



Learning lessons bulletin

PPO investigations issue 1

Sexual abuse in prisons

Highlighting lessons that can be learned from complaints and fatal incidents that involve a sexual element.

This Learning Lessons Bulletin is a revised version of a paper that I presented to the Howard League's Commission on Sex in Prison in November 2012¹ entitled - for good reason - "a hidden issue in a hidden world".

Sexual activity is an inherent part of our humanity and its existence in prison is inevitable. Sexual activity covers a broad range of behaviours both consensual and coercive but, in so far as the issue reaches my office at all, it is allegations of abusive behaviours with which my investigations into complaints and deaths in custody are most usually concerned.

As a result of the infrequency of the issue coming to my office, we have rarely sought to distil relevant lessons to be learned, although the issue of intimate relationships among women prisoners was explored in our thematic study² on links between bullying and deaths in custody. Even once raised, issues relating to sex in prison can be difficult to investigate, usually being secretive and hampered by a lack of persuasive evidence.

This bulletin takes a tentative look at both our complaints and fatal incident caseload to see if there are lessons to learn in the custodial context about this most fundamental aspect of human nature.

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1. Complaints made to the PPO

Complaints of a sexual nature made up less than half a percent of the total complaint caseload from 2007-2012. Of the 108 sexual complaints received, 47 (44%) were found to be eligible for investigation (a similar eligibility rate for all complaints in the period).

The majority of complaints of a sexual nature were allegations of sexually abusive behaviour towards

¹ For more information see: <http://www.howardleague.org/commissiononsexinprison/>

² PPO (2011) *Learning from PPO investigations: Violence reduction, bullying and safety*. London: PPO.

prisoners by either a member of staff or a fellow prisoner. Of all these complaints, 45 were allegations of abusive behaviours by staff, 27 were about abusive behaviours by other prisoners, 18 were about prison rules and policies, 10 were about discrimination on the grounds of gender identity and 8 were about discrimination on grounds of sexuality.

1.1 Complaints of homophobic bullying by prisoners and staff

Homophobia is still an issue found in prisons but there is little data available on the experiences of lesbian, gay and bisexual prisoners. The Prison Service is required to challenge homophobia and ensure equal treatment of all prisoners.

Case study 1

Mr A complained to the Ombudsman in 2010 that he had experienced homophobic bullying by prisoners and staff, and that the prison had failed to respond to his complaints. Mr A was assaulted in the shower by another prisoner who was subsequently convicted of assault causing grievous bodily harm.

The Ombudsman upheld Mr A's complaint about his overall experience as a gay prisoner. He found that the prison was not sufficiently supportive of gay prisoners and a culture existed in which prisoners felt unable to confide in staff. The Ombudsman also agreed that it was probable that Mr A was subjected to homophobic bullying by other prisoners. The Ombudsman did not agree that the prison had failed to sufficiently respond to Mr A's concerns and did not uphold this part of the complaint.

The Ombudsman found that, although a new diversity policy had been developed since Mr A had been at the prison, staff were not entirely at ease with the language used to discuss sexual orientation. Other prisoners would not generally accept a prisoner being openly gay.

The Ombudsman's recommendations supported those previously made by Her

Majesty's Chief Inspector of Prisons. These were for the prison to review their sexual orientation policy; take action to challenge homophobic language and attitudes; display information which affirmed equality of respect for sexual orientation; and provide details for sources of support and assistance.

Two specific recommendations were made to the prison by the Ombudsman.

First, to rewrite their diversity policy to remove the reference to displays of sexual orientation being in contravention of good order and discipline. Second, to develop further support and guidance for gay prisoners. The Ombudsman also made a national recommendation that research should be carried out into the experience of lesbian, gay and bisexual prisoners, given the lack of knowledge in this area.

1.2 Complaints of sexual assault by prisoners and staff

A number of complaints made to the Ombudsman concerned allegations of a sexual assault taking place during searches. Not infrequently, the Ombudsman found that the perceived sexual assault was an inherent and lawful aspect of the search. Indeed, prison governors sometimes assert that it is effective, thorough staff who most frequently face allegations of sexual assault when searching. Nevertheless, the highly intrusive nature, particularly of full searches, means that the humiliation of the prisoner must be minimised³. However, that is not always the case and this has been highlighted by the Ombudsman.

³ As stated in Prison Service Instruction 07/2011

Case study 2

In 2009, Mr B complained that an officer in his high security prison sexually assaulted him during a search. Mr B was subject to a routine rub down search when he was due to go to a visit. After Mr B had complained that he didn't like the pressure being used to search him, he alleged that the prison officer told him he would 'touch him how he liked' and that he would take him round the corner where there were not any cameras. Mr B asked for the complaint to be referred to the police.

The complaint was partially upheld. On the evidence available, the Ombudsman was satisfied that staff conducted the search appropriately and did not intend Mr B to feel aggrieved by it. However, it was of concern that the Police Intelligence Officers (PIOs) could not demonstrate that they had dealt with Mr B's complaint even though he had requested their involvement.

As a result of the investigation, managers undertook to remind PIOs to keep proper records of any complaint referred to them.

Sexual abuse rarely takes place in front of witnesses and allegations often come down to one person's word against another's. It is therefore essential that internal investigations are rigorous and consider whether there is any other corroborating evidence, including intelligence and circumstantial evidence. This might enable a conclusion to be drawn, appropriate action taken and future safety of prisoners improved.

Case study 3

In 2011, Ms C complained that a male officer had had a sexual relationship with another female prisoner (Ms D) in return for bringing contraband in for her.

Ms D had told Ms C that she had been having a sexual relationship with the officer, and that she

had put in several complaints about the officer, but the prison had not investigated them and had moved her to another prison. The Ombudsman interviewed Ms D and she repeated the allegations made by Ms C, although she did not want to make a formal complaint herself. Ms D said that she was worried the officer would track her down once she had been released and said that the officer told her she would spend longer in jail if prison staff found out what they had been doing.

The Ombudsman discovered that similar allegations had been made about this officer over a period of years (although this does not necessarily mean they are true). The Ombudsman concluded that the prison's previous investigation into Ms D's allegations about this officer had been wholly inadequate and recommended that the prison commission a new investigation into the allegations, taking account of the historical allegations against the officer.

The Cell Sharing Risk Assessment (CSRA) should be used to assess the suitability of prisoners for cell sharing and protect prisoners from being placed with an unsuitable cell mate. It is vital that prisons ensure their risk assessment paperwork is kept up to date in order to maintain the safety of prisoners.

Case study 4

In 2011, Mr E complained that he had been sexually assaulted in his category C prison by his cellmate, Mr F. Mr E said this could have been avoided as Mr F was known to have sexually assaulted previous cellmates and had moved wings due to these incidents. Mr E was moved cells after the allegations and a police investigation was carried out.

The investigation found there was intelligence on Mr F's behaviour towards other prisoners while in previous prisons and at the current

prison. The CSRA carried out on Mr F when he moved to the current prison failed to mention the previous intelligence reports about his behaviour towards other prisoners, and said that he had never shown anti-social behaviour, for example bullying or assault. He was assessed as being a low risk of harm to others and deemed suitable for multi-cell location.

The Prison Service has a duty of care to ensure the safety of all prisoners. Any allegations that a prisoner has assaulted or sexually assaulted other prisoners should be taken into account when considering whether it is appropriate for them to share a cell. In this case, there were numerous relevant security intelligence reports. Although these related to allegations rather than proven behaviour, they were sufficiently serious to make it clear that Mr F was not suitable to share a cell.

The complaint was upheld and the Ombudsman recommended that a formal apology be made to Mr E for being made to share a cell with Mr F and for the way his complaint was handled. The governor was also asked to formally remind his staff to take into account security intelligence when completing CSRAs.

1.3 Complaints of discrimination against transgender prisoners

The Ombudsman has investigated a number of complaints about discrimination experienced by transgender prisoners. This is coming to light more frequently now that gender reassignment is a protected characteristic under the Equality Act 2010, supported by a service users' guide produced by the Equality and Human Rights Commission⁴.

⁴ Equality and Human Rights Commission (2011) *Your rights to equality from the criminal and civil justice systems and national security*. London: Equality and Human Rights Commission.

Case study 5

In 2011, Ms G, a transgender prisoner in a male prison, complained that the prison was not treating the transgender population respectfully and that there was a lack of engagement between the various departments at the prison on the issue. Her complaint also extended to how the prison was managing her specifically as a transsexual prisoner.

The Ombudsman found that the prison had been attempting to protect Ms G - whose behaviour was sexually promiscuous - but that it was not adhering to Prison Service policy on the care and management of transsexual prisoners set out in Prison Service Instruction (PSI) 07/2011. The PSI included allowing the prisoner to live in their chosen gender, referring to them by their chosen gender identity and allowing them to purchase clothes for their chosen gender, as well as being able to wear them.

The Ombudsman upheld the complaint and recommended that training be developed for staff on the care and management of transgender prisoners.

2. PPO Fatal Incident Investigations

In the last five years the PPO investigated six fatal incidents where sexual issues were found to have contributed in some way to the prisoner's death. Although given the hidden nature of relationships and sexual issues in prison, this figure is probably an under-representation.

While this is a very small proportion of all cases investigated, five of these were deaths of women, meaning 20% of all self-inflicted female deaths from 2007-2012 involved this issue.

Some general themes emerged in all the cases regarding poor record keeping and information sharing which impacted on the safety of the individual. The more specific issue to emerge was the challenge posed in the prison context of intimate

relationships among women prisoners which fail or involve abuse.

This subject was touched on in a PPO thematic review of deaths in custody related to bullying in October 2011⁵. This identified that intimate relationships between female prisoners, which can obviously be a source of comfort, companionship and commitment, can also be a source of jealousy, abuse and bullying. The report recommended that staff should be more aware of, and if necessary, challenge abusive relationships between prisoners and ensure they record and report all incidents of violence.

2.1 Female relationships

Of the six fatal incident investigations with sexual aspects, five were female prisoners who all experienced relationship problems with a fellow prisoner prior to their death. Issues of concern, including bullying and abuse, were found in the relationships, but prison staff were often unaware of the problem or did not share the information if they were aware or received it too late to act upon it.

Case study 6

The case involved the self-inflicted death of Ms H in 2007. Throughout her time in custody Ms H had had intimate relationships with other prisoners. These relationships seemed to have been a major element in Ms H's distress and she had threatened to take her life on a previous occasion as a result of a relationship problem with another prisoner.

The prison appeared to have had little or no written information about relationships between prisoners. According to other prisoners, the usual prison response on discovering intimate relationships was to separate the women from each other. Whether this perception was accurate or not, the inevitable effect was to discourage prisoners from being open about their relationships. As a result, when a relationship comes to an end, the impact may not be apparent to staff and

they will not be in a position to offer help or support or be able to identify any related bullying.

Seven recommendations were made to the prison in relation to safer cells, mental health support and staff training. A national recommendation was made to provide training for violence reduction co-ordinators on how to identify and manage bullying caused as a result of relationships between prisoners.

2.2 Sexual murder

Although murder is very rare in prison, this case highlights the wider issues around information sharing and keeping records up to date. This is a vital task in the secure estate which ensures that prisoners are correctly risk assessed and the prison population is kept safe.

Case study 7

In 2008, Mr I was murdered by his cellmate Mr J. Mr J had allegedly sexually assaulted prisoners on two previous occasions. He had been convicted of the rape of an adult male two years before Mr I's death. There were concerns that Mr J was 'grooming' other prisoners. He was the subject of three Violence Reduction Strategy documents, due to his inappropriate behaviour to other prisoners, the last of which was open at the time he murdered Mr I. Given the security information available in Mr J's files, he should have been considered a risk to other prisoners and not been sharing a cell. The lack of action on these indicators of risk meant that there was a failure to protect Mr I.

One national recommendation was made in relation to the appropriate use and regular review of CSRAs, to ensure they effectively identify prisoners' risks to others. Other recommendations were made in relation to improving information sharing, risk assessments, and keeping abreast of the police investigations at the two prisons involved.

⁵op.cit. (2)

Lessons to be learned

1. Research should be carried out by the National Offender Management Service (NOMS) into the experience of gay, lesbian and bisexual prisoners.
The Ombudsman has found that there is a lack of information on the treatment of gay, lesbian and bisexual prisoners. In order to ensure that all prisoners are treated equally, the experiences of these groups should be collected.
2. Allegations of sexual abuse should be taken seriously, police investigations should be facilitated and internal prison investigations should be thorough and consider a wide range of evidence (as sexual abuse seldom takes place in front of witnesses).
The Ombudsman has found that some abusive sexual behaviours are not always taken sufficiently seriously and the quality of internal investigations is variable. These allegations may also raise serious criminal matters and the prison's PIO should be informed in a timely manner and a police investigation facilitated and, if necessary, encouraged.
3. Searches, particularly strip searching, should be carried out in line with National Security Framework requirements.
Strip searches, particularly full searches, can be highly intrusive and prison staff should ensure they follow NOMS policy to ensure humiliation of prisoners is minimised.
4. Prisons need to ensure they conform with the Equalities Act 2010, specifically in relation to transgender prisoners (as set out in PSI 07/2011).
The law is clear that in a single sex service environment, a transgender person should be treated according to the sex they identify with and be permitted to live permanently in their acquired gender, with access to appropriate clothes and risks to them properly managed. This poses significant challenges to prisons, but a challenge that needs to be met.
5. Staff should identify and challenge abusive intimate relationships, share appropriate information, proactively respond to bullying and support prisoners.
Intimate relationships, particularly among female prisoners, have been highlighted as a contributing factor in a number of fatal incident investigations. These illustrate the need for staff to be clear on when and how to challenge inappropriate relationships and to record and share relevant information. This stance should be reflected in the safer custody and prison decency policies.

The Prisons and Probation Ombudsman investigates complaints from prisoners, those on probation and those held in immigration detention. 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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