

Parliamentary Commissioner Act 1967

**Report by the Parliamentary Ombudsman to Mr Iain Stewart MP
of an investigation into a complaint made by Mr Kevan Thakrar**

29 June 2012

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**Report by the Parliamentary Commissioner for Administration
(the Ombudsman) to**

Mr Iain Stewart MP

on the results of an investigation into a complaint made by

Mr Kevan Thakrar A4907AE
HMP Woodhill
Unit 6a Tattenhoe Street
Woodhill
Milton Keynes
MK4 4DA

The complaint

1. Mr Thakrar complained that the Prisons and Probations Ombudsman failed to carry out an adequate investigation of his complaint about an alleged assault at HMP Woodhill.

The decision

2. For reasons I will go on to explain, I uphold Mr Thakrar's complaint. I find that the Prisons and Probation Ombudsman's handling of Mr Thakrar's complaint was maladministrative. I have set out below my recommendations to remedy the injustice caused to Mr Thakrar by this maladministration.

The Parliamentary Ombudsman's jurisdiction and role

3. The *Parliamentary Commissioner Act 1967* provides that the Ombudsman's role is to investigate action taken by or on behalf of bodies within jurisdiction in the exercise of their administrative functions. Complaints are referred to the Ombudsman by a Member of the House of Commons (an MP) on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the actions taken.

4. The Ombudsman's approach when conducting an investigation is to consider whether there is evidence to show that maladministration has occurred that has led

to an injustice that has yet to be remedied. If there is an unremedied injustice, the Ombudsman will recommend that the public body in question provides the complainant with an appropriate remedy (in line with the Principles for Remedy). These recommendations may take a number of forms, such as asking the body to issue an apology, or to consider making an award for any financial loss, inconvenience or worry caused. The Ombudsman may also make recommendations that the body in question reviews its practice to ensure that similar failings do not occur again.

The basis for the Ombudsman's determination of the complaint

5. In simple terms, when determining complaints that injustice has been sustained in consequence of maladministration, the Ombudsman generally begins by comparing what actually happened with what should have happened.

6. So, in addition to establishing the facts that are relevant to the complaint, we also need to establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case, which applied at the time the events complained about occurred, and which governed the exercise of the administrative functions of those bodies whose actions are the subject of the complaint. We call this establishing the overall standard.

7. The overall standard has two components: the general standard, which is derived from general principles of good administration and, where applicable, of public law; and the specific standards, which are derived from the legal, policy and administrative framework relevant to the events in question.

8. Having established the overall standard, we then assess the facts in accordance with the standard. Specifically, we assess whether or not an act or omission on the part of the body or individual complained about constitutes a departure from the applicable standard. If so, we then assess whether, in all the circumstances, that act or omission falls so far short of the applicable standard as to constitute service failure or maladministration. The overall standard which I have applied to this investigation is set out in the *Ombudsman's Principles* below.

The general standard - the *Ombudsman's Principles*

9. The Principles of Good Administration, Principles of Good Complaint Handling and Principles for Remedy are broad statements of what the Ombudsman thinks public bodies should do to deliver good administration and customer service, and how to respond when things go wrong.¹ The same six key Principles apply to each of the three documents. These six Principles are:

- Getting it right
- Being customer focused
- Being open and accountable

¹ The *Ombudsman's Principles* are available at: www.ombudsman.org.uk.

- Acting fairly and proportionately
- Putting things right, and
- Seeking continuous improvement.

10. I have taken these Principles into account in my consideration of this complaint. Three of the Principles of Good Administration particularly relevant to this complaint are:

- *'Getting it right'* - which includes providing effective services, using appropriately trained and competent staff;
- *'Being customer focused'* - which includes informing customers of what they can expect and what the public body expects of them; dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances; and keeping to its commitments, including any published service standards; and
- *'Being open and accountable'* - which includes being open and clear about policies and procedures, and ensuring that information, and any advice provided, is clear, accurate and complete.

11. The Principle of Good Complaint Handling particularly relevant to this complaint is:

- *'Being open and accountable'* - which includes providing honest, evidence-based explanations and giving reasons for decisions.

12. The Principle for Remedy particularly relevant to this complaint is:

- *'Being customer focused'* - which includes apologising for and explaining the maladministration or poor service.

The specific standard: legal, policy and administrative framework

The Prisons and Probation Ombudsman's role

13. The Prisons and Probation Ombudsman investigates complaints from prisoners, people on probation, and immigration detainees held at immigration removal centres.

14. In the case of complaints from prisoners, complainants are required to have exhausted the internal complaints procedure of the prison concerned before the Prisons and Probation Ombudsman can investigate. To be eligible for investigation, complaints must also be within the remit of the Prisons and Probation Ombudsman and be made within three months of receiving a final reply from the prison.

15. When a complaint is received by the Prisons and Probation Ombudsman, it is assessed to determine whether it is eligible for investigation. A letter is sent to the complainant to let them know that their complaint has been accepted for investigation. And, if the complaint has not been accepted, a letter is sent to the complainant explaining why this is the case. For cases accepted for investigation, the complaint is then allocated to an investigator.

16. At the time of the events complained about, the Prisons and Probation Ombudsman's service standards² for dealing with complaints were:

- determine the eligibility of a complaint within 10 working days of receipt (in 80 per cent of cases); and
- provide a substantive reply to a complaint within 12 weeks of accepting the complaint as eligible (in 60 per cent of cases).

17. The Prisons and Probation Ombudsman's *Terms of Reference* are the 'rules that describe and govern' their work. Paragraph 12 states that: '*the Ombudsman will be able to investigate: decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of prisoners in custody by prison staff*'. Paragraph 13 states that the Prisons and Probation Ombudsman: '*will be able to consider the merits of the matters complained of as well as the procedures involved*'.

18. The *Terms of Reference* sets out at paragraph 15 that the Prisons and Probation Ombudsman may decide not to accept a complaint otherwise eligible for investigation, or not to continue any investigation, if it is not considered that a worthwhile outcome can be achieved or the complaint raises no substantial issues. Paragraph 19 states that if a complaint is considered ineligible, the Prisons and Probation Ombudsman would inform the complainant and explain the reasons, normally in writing.

Incentives and Earned Privileges Scheme

19. The Incentives and Earned Privileges Scheme (the IEP Scheme) complements the prison discipline system by rewarding good behaviour. At the time of the events complained about, the national aims of the IEP Scheme³ were to:

- encourage responsible behaviour by prisoners;
- encourage effort and achievement in work and other constructive activity by prisoners;
- encourage sentenced prisoners to engage in OASys (Offender Assessment and Sentence Management) and sentence planning, and benefit from activities designed to reduce reoffending; and

² Taken from the Prisons and Probation Service Ombudsman's *Annual Report 2009-2010*.

³ As set out in *Prison Service Order 4000 - Incentives and Earned Privileges*, effective 18 October 2006.

- create a more disciplined, better-controlled and safer environment for prisoners and staff.

20. The specifics of the IEP Scheme can vary between prisons but each scheme has at least three tiers: basic, standard and enhanced. Prisoners move between tiers according to their behaviour.

21. One of the requirements of the IEP Scheme is that: *'there must be a system in place to ensure prisoners are given written warnings if their behaviour is causing concern and does not meet the set criteria'*.

The investigation

22. In the course of the investigation we have made enquiries of the Prisons and Probation Ombudsman and have considered their responses and the relevant files. Whilst I have not included in this report all of the information we have seen regarding Mr Thakrar's complaint, I am satisfied that nothing of significance to the complaint or my findings has been omitted.

Background

23. At the time of the events in question Mr Thakrar was detained in HMP Woodhill. (Mr Thakrar moved to Whitemoor and then Frankland in 2009, and spent a brief period at Wakefield in 2010 before returning to Woodhill later that year.) He said he was unhappy with the treatment he had been receiving from his senior officer and that he had made a complaint to the prison that he was being bullied. Mr Thakrar says that on 31 May 2008 several officers entered his cell, apparently to issue him with a warning under the prison's IEP Scheme (paragraphs 19 to 21). He said that he was assaulted by the officers and sustained several injuries as a result. According to the officers' account of the alleged incident, Mr Thakrar was restrained because he was behaving aggressively. Mr Thakrar was taken to the segregation unit where he was noted to have minor injuries.

24. Mr Thakrar reported the alleged assault to Thames Valley Police. They said they had no evidence to suggest that Mr Thakrar had been assaulted by prison officers and decided not to launch an investigation. Mr Thakrar also complained to the prison about the alleged assault. Commenting on a draft of this report, Mr Thakrar told us that he made a number of oral complaints to a nurse on the day of the alleged assault and in the following days. He said that he made his first written complaint to the Prison Governor at an adjudication hearing on 2 June 2008. We have also seen a complaint about the incident from Mr Thakrar on a 'COMP 2 form'.⁴ (The date and the details about his complaint are illegible on the copy of the

⁴ COMP 2 forms are used for 'confidential access' complaints, meaning that the prisoner has complained on a confidential basis directly to the prison governor, area manager, or chairman of the Independent Monitoring Board. The members of the Independent Monitoring Board are independent. Their role is to monitor the day-to-day life in their local prison and ensure that proper standards of care and decency are maintained.

form I have seen, though the 'complaint box' starts with 'on Saturday 31st May whilst I was on the house unit'. The prison has told us that it cannot locate the original copy and believes it has been destroyed as it is over three years old.)

25. On 6 June 2008 Mr Thakrar's then solicitors wrote to the prison governor to say that Mr Thakrar had brought the alleged assault to the attention of the prison and noted that:

'as yet nothing has been done in respect of carrying out an investigation in to the alleged assault. We would appreciate that you turn your urgent attention to this matter and ensure that it is investigated as fully and expeditiously as possible.'

26. On 13 June the Independent Monitoring Board (footnote 4) acknowledged Mr Thakrar's complaint. Two weeks later the prison's deputy governor responded to Mr Thakrar's solicitors and said that she had asked two members of prison staff to investigate the 'allegation of assault'.

27. Mr Thakrar submitted, via his solicitor a complaint to the Prisons and Probation Ombudsman, which they received on 26 September 2008. He said that he had been 'attacked by Prison Officers on 31 May 2008' and that the 'prison would not investigate [his] complaint' and were ignoring his solicitors' correspondence. He complained, among other things, that his solicitors had contacted the prison to try to establish the progress of his complaint about the alleged assault, and were told it would be concluded on 26 August 2008. However, he said that he had not received an outcome, despite his solicitors chasing the prison for a decision on several occasions. In the box which asked 'what do you think should be done to put things right?' Mr Thakrar wrote, amongst other things, 'the officers who attacked me to be charged'.

28. In their comments on a draft of this report, the Prisons and Probation Ombudsman said that they were:

'prevented from investigating the earlier complaint of 26 September 2008 because [Mr Thakrar] had not completed all the stages of the internal complaints procedure. We had informed him of this and set out for him the procedures he would need to follow before the PPO [Prisons and Probation Ombudsman] could investigate his complaint.'

(Whilst I have seen no documentary evidence of that, Mr Thakrar has confirmed to us that the Prisons and Probation Ombudsman told him that his complaint was premature. However, he disputes that the Prisons and Probation Ombudsman explained to him what he needed to do to pursue the complaint with the prison, Mr Thakrar says all he was told was that 'the complaint is not eligible for investigation'.)

29. Mr Thakrar was in contact with the prison in late 2008 about the alleged assault and related complaints about being bullied. Mr Thakrar complained to the prison in January and appealed in February 2009 about the time taken to complete its promised investigation. In the January complaint Mr Thakrar requested that *'the investigation [be] taken seriously and to be kept updated with its progress'*. Mr Thakrar's solicitors also complained to the prison about the delay in April and May.

30. On 5 May the deputy governor of the prison wrote to Mr Thakrar's solicitors to explain that she had:

'received the investigation reporting to the allegations made by your client, however, as I explained I am not content that all of my questions have been answered. I have therefore asked [named person] to review the investigation.'

Key events

31. In the meantime, in May 2009 Mr Thakrar submitted multiple complaints to the Prisons and Probation Ombudsman. Among other things, he complained about the alleged assault, reminding them that he had complained about this some months previously (26 September 2008) and said that they had *'failed to do anything after being lied to by Woodhill who claimed I had never made any complaint'*. In this letter Mr Thakrar explained that the prison *'have claimed to be conducting an investigation into how I received my serious injuries on a Saturday night after bang up for months now, but have failed to actually do anything even ignoring letters from my solicitors'*. He also outlined difficulties he was still facing at the prison, which he said stemmed from this.

32. On 10 June 2009 the deputy governor of the prison wrote to Mr Thakrar's then solicitors and explained to them that she had *'again reviewed the evidence and as there is no corroborating evidence to support the allegations made by your client, Mr Thakrar, I am left with no option but to close the investigation'*. The deputy governor also said that some members of staff had been given advice and guidance about the timing of the IEP warning.

33. The Prisons and Probation Ombudsman wrote to Mr Thakrar on 23 June, to say that he needed to complete the prison's internal complaints process before they could look into his complaints (paragraph 14), and to advise him on how to complain. That letter referred to case number 35908/2009. In it, the Prisons and Probation Ombudsman said that they were *'still making enquiries regarding your complaint of an alleged assault on you which was to be investigated'*, and that they would contact him when they had further information. Mr Thakrar replied a few days later, to confirm that he had already complained directly to the prison about the alleged assault. He reiterated his complaint as *'directly against Woodhill officers attacking me in my cell causing severe injuries'*, and explained that he was *'under the impression that [the Prisons and Probation Ombudsman] could investigate abuse of a*

prisoner without these forms being submitted'. He asked the Prisons and Probation Ombudsman whether they could investigate.

34. On 21 July the prison wrote to the Prisons and Probation Ombudsman, in response to a letter of 6 July (which we have not seen) about the investigation into the alleged assault. The prison said that *'the investigation has been completed and the report given to the commissioning authority. I can inform you there was no corroborating evidence to support Mr Thakrar's allegation of assault'*.

35. On 31 July 2009 the Prisons and Probation Ombudsman wrote to Mr Thakrar, and said: *'you have confirmed that you have received the outcome into the investigation of you being assaulted at Woodhill and you remain unhappy. I have accepted this case for investigation under case number: 36928'* (my emphasis). This letter also referred to a number of other outstanding and unrelated complaints made by Mr Thakrar, on which they had yet to decide whether they could investigate.

36. On 5 August 2009 Mr Thakrar's solicitors wrote to the deputy governor of the prison. They said:

'in respect of you closing the investigation, we trust that a full and final report has been compiled, including details of the initial investigation, the re-investigation which took place in December 2008 and the initial stages of the review carried out by [named person].'

37. On 6 August 2009 the deputy governor of the prison wrote to Mr Thakrar's solicitors. She said:

'I had thought an independent review of the investigation may provide you and your client some reassurance that the Prison had fully investigated your client's allegations ... I have no other mechanism of "instructing" an independent body to review the case, which is a matter for you and your client. I am aware however your client has since written to the Prisons and Probation Ombudsman about the matter and that is a course of action available to him and one he may choose to pursue.'

38. On 10 August 2009 one of the Prisons and Probation Ombudsman investigators (the investigator) wrote to Mr Thakrar and told him his complaints had been allocated to her. She confirmed the scope of her investigation and said *'as I understand it your complaints are about being assaulted'*. In a letter the following week, the investigator said it was likely to be some weeks before she could start her investigation.

39. On 13 August 2009 Mr Thakrar wrote to the investigator to thank her for her letter of 10 August accepting a number of his complaints for investigation. In this letter, he specifically referred to *'case 36928 assault by Woodhill staff'* and said: *'I*

am pleased to see that investigations will finally be started and hope you can achieve an outcome I couldn't alone'.

40. On 18 August 2009, in a note on their file for complaints numbered 36928 to 36933, the investigator made a note of a telephone conversation with Mr Thakrar. She said that he *'wanted to know which one of his complaints I would be dealing with first. I explained that I would deal with them all at the same time'*. She also noted that, after dealing with some other issues:

'Mr Thakrar started to explain some issues about getting some CCTV footage. I suggested it was best for him not to go into any details about his complaints as yet. I added that he will have an opportunity to discuss this when I start to look at the cases in more detail.'

41. Mr Thakrar telephoned the investigator on 27 November 2009 to ask for an update. The investigator said she would be starting her investigation that day and did so later that day. She contacted the prison, requesting all the paperwork *'in relation to Mr Thakrar's complaint about being assaulted'*.

42. On 1 December 2009 the investigator left another voicemail message with the prison asking for *'all paperwork in relation to [Mr Thakrar's] complaint about being assaulted'*. On the same day the investigator emailed the prison and, amongst other complaints, explained that this particular request *'relates to a complaint about an assault which [Mr Thakrar] says occurred on 31/5/08'*. The investigator asked the prison to provide Mr Thakrar's complaint forms and all its responses about the alleged assault, Mr Thakrar's statement, the 'Injury to Prisoner' form, witness statements, and a copy of the report completed by the prison investigating officer, as well as any documents used as part of the investigation. In that same email the investigator later described the complaint as being about *'the delay in receiving the outcome of the investigation'*. On 15 December 2009 the investigator wrote to Mr Thakrar and asked him to provide his written consent to information about his healthcare being released in connection with his *'complaint about being assaulted'*. The investigator made no reference in that letter to the issue of delay.

43. On 7 January 2010 the prison provided the requested documents. And, the following week (12 January), the investigator spoke to Mr Thakrar about his complaint about the alleged assault. In her notes of that conversation the investigator said she had wanted to clarify what Mr Thakrar wanted the Prisons and Probation Ombudsman to investigate, because his correspondence *'indicated that his complaint related to Woodhill not doing anything following the assault'*. She recorded that Mr Thakrar:

'said that he wanted there to be an investigation into how he sustained his injuries. He said that Woodhill do not acknowledge that anything illegal had taken place. He confirmed that he had received some information about the outcome of the investigation [from the prison]. However this said that Mr Thakrar assaulted staff.'

(The investigator's notes do not include any reference to her explaining to Mr Thakrar that the Prisons and Probation Ombudsman would only be looking at the delay in the prison's investigation of his alleged assault.)

44. In March 2010 the investigator emailed, and spoke to, the prison's deputy governor about the alleged assault complaint. She described her enquires as the '*delay in Woodhill investigating [Mr Thakrar's] complaint that he had been assaulted by staff on 31 May 2008*'. The deputy governor outlined the reasons behind the delay in the prison's investigation being completed. The deputy governor noted '*the investigation was challenging and they were unable to really get to the bottom of the matter*'.

45. On 1 April 2010 the investigator spoke to Mr Thakrar's previous solicitors, to ask them to provide copies of certain items of correspondence between Mr Thakrar and the prison. (Mr Thakrar has said he approved this request and his solicitors subsequently forwarded the requested information on 7 May 2010). On 6 April the investigator wrote to Mr Thakrar at HMP Wakefield (where he had been temporarily moved - paragraph 23) to ask for his written consent for his solicitors to release this information. In this letter she outlined Mr Thakrar's complaint as being about '*the delay in HMP Woodhill investigating [his] report that [he] had been assaulted and that they had ignored correspondence from [his] solicitors*'. (Mr Thakrar has told us that he did not receive this letter. By the time it was sent to him, he had been moved back to HMP Woodhill.)

46. On 22 April the Prisons and Probation Ombudsman sent Mr Thakrar the report of their investigation into complaint number 36928/2009. In their covering letter, they said Mr Thakrar had complained to the Prisons and Probation Ombudsman that the prison did not investigate his complaint that he had been attacked by prison staff and that neither he nor his solicitors had received details about the outcome, or had any feedback. They also said that Mr Thakrar '*had subsequently asked [named investigator], the Ombudsman's investigator to investigate [his] complaint that [he] had been assaulted*'. They said:

'the matters [Mr Thakrar] asked the Ombudsman to investigate were reviewed together with the details of the complaint that [he] had submitted to Woodhill relating to the delay in the prison completing the investigation into [his] assault complaint.'

The Prisons and Probation Ombudsman said the focus of their investigation had been, first of all, to establish if there was a delay in the prison investigating Mr Thakrar's complaint and whether prison service policy was followed and second, to determine if the prison responded to Mr Thakrar's solicitors' letters. In their consideration, the Prisons and Probation Ombudsman acknowledged that Mr Thakrar had asked for the alleged assault to be investigated, but said '*as this was not the substance of his complaint to Woodhill this matter [had] not been investigated*'. The Prisons and Probation Ombudsman partly upheld Mr Thakrar's complaint, and found that the

prison's response to his complaint about the alleged assault had been unreasonably delayed.

47. On 12 September 2010 Mr Thakrar wrote to his new representatives to confirm that a copy of the Prisons and Probation Ombudsman report had been forwarded to them. He explained that *'the PPO [Prisons and Probation Ombudsman] investigation report you have is currently still under further investigation after I requested its findings be reviewed. I am told the Deputy Ombudsman [named officer] is dealing with this'*. (We have not seen any other evidence of a request for a review.) Mr Thakrar reiterated this point in a further letter to his new representatives on 9 October.

48. In October 2010 Mr Thakrar raised another complaint with the Prisons and Probation Ombudsman. This was about the *'corruption'* of prison staff, and he explained that *'this matter overlaps with previous complaints I have made about the assault I sustained on 31/05/08'*. Mr Thakrar suggested to the Prisons and Probation Ombudsman that *'it may be possible to include this in ... the review of the findings currently being completed by [named Prisons and Probation Ombudsman officer] into the assault'*. The Prisons and Probation Ombudsman do not appear to have responded to this.

49. In December 2010 Mr Thakrar wrote to the Prisons and Probation Ombudsman to ask why they had not yet reviewed the findings of their investigation of his complaint about the alleged assault. The Prisons and Probation Ombudsman responded in January 2011, acknowledging that Mr Thakrar had asked them to reconsider his complaint about *'an assault by prison officers on 31 May 2008'*. They said that they had already conducted an investigation into that complaint under reference 36928, which was now finished and they could not progress the matter any further. In his response, Mr Thakrar asked why it had taken two months for them to reply to his request. He also asked why the outcome of the investigation had not been reviewed despite his request for this to be done. Mr Thakrar said that since the alleged assault he had suffered from anxiety, panic attacks, flashbacks and pain, and that he was struggling to live with the impact it had had on him. He said that he had attempted suicide three times since and would *'eventually ... be successful'*.

50. On 10 February the Prisons and Probation Ombudsman said that, having retrieved Mr Thakrar's file from storage, they could find no evidence of him requesting a review. They said they were sorry they were unable to respond to his concerns about their investigation, but noted he had since put his complaint to this Office, and they had forwarded us their files.

The Prison and Probation Ombudsman's comments

51. When invited to comment on a draft version of this report, the Prisons and Probation Ombudsman told us that Mr Thakrar had *'always been quick to let us know if he thinks we have got something wrong'*. They said that in July 2009 they were looking at 14 of Mr Thakrar's complaints, and that since then he had made

180 complaints to them. They said that many of Mr Thakrar's letters to them were lengthy and raised multiple complaints, in addition to which he regularly raised additional matters which he may or may not have complained to the prison about. They said that *'this can make it very difficult to determine whether he has completed all the internal stages in relation to a specific complaint'*.

52. The Prisons and Probation Ombudsman also told us that:

'If Mr Thakrar was dissatisfied with the outcome of [the prison investigation] he needed to appeal to Woodhill and give the prison the opportunity to respond and address his concerns. Until he had done that, he had not completed the internal complaints process and it was not, therefore, within the remit of this office to investigate.'

53. The Prisons and Probation Ombudsman explained that the number of eligible complaints received by them rose by 10 per cent in 2008 to 2009 and by a further 27 per cent in 2009 to 2010, without a corresponding increase in resources. They said that, as a result, they were unable to meet their published service standards in 2009 to 2010.

54. The Prisons and Probation Ombudsman accepted that:

'some of the information given to Mr Thakrar, particularly early on, was ambiguous and may have suggested to him that we were investigating the assault itself, when that was not the case ... however, we consider that any potential misunderstanding was clarified by 12 January 2010.'

55. The Prisons and Probation Ombudsman himself has told us that his Office has implemented a programme of change to improve and streamline casework processes and investigations. They are keen to improve their practice and apply learning from any weaknesses identified.

Mr Thakrar's comments

Scope of complaint 36928

56. Mr Thakrar has told us that until he read the Prisons and Probation Ombudsman's report, he believed they were investigating both the alleged assault and the delay in the prison investigating the alleged assault. He said that had he known the Prisons and Probation Ombudsman were not planning to investigate this aspect of his complaint, he would have followed it up at a much earlier stage.

12 January 2010 conversation

57. Mr Thakrar said he remembered this conversation, and that the investigator had asked him to clarify what he wanted to be investigated - the delay or the alleged assault, or both. Mr Thakrar said he told her he wanted both investigated.

She said 'OK' and then the conversation went on to discuss a number of his other complaints.

6 April 2010 letter

58. Mr Thakrar said he did not receive the 6 April 2010 letter. He said he had been in HMP Wakefield from 13 to 26 March 2010, and was moved back to HMP Woodhill on 26 March. He said he had received correspondence about his other complaints from the Prisons and Probation Ombudsman at Woodhill during this period, so they were obviously aware that he had moved back there.

22 April 2010 - report

59. Mr Thakrar said that he had been shocked when he read the Prisons and Probation Ombudsman's report and learnt that they were not investigating his complaint about the alleged assault. He said he read it very carefully and made extensive comments on the report because it had inaccuracies. He reiterated that this was the first time he had been made aware that the Prisons and Probation Ombudsman were not investigating the alleged assault. Mr Thakrar maintains that his complaint '*has ALWAYS been about being assaulted*'. He said that he wrote to the assistant ombudsman who had signed the report to request a review of the investigation a few days after he received it, and then followed this up with a telephone call to her about 14 days later. He said that during that conversation, the assistant ombudsman confirmed she had received his letter and explained that as he was requesting a review it was being passed to another assistant ombudsman who had not been involved in the initial investigation. He said that after this he called the office regularly to get an update on the review and each time had to leave a message - but his calls were never returned.

60. Mr Thakrar said that he understood it would be difficult to investigate the alleged assault now and he accepted that the outcome could be inconclusive. Despite this, he still wanted the alleged assault to be investigated. Mr Thakrar identified some evidence sources which he felt could assist an investigation:

- a) his medical records from the prison;
- b) the signed statement about his account of the assault during a meeting with his solicitor on 2 June 2008;
- c) interviews with prisoners who were on the wing at the time of the alleged assault, including his brother. Mr Thakrar noted that none of these prisoners has been interviewed about the alleged assault.

61. Mr Thakrar said that he suffers from post traumatic stress disorder as a result of the alleged assault and would like the prison officers to be disciplined for their actions. He said he has to undergo psychotherapy and is kept in a high-security unit in the prison as a result of his post traumatic stress disorder, which he said was attributable to prison staff and he did not consider this fair.

62. Commenting on a draft of this report, Mr Thakrar said that the prison have consistently refused to give him a copy of the report of their investigation into his allegation of assault. He says that it was '*impossible for [him] to ask them to review their investigation*'.

Findings

Maladministration

Complaint about the investigation of the alleged assault

63. Mr Thakrar's complaint relates to the Prisons and Probation Ombudsman's handling of his complaint about an assault he said he suffered at the prison. Mr Thakrar initially put this complaint to the police, and subsequently to the prison. Although we have been unable to obtain a clear copy of his initial written complaint to the prison, it is obvious from subsequent correspondence that at the outset Mr Thakrar complained specifically about the alleged assault, and that the prison said it would investigate that allegation (paragraph 24).

64. Mr Thakrar complained to the Prisons and Probation Ombudsman about the alleged assault before he had appealed the outcome of the prison's investigation. He says that this is because the prison were refusing to investigate his allegation of assault. However, that meant that he had not exhausted the local complaints procedure, which the Prisons and Probation Ombudsman would have expected him to do before they would begin an investigation. I am not persuaded that the Prisons and Probation Ombudsman made that sufficiently clear to Mr Thakrar; and I can find no evidence that the Prisons and Probation Ombudsman actively considered whether that complaint was ineligible under their *Terms of Reference* (paragraph 17). Nor is there any documentary evidence that the assessor or the investigator explained to Mr Thakrar that they could not look into his complaint about the alleged assault because it was premature. That was a failure to 'get it right'.

65. The Prisons and Probation Ombudsman did write to Mr Thakrar on 23 June 2009 to tell him that some of his complaints were premature. The letter did not spell out which complaints they were referring to, and the letter was sent under reference number 35908/2009. That was not the reference number that the Prisons and Probation Ombudsman assigned to his complaint about the alleged assault. Given that Mr Thakrar had made a number of complaints, I can see why they wrote to Mr Thakrar in those terms, but I cannot agree that that letter made clear that the alleged assault was not to be investigated.

66. The letter of 23 June did say that the Prisons and Probation Ombudsman was still making enquiries about Mr Thakrar's complaint about the alleged assault, and that they would contact him again about that when they had more information. And that is what they subsequently did when they wrote to him on 31 July 2009. In the meantime, Mr Thakrar had told the Prisons and Probation Ombudsman that he was unhappy with the prison's decision on this matter. In my view, it was clear that he

wished the Prisons and Probation Ombudsman to look into this matter, and they did not tell him that they were not going to do so.

67. The Prisons and Probation Ombudsman's letter of 31 July 2009 was unequivocal: *'you have confirmed that you have received the outcome into the investigation of you being assaulted at Woodhill and you remain unhappy. I have accepted this case for investigation under case number: 36928'*. This letter did not make it clear that Mr Thakrar was required to appeal the prison's decision before they would look at the alleged assault. Nor did it specify that the scope of their investigation was to be limited to the delay by the prison in carrying out its own investigation. I do not see how Mr Thakrar could reasonably have known from this letter that the Prisons and Probation Ombudsman did not intend to investigate whether or not he had been assaulted, nor even consider the robustness of the prison's own conclusion about that. Nor am I persuaded that the Prisons and Probation Ombudsman had, by then, taken an explicit decision to limit the scope of the investigation to the question of delay. Mr Thakrar's letter to the investigator in mid-August 2009 clearly indicated that he thought the Prisons and Probation Ombudsman were going to undertake an investigation which would *'achieve an outcome I couldn't alone'*. And that belief was reinforced by further correspondence to him from the investigator in August which referred to his *'complaint of being assaulted'*.

68. The investigator gathered evidence for her investigation, including information which was relevant to the substance of Mr Thakrar's complaint about the alleged assault (for example, the record of his injuries and the witness statements). I do not see that such evidence was relevant to an investigation into the question of delay alone. The investigator's request for Mr Thakrar's consent to access his healthcare records (paragraph 41) can only have reinforced Mr Thakrar's belief that the Prisons and Probation Ombudsman were investigating the alleged assault.

69. The investigator gave Mr Thakrar every reason to think this is what she was investigating, particularly during her telephone conversation with him on 12 January 2010 (paragraph 42) when she sought to clarify his complaint. The investigator had a clear opportunity during this conversation to explain to Mr Thakrar if she did not intend to consider this issue. Either the investigator did not clarify with Mr Thakrar that she was investigating only delay, or her notes of the conversation were inadequate and she failed to record the conversation in sufficient detail. Either way, the investigator was not *'open and accountable'*. She did not create and maintain reliable and useable records as evidence of her activities. On balance, I think the most likely explanation is that the investigator did not tell Mr Thakrar that she had decided to refine and narrow the scope of her investigation; that is consistent with Mr Thakrar's account of the conversation and consistent with her note of the conversation. It is also consistent with the Prisons and Probation Ombudsman's assertion that Mr Thakrar is generally quick to alert them if he thinks they have done something wrong (paragraph 50). Before reaching that conclusion, I considered carefully whether it was significant that Mr Thakrar did not challenge the Prisons and Probation Ombudsman's letter of 6 April 2010. I do not think it was.

Mr Thakrar has told me he did not receive that letter and I have no reason to doubt that, given that it was sent to a prison where he was no longer being held.

70. It was only after seeing a draft of this report that the Prisons and Probation Ombudsman accepted that their early correspondence with Mr Thakrar may have been *'ambiguous'* and led him to believe that they were investigating the alleged assault. This admission did not go far enough, in my opinion. From the evidence we have seen, Mr Thakrar was, albeit unintentionally, misled about the nature of the Prisons and Probation Ombudsman's investigation. This was not good enough. For the reasons I have identified above, I consider the Prisons and Probation Ombudsman's actions were not in line with the Ombudsman's Principles of *'Being customer focused'*, *'Being open and accountable'* or *'Getting it right'* (paragraph 10). However unintentional, these actions have served to confuse and mislead Mr Thakrar.

Request for reconsideration of the Prisons and Probation Ombudsman's decision

71. I turn now to Mr Thakrar's request for the Prisons and Probation Ombudsman to reconsider their findings on his complaint about the alleged assault. The investigation report was issued in April 2010. Mr Thakrar's letters to his representatives in September and October 2010, and his letter to the Prisons and Probation Ombudsman of 9 October 2010, demonstrate that he was under the impression that the report's findings were under review. Whilst I have seen no physical evidence of when Mr Thakrar initially asked the Prisons and Probation Ombudsman to review these findings, Mr Thakrar's account to me of his request for a review was compelling. And it is clear from his letters to the Prisons and Probation Ombudsman in October and again December 2010 that he was seeking a review. But it was not until January 2011 that the Prisons and Probation Ombudsman responded to Mr Thakrar and declined that request.

72. The Prisons and Probation Ombudsman apologised to Mr Thakrar for the delay in responding to him and said that, as they had already conducted an investigation into his *'complaint about an assault by prison officers'*, the matter was concluded and could not be progressed any further. This response is at odds with the investigation report where the Prisons and Probation Ombudsman specifically excluded the complaint about the alleged assault itself. I consider this explanation was unreasonable and contradictory. Either the Prisons and Probation Ombudsman had not carried out an investigation into Mr Thakrar's complaint about the alleged assault and could not review their findings because there were none; or they had carried out an investigation into the alleged assault and did not consider there was any basis to review or reconsider their findings. The answer says neither of those things and appears to make no sense in the light of the facts. I consider the Prisons and Probation Ombudsman's response on this point to be a failure to be *'open and accountable'* (paragraph 10).

Time taken to investigate the complaint

73. I have also considered Mr Thakrar's complaint about delay by the Prisons and Probation Ombudsman. Mr Thakrar initially complained about the alleged assault on 26 September 2008. I have already commented on the explanations that the Prisons and Probation Ombudsman initially gave Mr Thakrar about the need to put his complaints to the prison first. Whilst I do not think they made their position sufficiently clear, I do accept that they could not make any progress on his complaint about the alleged assault until the prison had completed its investigation into the complaint he had made to it. I am of course mindful of Mr Thakrar's point that he felt compelled to complain to the Prisons and Probation Ombudsman as the prison did not appear to be investigating his allegation of assault.

74. Mr Thakrar complained again to the Prisons and Probation Ombudsman on 6 May 2009. In that letter he clearly stated '*my complaint is directly against Woodhill officers attacking me in my cell causing severe injuries*'. The complaint was not accepted until 31 July, and that delay appears to be attributable to the number, and overlapping nature, of the complaints Mr Thakrar made. While that would not necessarily have prevented the Prisons and Probation Ombudsman from deciding whether to begin an investigation within their normal service standard, I do not think that delay was so long as to be unreasonable. However, after that I have seen no evidence of any substantive work on this complaint, other than some initial communication in August from the investigator, introducing herself and alerting Mr Thakrar that there may be a delay in starting the investigation. It was not until the investigator contacted the prison for information on 27 November - some 17 weeks later and well outside the service standard for completing 60 per cent of cases within 12 weeks - that any substantive work was done. And, coincidentally perhaps, this action was taken only after contact from Mr Thakrar asking for an update on his complaint. I accept that the Prisons and Probation Ombudsman had a high volume of work at that time (paragraph 52) and that they cannot guarantee to deal with every complaint within their service standard. I can also see that the number of complaints from Mr Thakrar could have led to some confusion, and that his complaints may have been more complex than many that they receive. But at the very least, the Prisons and Probation Ombudsman should have kept Mr Thakrar regularly updated about this complaint. After all, Mr Thakrar said in his 6 May letter that the stress from his experiences at the prison, including the alleged assault, had '*made [him] suicidal*', and he asked them to '*please get back to me as soon as possible and keep me updated on the progress so I can feel safe that someone is helping*'. While I accept that Mr Thakrar had a number of complaints with the Prisons and Probation Ombudsman at that time, and that they had to balance his needs with those of other complainants, their failing to update him was a failure to be 'customer focused'.

75. The investigator appears to have maintained regular contact with Mr Thakrar between January and April 2010 about a number of his complaints. And she persisted in her attempts to communicate with him in writing even after he refused to take her telephone calls in February 2010. However, I can see no evidence that she

updated him specifically about the progress of the complaint about the alleged assault during that period. It was, of course, open to Mr Thakrar to ask about this complaint when he was discussing his other complaints with the investigator, but I do not think that completely removed the responsibility from the investigator to update him. And as we have discovered, it was not until 6 April 2010 - two weeks before the final report was issued, and 11 months after he complained for a second time about the alleged assault - that the investigator put in writing that the complaint she was investigating related to 'delay', rather than to the alleged assault itself.

76. Overall, it took from 31 July 2009 to 22 April 2010 for the investigation into Mr Thakrar's complaint to be completed, and when it was, the investigation did not focus on the issue that Mr Thakrar had been led to believe it would be. While that might not have been unreasonable for a complicated investigation, it seems a very long time for Mr Thakrar to have to wait for a report that did not cover the central matter that he had firmly believed was being investigated. I consider that this shows a lack of 'customer focus' and a clear failure to 'get it right' (paragraph 10).

77. I have identified numerous shortcomings in the Prisons and Probation Ombudsman's handling of Mr Thakrar's complaint. I consider that, collectively, those shortcomings fall so far short of an acceptable standard as to amount to maladministration.

Injustice

78. I consider that the failings I have identified in the Prisons and Probation Ombudsman's investigation of Mr Thakrar's complaint have caused Mr Thakrar an injustice. Mr Thakrar has been given ambiguous and misleading information about the complaint he asked to be investigated, and has not received an investigation into the alleged assault itself, contrary to what he was led to believe. Mr Thakrar was, as a result, denied the opportunity to appeal the outcome of the prison's investigation of his complaint about the alleged assault. If he had been made aware that he needed to do that at the outset, I can see no reason why he would not have done so. That would have prevented some of the frustration and distress that he has experienced.

79. Mr Thakrar's request for a review was also declined for reasons that appear irrational. All of this means that Mr Thakrar is left with an understandable sense of grievance: he did not have an investigation of his complaint by a body independent of HMP Woodhill and that is a clear injustice to him, whatever the outcome of such an investigation might have been.

Recommendations

80. I recommend that the Prisons and Probation Ombudsman write to Mr Thakrar within four weeks of the date of this report, and apologise to him for the way they handled his complaint, and for the misleading and contradictory information they provided him about the scope of their investigation.

81. I am acutely aware of how important it is for Mr Thakrar that the alleged assault be investigated. And I have considered very carefully whether or not that would be an appropriate outcome to my investigation. The passage of time, the likelihood that the prison officers could now recollect events in any detail, together with the lack of physical and CCTV evidence, means that any investigation could be inconclusive. (Even a more timely investigation might have been inconclusive. I understand that there is no dispute that Mr Thakrar was subjected to 'control and restraint' techniques by prison staff. The question of whether he was assaulted turns on whether the force used was justifiable.) Mr Thakrar understands this but remains very keen for an investigation to be undertaken because he believes that the post traumatic stress disorder (paragraph 60) he says he is suffering from was caused by the incident.

82. For these reasons I recommend that the Prisons and Probation Ombudsman investigate the alleged assault, as they initially led Mr Thakrar to believe they would do. I expect them to investigate this on the same basis as they would have done in 2009 when the issue was complained about. Mr Thakrar has identified possible evidence-gathering opportunities which might be useful in the investigation. I recommend that the scope of the investigation, and a timescale for its completion, is agreed with Mr Thakrar within four weeks of the date of issue of this report.

Conclusion

83. This report on the results of the investigation of Mr Thakrar's complaint has been approved and signed by me, acting within the power of the Ombudsman delegated to me under section 3(2) of the *Parliamentary Commissioner Act 1967*.

Gwen Harrison

Gwen Harrison
Director of Parliamentary Investigations

29 June 2012