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Interview: Stephen Shaw

Stephen Shaw was the Prisons and Probation Ombudsman for England and Wales from 1999 to 2010. He is interviewed by **Martin Kettle** who works for HM Inspectorate of Prisons.

Stephen Shaw CBE is the recipient of the Perrie award 2010. He was appointed Prisons Ombudsman in October 1999. His role was extended in September 2001 to take in complaints against the National Probation Service (NPS) from those under supervision in the community and the post was renamed as the Prisons and Probation Ombudsman for England and Wales. His remit was further extended to take in complaints from those in immigration detention in October 2006.

Initially established in order to provide some independent oversight of complaints, during his time in office, the work and responsibilities of the office have expanded significantly. Most notably, from April 2004, the Ombudsman's office has been responsible for the investigation of all deaths in prisons and immigration removal centres, as well as the deaths of residents of NPS hostels (approved premises).

As Ombudsman, he conducted a range of investigations in a personal capacity, including the inquiry into a riot at an immigration centre, an investigation into the death of Harold Shipman, and the first public inquiry to be held into a near death in prison. He also served as one of two independent members of the Parole Board's review committee that considers the cases of released prisoners who have committed serious further offences.

Prior to becoming Prisons Ombudsman, he was director of the Prison Reform Trust (PRT) charity for 18 years.

In April 2010 he left his post and took up a new role as the first Chief Executive of the Office of the Healthcare Adjudicator. This office has been established in order to create a clear separation between the power to investigate and the power to adjudicate concerns about health professionals.

He has written widely on both criminal justice and economic issues. His latest publication is entitled *Fifty Year Stretch: Prisons and Imprisonment 1980 — 2030* and was published in 2010 by Waterside Press.

MK: Many congratulations on receiving the Perrie Award 2010, in recognition of your many years of work to improve the criminal justice system.

SS: I was very pleased when I found that not only was I the recipient of the Perrie Award, but also that

as a concomitant of this I had this opportunity to speak to the readers of *PSJ*. I remarked when I was given the Award that it is the sort of award that is given to people at the end of their careers. I compared it with what happened at the Emmys, the music industry awards, this year. They had given one to Andre Previn, aged 81, one to Leonard Cohen, aged 75, and one to Bobby Darin, who would have been a mere 74 but for the unfortunate fact that he died in the 1970s. So to receive the Perrie award was bittersweet, and I reject the implication that my best days may be behind me. Still, I was delighted.

MK: The Award is mainly in recognition of your years as the Prisons and Probation Ombudsman. Before that you were with the Prison Reform Trust for 18 years.

SS: Yes, two jobs in 30 years. I was described on some left-wing website as a careerist, and I thought two jobs in 30 years was an interesting definition of careerism.

MK: Which was the better of those two jobs?

SS: Each in its time, really. I don't envy people running pressure groups and interest groups these days; I think it's a much trickier business. When I started all those years ago at the PRT, newspapers were literally based in Fleet Street, and they would take a huge amount of pressure group material. You could (and I did) run or drive up and down Fleet Street with a photocopied press notice and hand it in at the desk with a reasonable chance that the next day it would get in. I remember one incident where it was the first time that the government of that time proposed intermittent custody — we used to call them awayday prisons. We thought it was a daft idea. I wrote a press notice saying so, for PRT and also for a separate campaigning body. As I was driving home, just after midnight, on the BBC radio in my old Datsun came on saying that the government is proposing intermittent custody, and already the idea has been criticised by two organisations, PRT and this other one — and that was just me at a typewriter. It was much easier then. Now the serious newspapers want exclusives, they are happy to report crime but less so serious discussion about crime and how to deal with it because other matters, often consumer-based, have taken the space. If you do an analysis of what goes

into the broadsheets it's utterly different from what obtained 30 years ago.

You had that period, around the Strangeways riot and the Woolf Report, and although Harry Woolf very much came to his own judgments, in a sense the influence of Prison Reform Trust, NACRO and the Howard League was at its apogee. That was a tremendously exciting period. In the late 70s the prison system was not much to write home about, there were huge opportunities both to say things and to change and shape — there was a lot to change.

MK: So was being the Ombudsman a bit less exciting?

SS: Not at all. When I joined the Ombudsman's office I enjoyed that too. I used to say to people that I found the move seamless, for two reasons — first, in running PRT I had always wanted to engage with those prison staff, governors and officials who actually wanted to change the mould, so although outside the tent I wanted to and could work with people inside the tent. Secondly, though I liked all the press and policy stuff, I suppose in my juvenile way I liked having a profile and being able to change things. The thing that pleased me most was being able to make small changes for individuals; I remember going to Saughton prison in Edinburgh, and finding this very grubby young man, a sex offender. He'd urinated on himself and was in this horrible old cell, and he just needed a radio; in those days you could get a radio off the chaplain, but he hadn't liked to ask, or he'd asked a member of staff and they hadn't told the chaplain, or the chaplain couldn't be bothered to do it, and before I left Saughton that day I'd got the fellow a radio. It doesn't change what he's done, it doesn't change his life chances, it didn't change the prison very much, but was the world a marginally better place? Absolutely. And lots of what I did as Ombudsman, particularly on the complaints side, was making the world a marginally better place. If something had gone wrong for a prisoner, we could help to put it right, or if the chap deserved to have something explained to him, he got an explanation. If something had gone wrong and the governor really should have apologised for it, that was done. And that accumulation of small improvements, I always thought, was part and parcel of the decency agenda. So that was enormously worthwhile. And I had some great colleagues.

MK: What is the best or worst state of affairs that you have come across in a prison?

SS: To talk about the 'best' prison is difficult. Prisons are an unfortunate social necessity: they have cruelties about them which are necessary — the very fact of separating people from their family is a necessary cruelty; the lack of autonomy over your own life is a necessary cruelty. I support strip-searching, because I think that that is a necessary cruelty of prison. A degree of control or censorship over your means of communication is a necessary cruelty — so to talk about 'good' in that context is tricky. It's not that I think these things are wrong in themselves — I think they are ineluctable — but that's why prisons should be subject to a degree of monitoring.

MK: Much of the Ombudsman work was about complaints. Many people, not perhaps among readers of the *PSJ*, informed by certain parts of the media, would think that prisoners' complaints are taken too seriously and that prisoners are treated too well.

SS: I never saw it like that. Most offenders have very little confidence in authority, they are alienated from society. I always felt that being treated properly, being confident that if you had a problem it would be put right, was all part of pro-social

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modelling. Prisoners have often been failed by their dad, if he was ever around, they've been failed by the school (as they would see it), they've been failed by workmates, by the police and courts and Probation, they've been failed by the housing authorities, and so they have very little confidence that authority will act other than in a way that disadvantages them. If you run a prison in a way that confirms that — 'Here you get nothing' ... there was a great phrase in one of the complaints I read, from the wing conduct report in an adjudication: 'To be fair' (which I thought was brilliant), 'X causes no trouble on the wing — he asks nothing and gets nothing'. All of that, I think, just confirms a criminal identity, that authority is out to get you, it will do you down, the only people you can trust are your mates who share your view of the world. So I always felt that what we were doing on the complaints side, as far as the prisoner was concerned, was yes, putting right things that ought to be put right, but also saying 'Yes, if you play by the rules, other people can play by the rules, and authority is not unjust and uncontrollable; on the contrary, authority is legitimate, prisons are legitimate, but you

also have expectations about how you should be treated, which are legitimate’.

So I was always very proud of that. I also felt that what the office does in respect of prisons complaints, like all complaints agencies and all Ombudsmen, is about helping the service whom you oversee, to improve the quality of what it does. I have used this metaphor before: if you think of the most successful commercial organisations, say Tesco, what is the first thing you see when you walk in? It’s the customer service desk, which is really the complaints desk, where you take back the fruit that was off when you got home, or you’ve been over-charged on Till 13, or you were supposed to get 2 for the price of 1 but you haven’t. Why’s that the first thing you see? Because they are saying to you as a customer, you are important to us, you are entitled to be treated properly, but also because they want to know when those things are going on. If people are always being over charged on Till 13, then something’s going wrong on Till 13, and we want to change that. If you’re bringing back the bananas that have gone off by the time you get home, we don’t want to stock them from this supplier any more; and so they’re using the complaint as a way of improving service delivery.

I remember a friend of mine who became a governor of what was then a rather notorious young offenders’ institution (it’s now a rather better one and I won’t name it), saying to me that one of the indices of his success was that he was getting more complaints. And the reason for that is that the young men in the YOI, firstly they weren’t terrified of complaining, because they weren’t fearful of recrimination, and secondly they had an expectation that if they complained something might actually be done about it. There is a perverse aspect to complaints, that if you’ve got a really bad institution, you don’t get any complaints, because nobody expects anything to be put right. If you have an excellent institution, you probably get quite a few complaints, because people are confident that something will be done to put matters right. So I think those things are worth repeating.

MK: Then deaths in custody became a major part of your remit.

SS: It was incredibly worthwhile when in 2004 we took on the death in custody remit. The ability to

tell people’s story, the opportunity to engage with the bereaved, the ability to change things hugely for the better for prison staff — in 2004 you got hardly any support, if someone died in prison it was all very macho, you went back to work the next day and no one seemed to care very much. Family liaison was transformed in the prison service, largely I think as a consequence of the Ombudsman’s office’s work. And of course, whether it’s directly related or coincidental, the very substantial reduction in the rate and overall number of self-inflicted deaths in prison. That is work of huge public value, of which I am very proud. Running round Fleet Street is trivial — what is more ephemeral than a press notice? — compared to helping to drive down avoidable deaths

MK : Did those changes come about through the fear of consequences, of investigations if people didn’t open the ACCT and so on, or do you think your role was positive?

SS: I think this has been unacknowledged by politicians — the extent to which the prison service acknowledged the value of independent investigation (and it benefited not least because it involves independent validation of what things are done well). But it is also a way of driving improvements in performance. I had huge encouragement from the service in carrying out this death in custody work. When we first started of course there was some unease — that’s only

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natural. But over the six years when I was personally responsible for about 1000 investigations, there was huge support first from Martin Narey and then from Phil Wheatley — and from everybody lower down the food chain. In some sense it goes back to my personal approach as a pressure group activist, which was that I always preferred to work with the grain rather than against it. And I was very fortunate that the leadership of the service wanted to go in the same direction that I did. I don’t think it’s telling tales out of school, that Phil Wheatley, just before his retirement, when he was responsible for NOMS and with all the meetings with MoJ that he had to spend a lot of his time doing, would personally read some of our death in custody reports. Now that tells you a huge amount about him as an individual, it tells you about the significance that he attached to what we were doing, and it tells you a lot about the impact of the work for which I was responsible.

MK: Do you think that the reduction in deaths in custody can continue? A high proportion of them take place on remand.

SS: They always have done. Funnily enough, if you go and look at the 1922 book *English Prisons Today* by Stephen Hobhouse and Fenner Brockway, they have a section dealing with suicide; and there it is, it's in the first few weeks in custody, it's more likely when you're on remand, the old lags tend not to do it — and broadly, that picture remains the same today. Well, what do we know about reduction in suicides? We know that a lot of it has been driven by improved practice — I think ACCT is a world-class system that saves lives daily — but ACCT is expensive if you do it properly, if you really do it in a multi-disciplinary way — that's a lot of staff and a lot of staff time. So there is pressure there, on some of the processes. We also know that suicide and self harm are correlated with prisoners' sense of their own safety; and with whether they think they are in a good prison that cares for them. Individual care and a sense of safety may be undermined if the population remains at about its current level but the funding reductions that are projected begin to take effect.

MK: Do you have your two penny-worth to put in to the debate about short sentences, and where the government should be going with that?

SS: Well, it is encouraging that you have a Secretary of State who is very publicly making the case that prison is not an effective way of reforming the many mainstream offenders, and the statistics on this are now very powerful: that there is a reformative effect, but with very short sentences prison does marginally make people worse than you might have anticipated — reconvictions are slightly higher than might otherwise be the case. There may still be a case for short-term imprisonment if people continue to breach non-custodial sentences, so that you're being punished not for the seriousness of what you're doing but for its persistence — and a break in a criminal career may still provide some relief. I did a lot of work at Styal prison — and the vast majority of women in the remand wing at Styal are women who are addicted to heroin, whose lives are very bleak; many of them have been subject to physical and sexual abuse from men, their offending is mostly petty, but very persistent, to fund a drug habit — because any

money goes on drugs, you steal food from a local supermarket. We sitting here would describe that as petty thieving. But if you're the person running that corner shop, or the little petrol station, and it's the same woman coming in most days stealing from you, then it's suddenly not petty, and interrupting that criminal career is really rather important.

So imprisonment gives some public protection. I wanted to be careful about what I said there because a lot depends on how bold the Secretary of State is in terms of reforms to sentencing structure — you cannot reduce the prison population by very much unless you reform the sentencing structure. If you look at the make-up of the prison system now, there aren't many petty persistent offenders in the male system;

over half the people there are serving longish sentences for drugs or for sexual crimes or violence. It's a hard nut to crack to say that we want shorter sentences for those people. And it's a hard nut to say that we know short sentences are no use in terms of reducing reconvictions, but what's fed the population with short — sentence people is that they keep doing it time and time again — so what policy are you going to have on breach? The enforcement of community penalties has become much more robust in recent years. It's very hard to say it shouldn't be robust — of course one wants to be forgiving, understanding,

tolerant (tolerance is a good thing, I'd like to see it no longer a dirty word) — but if you actually want to reduce the prison population you have to make some very hard choices about sentencing, and that's a real test. If you don't do that, then I'm fearful that the consequence of current policy is that there will be fewer resources, but the prison population — it may not rise as the worst projections showed, but actually forcing it down from the current 84 or 85000 is going to be incredibly hard. There's a sort of ratchet effect in sentencing, and I hope that officials and politicians are clear just what challenging decisions they will have to make. Saying that nobody goes to prison for less than 3 months or even 6 months (which would presumably set the Magistrates' Association's alarm bells ringing) doesn't really do enough to force down the population.

MK: You have recently published your own manifesto in the form of your book *Fifty Year Stretch*. What for you are the key principles?

We also know that suicide and self harm are correlated with prisoners' sense of their own safety; and with whether they think they are in a good prison that cares for them.

SS: That book is in some ways an optimistic account of how much has changed for the better in prisons, in terms of how they run, the culture, the values of staff, and what they can now deliver in turning lives around. In the book I talk about this as an intensely moral outcome — fewer victims, fewer lives wasted. To talk about reducing the reconviction rate sounds terribly bureaucratic, but turning lives around, meaning fewer victims of crime in the future, that's intensely moral. So in many ways the prison service (and I use them term advisedly) is a huge success story in public administration in the last 30 years, almost entirely unacknowledged by the media, the public and politicians, and perhaps not always acknowledged by prison staff themselves — there is still a long-standing tradition, particularly among officers, of thinking everything's for the worse, and it's always been bad. I've used this metaphor before, but it reminds me of that song the Millwall football supporters used to sing, 'Everyone hates us, we don't care' — there's some of that mood which is there, perhaps not just among uniformed staff either. So part of the purpose of the book is to try to celebrate that success. But it is less optimistic in terms of the reach of the prison system. My 30 years has covered a period when the prison population has more than doubled. And one of the questions that I pose in the book is whether there is some realistic likelihood of reverting to the situation that obtained 30 years ago. 30 years ago there was an active abolitionist movement in the universities and more generally — well, abolition has lost any sort of currency at the moment. Is the thought of reducing the prison population to its 1980 level equally unlikely? The book suggests that that is the case. It was written before Kenneth Clarke became Secretary of State, and before it became clear that law and order was not immune from the sorts of financial cutbacks that the government is currently planning. Kenneth Clarke has had the support of David Cameron in this so far, and it was often said that the Treasury was the best prison reformer, because it is always sceptical about law and order spending, in terms of improving real public safety. The book perhaps underestimated the extent to which the Treasury will prove to be the best prison reformer of all.

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MK: Speaking of value for money, some people trace a change in the management style in NOMS, and think that the emphasis on performance and targets has undermined a reflective and moral approach to managing prisons. Do you share that concern?

SS: My friend Alison Lieblich has conducted research on this very issue at Cambridge, and she has found that sadly there is some truth in this, that many more of those in senior positions in prisons are very task-oriented — they are managerialist — and there isn't the moral dimension to their work that perhaps there was in the past. I think there has been that change, and I do of course very much regret that. In the old days, of course, people would talk about 'the numbers', rather than prisoners, or about 'feeding'; even in David Ramsbotham's day, you'll find Inspectorate reports referring to 'feeding'. This is appalling — and you say 'Oh, we wouldn't do that sort of thing now'; but if you are involved, almost daily, in transferring prisoners against their best interests, almost willy nilly around the prison system, because you've got to find the available spaces, that is dehumanising as an act, and I think it is very much to be regretted that the more reflective approach encouraged by the *PSJ*, and by the Perrie Lectures, is no longer part of the mainstream. Of course it is important that the prison service, and prison governors, make best use of the taxpayers' money. I sometimes point out that my mother is alive, she's 90, she still pays a bit of tax on her pension, and there is no case for that money being used wastefully; so I am in favour of that money being spent well, I am in favour of an evidence-based approach to policy making, so that governors can't just say 'I've got a whim, I want to do X whether there's an evidence that X does any good or not'. But I am equally concerned that if people come into the Prison Service and say 'Well, I'm in the Prison Service, but I could equally well have joined ICI or some other walk of life', without acknowledging what distinguishes all prisons — but especially those in England and Wales — namely the human element, that they run best on relationships, that softer skills matter hugely both to staff and to prisoners,. The new government has suggested in relation to Health that it has become perhaps too target-driven, and that we should be much more interested in real outcomes for people

rather than artificial targets. Some of this is political rhetoric, but some of it does suggest a change of direction.

MK: So you have become chief executive of the Office of the Health Professions Adjudicator, just at the time when the health service is having its biggest reorganisation for however many decades ...

SS: Yes — just to explain what the OHPA is — I'll let you into a secret, there ain't no such thing as a Health Profession Adjudicator, so it's a daft title. The Office was set up under the Health and Social Care Act of 2008, and it is intended to take over initially from the GMC the responsibility for Adjudications in what are called 'fitness to practise' cases. In effect, OHPA will be running the tribunals which determine whether doctors, and in the future other health professionals, should be allowed to continue on the register, or whether they should only practise subject to particular conditions. There is a link back to my previous career, in that OHPA can trace its history back to a judge, Dame Janet Smith, who conducted a series of enquiries following Harold Shipman's murder of hundreds of his patients. She proposed that, for

reasons of public confidence and because in principle the same body should not be responsible for investigating such cases and adjudicating on them, there should be a separate organisation. So this has a certain resonance for me, because I personally investigated the suicide of Harold Shipman, the first independent investigation of a suicide in a male prison in this country. There is a pleasing symmetry for me about how I have ended up here. Healthcare regulation, like prison inspection, and law and order generally, are public goods; they have to be paid for — these are political choices, and some things will go including some things which we think are important

The job of the Office of the Health Professions Adjudicator is about balancing the rights of the doctor who is accused of malpractice against the right of the public to protection from doctors who are not fit to practise — and that's familiar territory, is it not? So in that sense I found the transition from prisons to healthcare seamless.

MK: We wish you well for this new task, and thank you again for your real contribution to the human rights issues which lie at the heart of the criminal justice system.