Judicial review – prisoner's conditions – sanitary and hygiene conditions – whether conditions of female prisoner degrading – whether breach of Arts 3 and 8 – whether breach of Art 14 comparing male and female prisoners – strip searching – whether practices breach of Arts 3 and 8.

Neutral Citation No. [2005] NIQB 80 | *Ref:* **GIRF5249**

Judgment: approved by the Court for handing down | *Delivered:* **20/04/2005**

(subject to editorial corrections)

2004 No. 04-29250

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY KAREN CARSON

AND IN THE MATTER OF DECISIONS OF THE NORTHERN IRELAND PRISON SERVICE

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GIRVAN J

Introduction

[1] In this judicial review application the applicant Karen Carson, a life sentence prisoner, who recently received a twelve year tariff is currently detained in HM YOC Hydebank ("Hydebank"). She seeks various reliefs relating to the conditions of her detention. Firstly, she challenges the Prison Service's continuing decision to detain her in a cell without in cell sanitation. Secondly, she asserts that she has been subjected to a disproportionate scheme of strip searching following visits. Thirdly, she claims that she and other female prisoners have been subjected to harassment by male offenders at Hydebank.

Factual background

[2] Prior to 21 June 2004 the applicant in line with other female prisoners in Northern Ireland was housed at Mourne House at HMP Maghaberry. On that date she was transferred to Ash House at Hydebank. Unlike the situation

at Maghaberry, Hydebank is a low security prison. The staff are not uniformed and the grounds are more open. The Governor of Hydebank in his first affidavit asserted that the aim at Hydebank is to create a physical atmosphere that is not oppressive.

[3] The reasons behind the decision to move women prisoners to Hydebank are disputed on the part of the applicant. The applicant claims that it was driven by a desire to save money. The Prison Service, on the other hand, contend that there were serious shortcomings in the conditions at Mourne House which was limited and restrictive. It was very staff intensive and expensive. Hydebank, according to the Prison Service is considered to be a more suitable location to accommodate female prisoners. The aim of the proposed transfer was to make better provision for women prisoners including providing access to a wider range of programmes, improved health care, an opportunity to address specific female related issues and a more open physical environment.

Lack of in-cell sanitation

[4] When consideration was being given to the move it was recognised that there would be no sanitation in single occupancy cells within the proposed accommodation at Hydebank. At Mourne House cells had in-cell sanitation consisting of a wash basin and toilet with a modesty screen. An equality impact study was carried out before the decision to move was made. As a result of the Prison Service's deliberations in the light of the consultation process the Prison Service considered that this potential shortcoming was sufficiently mitigated by the existence of a 24 hour electronic unlock facility at Hydebank. The system does not require a member of the staff to be present on the landing when a female prisoner requests to use the facility. Modesty screens have been installed in the bathing, showers and toilet communal areas, therefore observing the prisoner's right to privacy and decency.

[5] The applicant complains that the absence of in-cell sanitation with a toilet and wash-hand basin presents her with difficulties. She cannot wash her hands, clean her teeth or wash her cup in the cell. She cannot go to the toilet immediately when she requires to and on occasions she may need to go to the toilet at short notice. She effectively has to seek permission every time she wishes to go to the toilet. On occasions she must, she alleges, wait for a considerable time to go to the toilet, for example where the operator has failed to note her request to go to the toilet or when the toilet on the wing is in use or where the locking system is failing to work properly. If the locking system is not working she must shout for prison staff. On occasion she has had to use a plastic potty in the cell which has to be retained in the cell until "unlock" and "slop out" When using the toilet she may be subjected to being shouted at if she is considered to be taking too long. Prison staff are able to see the applicant using the night toilet through a glass panel in the door. No

toilet is provided in the garden area where the applicant works, though a port-a-loo has been installed as from 25 February 2005. Even when she is not detained in her cell she must use a shared toilet at all times and there are periods when she and other prisoners will not be able to use the toilets for some time.

[6] The applicant contend that on occasions she has to wait a considerable time between a request being logged and being released, though the maximum time to which she refers was just under 16 minutes. The electronic locking system is liable to failure, though the evidence indicates that this is only occasional. The applicant alleges that she has had to use the potty because of lock failures, though she does not state whether this is on more than one occasion. The clear picture emerging from the evidence was that the prisoners are rarely required to use a potty. It is certainly not a matter of routine and it is restricted to emergency situations.

[7] The applicant complains that she suffers from endometriosis which requires frequent visits to the toilet. There is no medical evidence as to the nature and extent of her condition. She argues that her condition warrants her having in-cell sanitation.

[8] Governor Davis in his affidavit avers, and I accept, that the prisoners have full access to toilets when not locked in their cell. During periods of lock-up females prisoners access to toilets is governed by an electronic unlock system with each prisoner having a buzzer in her cell. When the buzzer is pressed it registers on a central panel in Ash House control room. The relevant staff members can then activate the system to unlock the cell. Lock-up times are between 12.30 and 13.30, 16.15 to 1700 and 21.00 to 07.45 (a total of 12½ hours a day). The landing on which the prisoner is imprisoned has five toilets to serve a maximum of 15 prisoners, although the actual maximum number has been 9 and has sometimes been as low as 4. Three of the toilets are in the ablutions area. One is a night toilet. One is located in the mother and cell unit which may be used if it is not occupied (which is presently the case). The applicant does not accept that that cell is readily accessible to prisoners. The night toilet has a glass panel for the purpose of safety and security. The toilet is fitted with a modesty screen, though the applicant claims that the prisoner's head and upper body may be seen. The time a prisoner spends in the toilet is not monitored in any formal or substantial way. On occasions officers would check the toilets in the interests of safety and security. The use of potties in cells is not a recurring part of a system. Cells are unlocked as soon as possible after the use of a potty.

The applicant's contentions

[9] The applicant argues that the failure to provided the applicant with in-cell sanitation and the present arrangements imposed on her in respect of her

toileting requirements are a breach of articles 3, 8 and 14 read in conjunction with Article 8. Mr Schoffield on behalf of the prisoner contends that when approaching the concept of "degrading treatment" forbidden by Article 3 the court should bear in mind that the Convention is a living instrument. The court should adopt a "dynamic and evolutive approach" in the words of the European Court of Human Rights in Goodwin v United Kingdom (2002) 35 EHRR 18. In interpreting the scope of the applicant's rights under Article 3 and 8 Mr Schoffield urged the court to take account of one of the key recommendations in the 1991 Woolf Report produced after the Strangeways riots. Counsel referred to the conclusions of the Northern Ireland Human Rights Commission that the Prison Service had shown no perception of the issues regarding personal hygiene, shared ablutions and significance of privacy. Counsel called in aid the decision of Lord Bonomy in Re Napier 's Petition for Judicial Review (2004) Scot SC 100. The Prison Service has addressed the issue in an improper way. Counsel argued that the conclusion that the lack of in-cell sanitation was not a gender specific issue, according to the Prison Service, was Wednesbury irrational since clearly male and female prisoners have different toileting needs. It was irrational to conclude that there would not be adverse impact on female prisoners by virtue of the change from Mourne House to Hydebank. The Prison Service has not analysed the impact of the move on women prisoners in terms of the Convention rights. Governor Davis simply averred that the Prison Service did not accept that the lack of in-cell sanitation was a breach of the applicant's human rights. The analysis did not pay explicit attention to their Article 3 and Article 8 rights. The lack of in-cell sanitation facilities fell within the ambit of Article 8. Male life sentence prisoners received more favourable treatment that female life sentence prisoners in that they had in-cell sanitation. There was no legitimate reason for having a differentiation of treatment between male and female life sentence prisoners. Male life sentence prisoners were the proper comparators. The difference in treatment could not be justified.

The Napier decision

[10] In Re Napier the relevant prisoner Robert Napier sought a determination that while a remand prisoner between 20 May and 27 June 2001, a period of 40 days he was held in conditions in C Hall of HM Prison Barlinnie, Glasgow which were inhuman and degrading in contravention of Article 3 or, failing that, in conditions which infringed his right to respect in his personal life contained in Article 8. The petitioner in that case founded his claim on the "triple vices" of overcrowding, slopping out and impoverished regime. Lord Bonomy pointed out that in the final analysis these matters could not be viewed in isolation since each one had an impact on and was affected by the others. In paragraph 75 of his judgment Lord Bonomy stated:

> "My consideration of the evidence of those whom I have called experienced students and examiners of

> prison conditions, in light of these various authorities, has led me to conclude that to detain a person along with another prisoner in a cramped, stuffy and gloomy cell which is inadequate for the occupation of two people, to confine them together for at least 20 hours on average per day, to deny him overnight access to a toilet throughout the week and for extended periods of the weekend and to thus expose him to both elements of the slopping out process, to provide no structured activity other than daily walking exercise for one hour and one period of recreation lasting an 1½ hours a week, and to confine him to a 'dog box' for two hours or so each time he entered or left the prison was, in Scotland in 2001 capable of attaining the minimum level of severity necessary to constitute degrading treatment and thus to infringe Article 3 …."

[11] The decision in Re Napier is of limited relevance in the present context in view of the very different arrangements in Barlinnie. The slopping out arrangements as described in that case were, as the judge stated truly chaotic and dispiriting. The conclusion that there was a breach of Article 3 was reached in the light of a very considerable body of factual evidence including oral testimony and expert medical, psychological, scientific and technical evidence. The conditions of detention were found on the totality of the evidence to be such as to diminish the petitioner's human dignity and to raise in him feelings of anxiety, anguish, inferiority and humiliation.

[12] The judgment of Lord Bonomy helpfully analysed the jurisprudence on what constitutes inhuman or degrading treatment. In Yankov v Bulgaria (Application No. 39084-97) the European Court of Human Rights reminded us that the court has deemed treatment to be "degrading" because it was such as to diminish the victim's human dignity and as to arouse in him feelings of fear, anguish and inferiority, capable of humiliating and debasing them. The court would have regard to whether the object of the treatment was humiliate and debase the prisoners concerned and whether, as far as the consequences were concerned he had adversely affected him in his personality in a manner incompatible with Article 3. The absence of such a purpose does not conclusively rule out a finding of a violation of Article 3. At paragraphs 106-107 the judgment went on to state:

> "The court has consistently stressed that the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with the given form of legitimate treatment or punishment. Measures depriving a person of his

> liberty may often involve such as element. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (Kudla v Poland (GC) No. 30210-96) …."

In that case the court decided that the shaving of the applicant's head in the context of punishing him by confining in an isolation cell for writing offensive remarks about staff amounted to degrading treatment. The reference in that case to a "minimum level of severity" finds a clear echo in Lord Hope's speech in R (Pretty) v DPP [2002] 1 All ER 1 at paragraph 60 where he said that:

> "Only serious ill-treatment will be held to fall within the scope of the expression in human or degrading treatment for punishment."

Conclusions on the Art 3 issue

[13] In considering whether a person has been subjected to inhuman or degrading treatment one must consider the totality of the circumstances. A particular act on its own may constitute treatment although the concept of treatment generally points to a course of conduct. In considering whether the sanitary arrangements have given rise to degrading treatment those arrangements must be looked at in the overall context of the surrounding prison arrangements. In Napier the combination of circumstances (overcrowding, the bad lighting and ventilation in the cell, the lack of privacy during urination and defecation flow from the fact that cells occupied by two prisoners etc.) created circumstances giving rise in total to a breach of Article 3. However, the sanitation arrangements in the present case must be viewed in the light of the following facts.

(a) the applicant occupies a cell on her own and thus has a much higher degree of privacy than in the case of Napier or any of the other cases referred to;

(b) the considerable amount of time the applicant was allowed out of her cell meant that there was a considerable part of the day when she had easy access to ordinary toileting and handwashing facilities;

(c) the availability and generally satisfactory nature of an unlocking facility during lock-up hours;

(d) the relatively limited number of occasions when she had to wait any significant length of time to go to the toilet during lock-up hours;

(e) the very limited need to use a potty and on those rare occasions the ability to dispose of the contents relatively quickly; and

(f) the fact that if the potty had to be used the prisoner was in the cell on her own.

[14] The sanitation arrangements while they may not be ideal could not be fairly described as degrading. The overall treatment of women prisoners at Hydebank is in very marked contrast to the very different circumstances that led to findings of degrading treatment in, for example, Napier, Peers v Greece (2001) 33 EHRR 57, Kalashnikov v Russia (2003) EHRR 587 and Kuznetsov v Ukraine (Application No. 39042-97).

The Article 8 issues

[15] The applicant sought to rely on Article 8 of the Convention. Article 8.1 provides that everyone has the right to respect for his private and family life, his house and correspondence. Article 8.2 provides:

> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."

In the present context Lord Bonomy in Napier explained the relevance of Article 8 in this context thus:

> "In applying Article 8.1 to the situation where a public authority has responsibility for the control and care of a person in an institution, 'private life' includes the conditions in which the person is held and the circumstances in which he has to undertake the particularly personal, regular activities of daily life, such as discharging bodily waste and maintaining a standard of cleanliness, particularly where he suffers from a serious skin complaint which

> requires a regular regime of care. That is self-evident. It is clear from Raninen v Finland (1997) 26 EHRR 563 at paragraph 63, a case relating to unnecessary handcuffing for two hours in the context of an unlawful detention, that treatment which does not attain a level of severity such as to bring it within the scope of Article 3 may give rise to a violation of Article 8. I do not accept the submission made by counsel for the respondents that Article 8 is restricted to different aspects of detention, such as interference with prisoners mail, prevention of contact with their family and intimate body searches. It is plain that the detention of the petitioner in the squalid conditions which I have recounted, taken together with subjecting him to the regime of slopping out as it effected his routine, necessary, personal activities amounts on the face of it to an infringement of Article 8."

[16] In the context of the Napier case Lord Bonomy concluded that while a petitioner was undoubtedly detained "in accordance with law", he considered that to confine him in such conditions was not a proportionate response to the problem of securely detaining him. The detention of the petitioner in such conditions was thus "not necessary in a democratic society" for the purposes set out in Article 8.2, including ensuring public safety and preventing disorder and crime. To hold prisoners in C Hall as a matter of policy without taking steps to adjust the regime and to give low priority to eliminating slopping out and thus to subject remand prisoners to the conditions which prevailed there in May and June 2001 could not be justified and excused.

[17] Lord Bonomy in Napier approached the question whether there was an actionable breach of Article 8 in two stages. Firstly, he posed the question whether the circumstances of his detention amounted to a breach of Article 8.1 on the face of it. He concluded that they did. Secondly he posed the question whether the state could justify a breach under Article 8.2. This involved a determination whether the prisoner was held where he was in "accordance with the law" (which he was) and whether confining him in such circumstances was a proportionate response to the problem of detaining him. As noted he concluded that while he was undeniably held in accordance with the law his confinement in those particular circumstances could not be considered to be proportionate.

[18] For the applicant to succeed in establishing that the Prison Service has breached her Article 8 rights it would have to be demonstrated that the overall system in respect of the imprisonment was such that it could be said

that the state had in fact in all the circumstances failed to have respect for her private and family life bearing in mind that she was a prisoner lawfully deprived of her liberty. Looking at the circumstances objectively I cannot conclude that overall the circumstances of her imprisonment, including the lack of in-cell sanitation, bearing in mind the toileting and hygiene arrangements which were available to the prisoner pointed, in fact, on the face of it to a lack of respect for her private and family life. The prisoner is entitled to expect that there will be in place sufficient and adequate toileting and hygiene facilities to cope with her requirements and if those facilities are not adequate then her private life rights may well have been infringed. I conclude on the totality of the evidence of the facilities were adequate and took account of her Article 8.1 rights.

[19] The applicant contends that in making decisions relating to the arrangements for toileting and hygiene for women prisoners such as the applicant the Prison Service was bound to explicitly avert to and have regard to the provisions of Article 8. She contends that the Prison Service failed to do so. In A R v Homefirst Community Trust (2005) NICA 8 Kerr LCJ giving the judgment of the Court of Appeal concluded that the Trust had failed to consider the appellant's Article 8 rights at any stage. In that case it was accepted by all the parties that the removal of the relevant child from his mother constituted interference with her Article 8 rights. Interference with that right would be a violation of Article 8 unless it was in accordance with law. The Trust could not justify the interference having failed to explicitly recognise that the right was indeed engaged. Kerr LCJ went on to state:

> "Where a decision maker has failed to recognise that the convention rights of those affected by the decision taken are engaged, it will be difficult to establish that there has not been an infringement of those rights. As this court recently said in *Re Jennifer Connor's application* [2004] NICA 45, such cases will be confined to those where no outcome other than the course decided upon could be contemplated."

Counsel contended that the Prison Service failed to have specific regard to the provisions of Article 8 and thus all its relevant decisions were in law bad. This included the decision to move the prisoner from Mourne House (a decision made in June 2004); the decision to detain the applicant where she was currently detained in the cell without in-cell sanitation; and a day-to-day decision in relation to her use of toileting and hygiene facilities.

[20] Where objectively the arrangements do not in fact lead to any inference of lack of respect for the applicant's private life the question of a need to justify the arrangements under Article 8.2 does not arise. If, however, I am wrong on that and the decision makers must justify the arrangements as

being Article 8 compliant I am satisfied that the respondent has justified them. Mr Davis, the Governor of Hydebank in his affidavit stated that the Prison Service was acutely aware of the human rights of prisoners in the context of the primary loss of liberty arising from the sentence of the court. Although specific reference was not made to Article 8, reading the respondent's evidence as a whole I am satisfied the decision makers clearly did have in mind the prisoners' right to respect for their privacy and dignity in respect of their toileting arrangements. The arrangements in relation to toileting point clearly to an awareness on the part of the prison authorities at Hydebank of a need to ensure (i) adequate numbers of toilets, (ii) easy access thereto during periods when the cells were unlocked, (iii) adequate arrangement to enable prisoners to use a toilet when cells were locked, (iv) a reduction to the minimum of the need to use a potty and to slop out its content. The arrangements of the decision makers relating thereto, were thus clearly motivated by an awareness of the need to protect the prisoners privacy rights. While a court could contemplate other or additional arrangements that could be put in place to further improve the situation (eg. by the provision of some washing facilities in the cell, which is something currently under consideration, the provision of hand wipes and some additional screening in the event of the necessary use of a potty), it cannot be said that the arrangements presently in place fall below an acceptable level and represent a disproportionate outcome.

The Article 14 issues

[21] In relation to the applicant's case relating to an alleged breach of Article 14 Brooke LJ in Wandsworth LBC v Michalak [2002] 4 All ER 436 set out four questions which would be posed when an Article 14 issue arises.

(i) Do the facts fall within the ambit of one or more of the substantive Convention provisions?

(ii) If so was there a different treatment as regards that right between the complainant and other persons put forward for comparison?

(iii) Where the chosen comparators in an analogous situation to the complainant's situation?

(iv) If so, did the difference in treatment have an objective and reasonable justification? In other words did it pursue a legitimate aim and did the differential bear a reasonable relationship of proportionality to the aim to be achieved?

Laws LJ in R (Carson) v The Secretary of State [2003] 3 All ER 577 framed the later two questions to read "Are the circumstances of X and Y so similar as to

call in the mind of a rational and fair minded person for a positive justification for the less favourable treatment of X in comparison with Y."

[22] The policies relating to the toileting and hygiene arrangements of the applicant fall within the ambit of Article 8. The applicant contends that she as a female life sentence prisoner must be compared with male life sentence prisoners. However the true comparators are not life sentence prisoners male or female (who are only a sub-group of sentenced prisoners with no special call for different toileting and hygiene arrangements) but rather male and female prisoners. Some male prisoners have in-cell sanitation. Others do not, such as prisoners in Magilligan or some young offenders at Hydebank. This being so a breach of Article 14 has not been demonstrated. In any event the difference in treatment flowed from the different facilities historically available in different penal institutions. The overall conditions of imprisonment at Hydebank for females differ from the overall conditions for male prisoners at Maghaberry and it would be wrong to single out one aspect of the Hydebank regime for comparison on its own. Looking at the matter in this way is difficult to truly compare the position of a female prisoner such as the applicant and male prisoners at Maghaberry.

[23] The applicant's challenged as Wednesbury unreasonable the conclusion that the lack of in-cell sanitation was not a gender specific issue. In the context of a situation where male and female prisoners have single occupancy cells this conclusion could not be considered irrational. Different considerations might well arise where cells have to be shared in view of the different attitudes and actions of males and females involved in the use of a potty but they do not arise in the present context.

The strip searching issues

[24] The applicant's second challenge is to the lawfulness of the strip searching arrangements operated at Hydebank. In her grounding affidavit she stated that her major concern was the requirement to subject her to a full search after every visit. This applied also following legal visits. This policy of strip searching after all such visits did not occur at Maghaberry. The prisoner is asked to remove all her clothes, to turn round back and front in front of two prisoner officers. The prisoner officers do not touch her and she does not have to bend forward and backwards to facilitate the search. This takes place even when she is menstruating. The applicant contends that the experience is humiliating, a contention that the court can readily accept.

[25] Mr Davis in his first affidavit made the somewhat surprising statement that he was unable to comment on search procedures at other prisons. Such matters he said would vary having regard to the facilities available, the type of visits and nature of the prison population. There was no facility at Hydebank to properly search visitors at the time when the applicant brought

her judicial review proceedings. Such a facility had not been built at that stage. However improved facilities have been provided from December 2004 and this has removed the need for strip searching after every visit. He considers that there continues to be a need to conduct strip searching on an occasional basis to catch people who are believed to have secreted items on their person and to deter such behaviour. It appears from the way the case was presented that one in five prisoners is searched by strip searching after visits. This is operated as a form of randomised system to deter the secreting of items such as drugs which represent a very big problem in prison establishment. It appears that the largest find of drugs at Hydebank have been on female prisoners. While he accepted that the applicant has never been required to have a closed visit and has never failed a drugs test he did not consider that it would be appropriate to exclude any prisoner from being searched for a variety of contraband. The prisoners show considerable ingenuity in acquiring and concealing unauthorised items.

[26] In the case of Yankov v Bulgaria at paragraph 110 the European Court of Human Rights commented as follows:

> "In respect of other acts affecting the dignity of detainees, the court has held that while strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime they must be conducted in an appropriate manner must be justified. Even on single occasions strip searches have been found to amount to degrading treatment in view of the manner in which the strip search was carried out, the possibility that the same was to humiliate and debase on the lack of justification …. In the case of Van der Ven v Netherlands strip searches, albeit carried out in a normal manner had a degrading effect and violated Article 3 of the Convention as they were performed systematically on a weekly basis as a matter of practice which lack justification on the particular case of the applicant."

Counsel contended that unquestionably the routine use of strip searches after visits was a breach of the applicant's Article 3 and/or Article 8 rights. There must be a proper justification within the terms of Article 8.2 for each search. A system which permitted strip searches in the event of reasonable suspicion may be justified but the routine use of strip searches after every visit could not be. The system at Hydebank does not recognise individual considerations of whether it is necessary.

[27] Policies relating to the circumstances in which strip searching is to be carried out engage Article 3 and 8. The decision makers must justify the

policy as lawful and proportionate. Prison rules do permit such searches and therefore they can be lawful but the Prison Service must show that the searches are necessary and carried out in a proportionate way and as a proportionate reaction to the relevant mischief. Since Articles 3 and 8 are engaged the decision makers must have explicit regard to the provisions in drawing up their policy. It is not apparent from the respondent's evidence or from counsel's submissions that the decision-makers in the present instance in the context of strip searching did have explicit regard to the Convention rights. As noted the Governor was not aware of what was happening in other prisons. A random system of searching may in fact be a necessary and proportionate response to the mischief of the importation of illicit materials into the prison but the decision maker when arriving at the judgment of what is necessary and proportionate under Articles 3 and 8 would have to look at the alternative ways of reducing the problem short of undertaking the stripping of prisoners. Had the decision makers had explicit regard to Articles 3 and 8 they may have come to different conclusions or devised less intrusive means of dealing with the problems. Having failed to have proper and explicit regard to the relevant convention rights the current policy of strip searching at Hydebank cannot be demonstrated to be proportionate and necessary.

The harassment issue

[28] The applicant did not seriously pursue her third line of attack relating to the alleged abuse of the applicant and other female offenders by male prisoners. At the height of the applicant's case the incidents referred to were isolated ones and I can find nothing in the applicant's case to support her claim that Articles 3 or 8 have been breached.

[29] I shall hear counsel on the appropriate form of any order.