



# Learning lessons bulletin

## Fatal incidents investigations issue 4

### Basic regime Learning from deaths in custody about the use of basic regime as part of the incentives and earned privileges scheme in prison.

Incentives and earned privileges (IEP) schemes in prison are designed to encourage good behaviour and challenge misbehaviour. Schemes generally have three levels and the “basic” level is the most austere. There is current Ministerial interest in whether the schemes are properly calibrated, for example whether they are too generous and whether more prisoners ought to be on the basic level. This bulletin originates from a request to me by the Prisons and Rehabilitation Minister, Jeremy Wright MP, for any learning about the IEP scheme from my fatal incident investigations that might inform Ministers’ deliberations.

In essence, learning from my investigations suggests that disproportionate numbers of self-inflicted deaths occur among those on the basic regime. There is no simple causal relationship, but the statistics emphasise the dilemma for prisons, particularly where vulnerable prisoners also display challenging behaviour. Thus between 2007 and 2012, 8% of self-inflicted deaths investigated by my office were of prisoners on the basic regime. This is considerably higher than the national average percentage of prisoners on the basic regime (2%).

Accordingly, the use of the basic regime, with its reduction in contact with other prisoners and the outside world and the removal of television, needs to be carefully coordinated within a wider plan of care and support for prisoners who are at risk of self-harm. This is already required under current Prison Service safer custody policy, but does not always happen. There is also a need to examine, particularly with younger prisoners, whether the challenging behaviour masks underlying distress.

Whether or not the numbers of prisoners on the basic regime is to grow, vulnerabilities need to be managed effectively to avoid the risk of self-harm. This bulletin is designed to encourage the learning of that lesson and the achievement of an appropriate balance between care and control.

Nigel Newcomen CBE  
Prisons and Probation Ombudsman

## IEP system

All prisons and young offender institutions (YOIs), as part of Prison Rule 8 and YOI Rule 6 are required to provide a system of privileges in addition to the minimum entitlements detailed in the prison/YOI rules.

Prison Service Instruction (PSI) 11/2011 lays out the framework for the Incentives and Earned Privileges (IEP) scheme. The scheme aims to encourage good behaviour and participation in interventions to reduce re-offending and challenge poor behaviour and non-compliance. The scheme works by offering key earnable privileges including extra visits, higher rates of pay and in-cell television. These privileges are removed if behaviour deteriorates.

Prisons are required to provide regimes for at least three levels: basic, standard and enhanced. On entering custody, all prisoners are placed on the standard privilege level. The loss of an earned privilege or demotion to a lower level is expected to be seen as a consequence of a general deterioration in behaviour or a refusal to engage in interventions designed to reduce the risk of re-offending.

## Basic regime

Demotion to basic, the lowest of the three regime levels, is normally from standard level. Prisons are expected to avoid demoting prisoners directly from enhanced to basic level, except in the most serious cases of misconduct, for instance assault.

Prisoners at basic level should have their level reviewed within seven days and be informed of the steps they must take to return to standard level. Following this review, adult prisoners who remain at this level must have a monthly review. Young offenders should receive a review at least every fourteen days.

## Deaths in custody

The IEP levels were available for 215 fatal incident investigations of apparently self-inflicted deaths between 2007 and 2012. Seventeen prisoners (8%) were at basic level; substantially higher than the national percentage of prisoners on basic regime (2%<sup>1</sup>).

Of these 17 prisoners, two had had their IEP status reduced in the 72 hours before they died and a further seven had had their status reduced within the month before. The prisoners were aged between 18 and 45 and all but one were male.

## Effects of basic regime

Our investigations show that the restrictions of the basic regime can have a significant effect on individuals. They reveal that, as a result of being placed on basic, some prisoners became introverted and spent a great deal of time in their cells with very little to do in the lead up to their death. For others, the effect of the move to basic regime had a significantly negative impact on their mental wellbeing. Some prisoners exhibited extreme or strange behaviour and others threatened to self-harm.

Of the prisoners on basic, a quarter (4) were being monitored under Assessment, Care in Custody and Teamwork (ACCT) arrangements – the Prison Service's suicide and self-harm prevention procedures – at the time of their death. The removal of protective factors, such as: activity, interaction with others and contact with friends and family as a result of being reduced to basic level, appears to be at odds with the goals of the care planning in ACCTs. PSI 11/2011 addresses this by stating that in situations where a prisoner is at risk of suicide or self-harm, the withdrawal of privileges should be considered *alongside* an ACCT on a case by case basis.

Our investigations have found that a more coordinated approach between ACCTs and IEP would have better managed the risk posed by these vulnerable prisoners. A coordinated approach would have worked more effectively to protect their wellbeing while subject to the withdrawal of privileges.

<sup>1</sup>National Offender Management Service equalities annual report 2011/12, Annex C – Offender Data <http://www.justice.gov.uk/downloads/publications/noms/2012/statistics-offenders.xls>

## Case study 1

Mr A had been in prison for 8 years at the time of his death. He had episodes of instability and had been placed on suicide and self-harm monitoring on ten occasions, although no incidents of self-harm had followed. On the day of his death, he was subject to both IEP reviews and the opening of an ACCT following poor behaviour and food refusal.

Mr A had displayed hostile and abusive behaviour towards prison staff in the days before his death and an urgent meeting to review his IEP level was held where his status was reduced from enhanced to basic. After the meeting, in line with prison policy, Mr A was placed on an ACCT as it was his third day of food refusal. Mr A had told the nurse that food refusal was due to a number of ongoing issues with the drug users programme he was attending and his desire to be moved to a prison closer to his ailing mother. Mr A also told the nurse that he was feeling hopeless, that family concerns and his demotion to basic had worn him down and he had suicidal thoughts. Later that evening, Mr A was found dead in his cell.

The Ombudsman was not convinced that Mr A's behaviour was serious enough to warrant the downgrading of his level of IEP directly from enhanced to basic, and that these concerns could have been dealt with through other disciplinary measures. Prisoners do not usually move from enhanced to basic without an intervening period on standard, because the change in the prisoner's regime can be quite severe. The prison's own IEP policy stated that only in the most extreme cases should prisoners be demoted from enhanced to basic.

Although no formal recommendation was made to the prison, the Ombudsman suggested that the prison should ensure that the IEP policy was being properly implemented in the prison.

## Removal of activities

Our investigations have shown that the removal of activities and increased time spent in a cell with little purposeful activity can have a negative impact on the mental health of a prisoner. Provisions such as radios or reading materials are alternatives that can be offered to prisoners when subject to reduced association time.

The removal of in-cell televisions from prisoners placed on basic regime was noted in four self-inflicted deaths. PSI 11/2011 states that establishments can use their discretion when removing televisions from vulnerable prisoners:

*"All prisoners considered to be at risk from self-harm/suicide may be considered for in-cell TV irrespective of privilege level on a case-by-case basis."*

We observed good practice in one investigation where a vulnerable prisoner, who was subject to basic regime, was able to continue using their television.

## Case study 2

Mr B was in prison less than a month before taking his life. He was a foreign national whose first language was Farsi. He appeared to speak little English and did not tend to interact with other prisoners.

Mr B was reduced to basic level ten days after arriving in prison. He was moved to a single cell, had his television removed and was escorted when collecting his meals. As a result, he spent long periods of time alone in his cell with little to do.

During the following three weeks, his behaviour deteriorated and he would continuously press his cell bell and throw furniture. He also acted strangely by removing his clothes from his cupboard and then putting them back several times over.

## Lessons to be learned

**Lesson 1 - Prisons should consider the withdrawal of privileges on a case by case basis alongside the ACCT process.**

In line with the guidance in PSI 11/2011, where prisoners are downgraded to basic regime, prisons need to consider the effect this may have on the prisoner's behaviour and wellbeing. Consideration needs to be given to whether a deterioration in behaviour masks underlying distress or any mental health problems. Coordination of the decisions of IEP boards and the needs outlined in ACCTs will best support vulnerable prisoners.

**Lesson 2 - Prisons should ensure that prisoners at risk who have privileges, in particular television, removed when demoted to the basic regime, have the impact of this decision carefully assessed.**

To avoid vulnerable prisoners spending long periods of time alone in their cell with nothing to do, consideration should be given to providing a radio or other materials to occupy their time. Foreign national prisoners and those with poor English skills should be made aware of materials available in an appropriate language or at the right reading level.

**Lesson 3 - Prisons should ensure reviews of prisoners' basic status are conducted at specified times.**

Reviews of prisoners on basic regime are important in ensuring that the prisoner's behaviour and wellbeing is managed effectively. Prisons should follow the PSI 11/2011 guidance that the first review must take place within seven days and at least monthly (fourteen days for young offenders) after.

Mr B did not receive information in his own language about the basic regime and did not have the opportunity to see the foreign national orderly (a prisoner responsible for supporting foreign national prisoners). Farsi reading material was available in the prison library but depended on the prisoner asking for it. With little knowledge of the prison, it is unlikely he would have known that he could ask for these materials.

Mr B was on basic regime for nearly three weeks before his death. His IEP status was not reviewed during this time, contravening the PSI's guidance that prisoners placed on basic must have their level reviewed within seven days.

The Ombudsman raised concerns about the effect of the restrictive basic regime and noted that long periods alone in a cell are likely to exacerbate any frustrations as well as bring mental health issues to the fore. The Ombudsman recommended that provisions, such as reading materials, be offered to prisoners on basic regime to counterbalance this time alone and that reviews be conducted at the specified intervals.

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