Monitoring
    - Safe cell relocation



# Key Issues

- Timeliness of reporting
- Quality of reporting
- De-escalation
- Use of handcuffs
- One-on-one situations



# The future...

- Body Worn Video Camera
  - Incident led use
  - Standalone policy
  - Clear data retention policy
  - Clear policy for further use e.g. training and investigation

# Afternoon Session

Please see the seating plan for your table for this afternoon's discussion.

# Discussion

## Property

- What are the barriers to following the procedures set out in PSI 12/2011?
- What are the barriers to accepting responsibility when things go wrong?

## Use of Force

- Are the PPO's key messages about UoF appropriate and realistic ?
- What barriers are there to implementing them?

# Next steps

- PPO will:
  - Share slides & contact lists
  - Collate the discussion findings and disseminate more widely
  - Continue to investigate independently and robustly to identify learning in both individual cases and thematically
  - Learn from your feedback on this seminar
- What will you do?

# Farewell

- Thank you for your attendance and participation
- Please complete an evaluation form
- The PPO wishes you well in efforts to improve safety and fairness in custody

# Contact details

If you have any questions following the seminar please contact [PPOComms@ppo.gsi.gov.uk](mailto:PPOComms@ppo.gsi.gov.uk)

Have you checked out our website? Our learning lessons publications and anonymised fatal incident reports are now easily accessible at [www.ppo.gov.uk](http://www.ppo.gov.uk)