



# Making a Difference Anniversary Seminar Series

Complaints

25 November 2014



# Nigel Newcomen

*Prisons and Probation Ombudsman*

# Introduction

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- Delighted to welcome delegates from prisons, NOMS HQ, DDC Nick Pascoe and, of course, PPO staff
- PPO was created in 1994 to independently investigate prisoner complaints. We took on investigation of deaths in custody in 2004
- Our vision is to be a leading investigatory body, a model to others, that makes a *significant contribution to safer, fairer custody and offender supervision*
- This is the third in a new anniversary series of seminars designed to use PPO learning from individual investigations and thematic reviews to support prison staff to improve safety and fairness

# Introduction

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- Purpose of independent complaint investigation:
  - Allow prisoners a legitimate means to voice 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

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- Property complaints are the most common complaints to the PPO (26% of all those received) – and the most likely to be upheld (56%)
- 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 efficiently, effectively and locally, a great deal of time and money could be saved – and unnecessary tension with prisoners avoided

# Introduction – use of force

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- Prisons are coercive places and use of force is an inherent part of prison life, although it ought to be a last resort after de-escalation attempted
- PPO investigations are 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, these are typical issues: use of all available evidence, CCTV, recording, internal investigation and involvement of police
- Learning lessons can improve safety of prisoners and staff

# Agenda

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- 11.00      Introduction
- 11.10      **Property**
  - What PPO investigations involve
  - Learning lessons & case studies
  - Response from Nick Pascoe & Q&A
- 11.55      **Use of force**
  - What PPO investigations involve
  - Learning lessons & case studies
  - Response from Nick Pascoe & Q&A
- 12.45      Lunch
- 13.30      **Table discussions**
- 14:30      Feedback to panel
- 15:05      Next steps and close

# Property Complaints

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Elizabeth Moody - *Deputy Ombudsman*

Georgina Beesley- *Investigator*

Sarah Colover – *Research Officer*

# Property overview (1)

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- About 1 in 5 of all eligible complaints
- Almost all from male prisoners
- All types of prisons
- Most about clothes and electrical items
- Mostly relatively low value.
- In last two years average compensation recommended was £236. This is pulled up by a minority of high value items: the median was £102

# Property overview (2)

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- Often dealt with very poorly by prisons
- Highest uphold rate
- An area where the PPO makes a real difference
- 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?

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- Type of cases - lost / damaged / no longer allowed
- Request info - further details from complainant and property cards + cell clearance paperwork from prisons
- Review the evidence and policies
- Uphold - usual remedy is compensation
- Valuing property
- Trialling loss adjusters for valuable property
- Mediation or a report with formal recommendations.

# PPO thematic report: Property

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- Consistently one of the most common complaint categories.
- Over half of property related complaints were upheld/mediated in favour of complainant in 2012/13.
- 315 eligible cases looked at for report
- 77% of complaints investigated recommended compensation

# Lessons : Responsibility

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- **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.

# Lessons : Paperwork & Proportionality

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- **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.

- **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.

# Lessons : Religious items & Photography

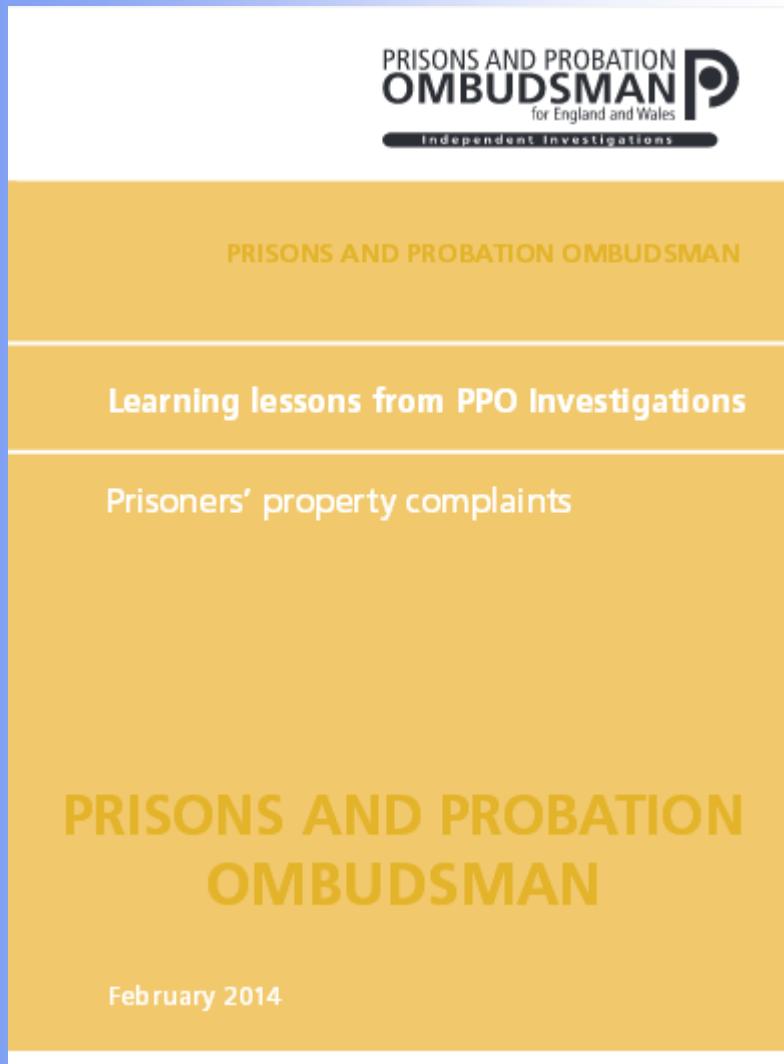
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- **Prisons should follow volumetric control instructions for religious items.**

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

- **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.



# PPO Thematic report

## February 2014

[http://www.ppo.gov.uk  
/document/learning-  
lessons-reports/](http://www.ppo.gov.uk/document/learning-lessons-reports/)

# Case study 1: accept responsibility

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- **Mr A complained that his property did not travel with him when he was transferred from one HSE prison to another, leaving him with just the clothes he was wearing.**
- The previous prison initially told him that his property had been located and would be sent on to him.
- When it had not arrived two months later, he complained again and was told that it had been sent to him that day.
- The property still did not arrive and he complained again. The previous prison said that they had posted his property to him but, because the sender's details had not been included on the parcel, his new prison had refused to accept it and the parcel had been returned to Royal Mail.
- They gave him a Royal Mail tracking number and told him to make a claim to Royal Mail. He could not do so, however, because he was not the sender. No claim was made by the prison.
- By the time PPO became involved, the parcel had been sent to Royal Mail's lost property centre and could no longer be located.
- **We concluded that the sending prison had been at fault and recommended they pay Mr A compensation for his losses.**

# Case study 2: property disclaimers don't absolve prisons of all responsibility

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- **Mr B placed himself on R45 Own Protection. He left his property in his cell. When it was transferred to him a lot was missing (including his legal papers) and he heard other prisoners boasting that they had stolen it.**
- The prison refused him compensation. They said he had signed a disclaimer accepting that property in possession was his own responsibility.
- However, responsibility for property passes to the prison if the prisoner is not able to look after his property himself (eg in the Segregation Unit). It was the prison's responsibility to safeguard Mr B's property by securing his cell before it could be cleared by staff.
- The prison could not provide a cell clearance certificate or any evidence that the cell had been secured.
- **In the absence of any evidence that the prison had followed the correct procedures, we held the prison liable for the loss and recommended that they pay Mr B compensation.**

# Case study 3: Destruction of property

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- **Mr C complained all his property was destroyed.**
- The prison said two prisoners had barricaded themselves in his cell in his absence and smashed up and everything had to be destroyed as it was contaminated with blood.
- The prison refused to pay him compensation, saying he had signed a property disclaimer.
- There was no cell clearance certificate, no record of what had been destroyed, no property cards and no photographs of the destroyed property.
- We concluded the prison had failed to secure Mr C's cell in his absence, failed to safeguard his property and failed to justify destroying it.
- **We recommended he receive compensation.**

# Response from NOMS

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Nick Pascoe

*Deputy Director of Custody*

# Complaints by Prisoners about Use of Force

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Michael Dunkley  
*Assistant Ombudsman (Complaints)*  
*Serious Complaints Team Leader*

Jess Rule  
*Investigator Serious Cases Team*

Helen Stacey  
*Research Officer*

# Complaints received

- PPO receives around 50-60 complaints of assault by prison staff per year
- Most of these are a complaint about unnecessary use of force
- No real pattern apparent (as yet)

# The PPO's capability

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- The Serious Complaints Team
  - Set up a year 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)

# Investigating an ‘assault’ complaint (1)

- Initial evidence gathered – Use of Force forms, footage, photos, medical, 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 Policy

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- Use of Force justified only if it is:
  - Reasonable in the circumstances
  - Necessary
  - No more force than is necessary
  - Proportionate

# PPO Bulletin: Use of Force

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

# Lesson : Using force

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- **Only when necessary**

Staff need to be clear about what harm they aim to prevent. Gaining 'compliance' with a lawful order in itself is not sufficient. But disobedience can escalate to the point of posing a risk of harm to the good order of the establishment.

- **No more than necessary**

There should be a clear justification for resorting to more painful techniques.

- **Decisions to strip search are separate**

Situations that require force do not automatically justify a full search.

# Lesson : Recording

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- **Detailed use of force forms**

Provide sufficient detail: events leading to, during and after force; alternatives used/considered; the reasoning behind actions

- **Retain CCTV, video footage, take photos**

This includes events before or after the incident, even where the force itself is not directly shown.

# Lesson : Internal investigations

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- **Assault allegations generally require a formal investigation**

Complaints about assault are not usually about being kicked or punched. Look at whether force was justified and if it was conducted correctly. Keep a written record of the investigation, the evidence and reasons for conclusions. Explain the investigation and the conclusions to the prisoner.

- **Use all available evidence**

This can include previous complaints about staff, where appropriate.

- **On request promptly inform the police**

Requests on a complaint form should be treated as a written application.

January 2014

## Learning lessons bulletin Complaints investigations issue 4

### Use of Force

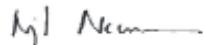
Learning from PPO complaints relating to the use of force on prisoners.

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.



Nigel Newcomen CBE  
Prisons and Probation Ombudsman

### Policy and Law

The requirements of the law on the use of force 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.

<sup>1</sup> The use of force includes personal protection, the use of a baton and the use of ratcheting handcuffs, as well as arm and wrist locks and Control and Restraint techniques.

# PPO Bulletin January 2014

[http://www.ppo.gov.uk  
/document/learning-  
lessons-reports/](http://www.ppo.gov.uk/document/learning-lessons-reports/)

# Some case studies

Prisoner A – Prisoner in wheelchair who damaged his cell. Then barricaded his cell and threw bags of urine at officers. Cell potentially unsafe due to damage	Officers went to great lengths to de-escalate. Prisoner damaged electrics potentially lethally. For protection of officers and safety of prisoner. Force justified – risk to officers and prisoner.
Prisoner B – refused to end phone call, officer intervened to end call. Resulted in stumble, and then full C&R.	The officer got into an unnecessary physical tangle leading to force. Could have been better dealt with by adjudication or IEP Force not justified - less injurious option
Prisoner C – Planned removal. Tension was high due to hostage situation. Prisoner failed to obey instruction, team entered cell and used restraint	Prisoner was standing with his back to officers, had complied to that point. Posed no immediate threat. No 1 far too quick off the mark to enter cell and initiate force. Force not justified – low threat at that point.
Prisoner D – Officers entered to remove observation hatch blockage. Prisoner standing at back of cell, did not communicate.	Officers had spent much time trying to engage the prisoner, to no avail. Prisoner then moved towards officer. Reasonable for colleagues to assume a threat. Force justified – threat to officer

# Response from NOMS

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Nick Pascoe

*Deputy Director of Custody*

# Discussion

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## 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

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- PPO will:
  - Share slides, contact lists and publications discussed on the day
  - Look into producing a training package using our learning
  - Continue to investigate independently and robustly to identify learning in both individual cases and thematically
- What will you do?

# Contact details

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If you have any questions following the seminar please contact

[Learning.lessons@ppo.gsi.gov.uk](mailto:Learning.lessons@ppo.gsi.gov.uk)

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