

# A REPORT BY THE AUDITOR GENERAL FOR SCOTLAND UNDER SECTION 22(3) OF THE PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

## THE 2005/06 AUDIT OF THE SCOTTISH PRISON SERVICE

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1. I have received the audited accounts of the Scottish Prison Service for the year ended 31 March 2006. The auditor has given a clean audit certificate on the accounts. Following my report on the accounts of the Scottish Prison Service for the years ended 31 March 2004 and 31 March 2005, I have decided to issue a further report to update Parliament on developments on prison conditions and related compensation claims.
2. I submit these accounts and the auditor's report in terms of sub-section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report which I have prepared under sub-section 22(3) of the Act.
3. As I previously reported, in April 2004 Lord Bonomy issued his judgement in the case of Robert Napier v the Scottish Ministers. The case involved a challenge by a serving prisoner over the conditions in which he was held in HMP Barlinnie in 2001. Lord Bonomy found that the Scottish Ministers had acted in a manner incompatible with Article 3 of the European Convention on Human Rights and that Mr Napier had suffered loss, injury and damage.
4. Lord Bonomy's judgement described prison conditions in terms of the "triple vices" of slopping-out, overcrowding and poor regime. He awarded damages of £2,000 plus interest because, as a result of having spent long periods sharing a cell in which he had to slop-out, Mr Napier's eczema was exacerbated. The judgement was upheld on appeal.

### **Movements in provisions and contingent liabilities**

5. The 2004/05 accounts of the Scottish Prison Service included a provision for £49 million being its estimate, in the light of the court's judgement, of its possible liability for compensation and other related costs arising from cases similar to that of Napier.<sup>1</sup> A contingent liability of £24 million was also recorded for other cases that may arise in connection with potential breaches of the European Convention of Human Rights. The 2005/06 accounts record an increase in the provision (including related costs) to £58 million and an increase in the contingent liability to £27 million.

### **Further Developments**

6. My report on the 2004/05 accounts noted that the Scottish Ministers had proposed a scheme for settling out of court personal injury cases, such as Mr Napier's, which have been caused or exacerbated by slopping out. This alternative dispute resolution scheme has now been established and had received 220 applications by the end of March 2006. This scheme is designed to provide a faster and more cost effective alternative to taking actions through the courts.

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<sup>1</sup> The 2004/05 report referred to a sum of £44m, which related to the possible liability for compensation, excluding other related costs. The £49m figure quoted above includes related costs to allow comparison with the figures available for 2005/06.

7. As at March 2006 there were 1009 actions raised in the Sheriff Court and 172 cases in the Court of Session in relation to alleged breaches of the European Convention of Human Rights. The majority of actions raised do not involve claims of personal injury and are not covered by the Napier judgement. The Scottish Prison Service has been keen to find an effective and efficient way of dealing with the large volume of litigation in this area. The majority of cases have been suspended pending the outcome of a number of "illustrative cases" through the court system to clarify the law and the potential liabilities for the Scottish Prison Service.
8. Most of the actions raised are funded by legal aid. My report on the 2004/05 accounts noted that the Napier case had highlighted the potential for significant expenditure of public money to arise from decisions taken about the same case by different parts of the justice system. The Scottish Prison Service has discussed with the Scottish Executive Justice Department the means of resolving disputes between prisoners and the Scottish Ministers and concluded that appropriate arrangements are in place, but that the position should be kept under review.
9. The Scottish Prison Service has continued to make significant progress in improving conditions in prison accommodation throughout the year. The practice of slopping-out has been eliminated, except at Peterhead where some 280 cells are using in-cell portable facilities and in one hall at Polmont, which the Scottish Prison Service aims to close when the new accommodation at Polmont opens. A consultation exercise has been conducted on the future of prisons in the north-east of Scotland, the next stage of which involves consultation with the new Community Justice Authorities.



**ROBERT W BLACK**  
**Auditor General for Scotland**  
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