



**INDEPENDENT REVIEW OF HMPPS INTERNAL
INVESTIGATION OF ALLEGATIONS OF
UNPROFESSIONAL CONDUCT**

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TERMS OF REFERENCE

In May 2018, AA completed an independent investigation under Article 2 European Convention on Human Rights (ECHR) into a serious assault that occurred at HMP Bristol on 26 June 2014 (The Article 2 investigation). This report recommended that there should be independent consideration of serious allegations of unprofessional conduct by the Commissioning Authority in relation to the internal investigation into the assault.

This recommendation arose because, during the course of the Article 2 investigation, Governor 2, the Governor who had conducted the internal investigation, alleged that the Commissioning Authority, BB had asked him to “soften” his report and “lessen the impact on NOMS”. Governor 2 claimed that as a result of this request he added a sentence to his report that concluded that there was no evidence to substantiate that the perpetrator chose the victim for the assault due to the victim’s ethnicity in order to “pacify or placate the Commissioning Authority”.

HMPPS (Her Majesty’s Prison and Probation Service) accepted the recommendation in the Article 2 investigation report and commissioned an internal investigation into Governor 2’s allegation, which concluded that there were no grounds to test any of the allegations made by Governor 2 at a disciplinary hearing and made no recommendation for disciplinary or management action.

On the 18 March 2019 I was commissioned by CC, Executive Director, Safety and Rehabilitation, HMPPS to undertake an independent review of the allegations of unprofessional conduct made by Governor 2 against the Commissioning Authority. Specifically I have been commissioned to:

- Make an independent assessment of whether or not there was an attempt as alleged to affect the account given by the Internal Investigator of the serious assault to diminish the role that a racial or religious motivation played in it.

Although, the allegation that I have been commissioned to investigate arises from an allegation of misconduct that was made during an independent Article 2 investigation into the circumstances surrounding the assault on AD. The terms of reference for this investigation do

not extend to a consideration of the circumstances surrounding the original assault on AD, or the undoubtedly devastating impact that the assault has had on the family of AD. Therefore, any references within this report to the original assault are made solely for the purpose of context or background.

BACKGROUND AND CONTEXT

1. On the morning of the 26 June 2014 in the exercise yard of the Brunel Unit in HMP Bristol; EF, a white British Christian man, committed a violent and unprovoked assault on AD, a black Somali Muslim man. At the time of the assault both men were inmates on the Brunel Unit, which is a therapeutic intervention unit for prisoners with mental health problems. During the assault EF knocked AD to the ground and then kicked and stamped on his head. The injuries sustained by AD were life threatening and included skull fractures, facial fractures and broken teeth embedded into his mouth. AD has not recovered from the significant physical and mental impairment caused by the assault, and now requires full time medical-care.
2. During the course of his police interview, on the 27 June 2014 (Annex A), EF was asked to explain why he had assaulted AD. He stated that although AD seemed a gentle man and had always been polite to him, he believed that AD posed a threat to him [EF] and the nation. EF stated that he was a practicing Christian and that he believed AD to be Muslim, and *“he had read enough of the Koran to know that it wouldn’t work in the UK: if Muslims had a crusade here there would be a lot of bloodshed”*. In relation to the physical assault he stated that *“I just walked up to him and hit him. I walked around knowing that I was going to attack him, I planned on doing what I did”*.
3. Article 2 of the ECHR (Right to Life) requires an independent investigation where the acts or omissions of the State may have caused or contributed to a death. Her Majesty’s Prison and Probation Service (HMPPS) guidance on “Investigations and Learning Following Incidents of Serious Self-Harm or Serious Assaults” (PSI 15/2014) (Annex B) confirms that the Courts have ruled that some “near deaths” and serious assaults in prisons are sufficiently serious to engage Article 2 and necessitate a compliant investigation. The guidance also places a duty on Governors to ensure that these incidents are investigated at the appropriate level and reported to the National Operations Unit. Governors must also make sure that a copy of the investigation report is submitted to the Equality, Rights and Decency Group (ERDG) no later than one week after the investigation is completed.
4. On 1 July 2014, the Deputy Director of Custody (DDC) South West, DD commissioned an internal investigation into the assault on AD and appointed Governor 2, the Governor of

another prison in the South West, as the lead investigator. BB was appointed as Acting DDC for the South West on 14 July 2014 to cover a planned period of absence by DD, and as such, assumed responsibility as Commissioning Authority for the internal investigation from that date. Governor 2 appointed an assist investigation officer EE the MTT Delivery Manager from his prison; and submitted an interim report to BB on 24 July 2014 (Annex C). The ERDG were sent a copy of the interim report at this time also. Following the submission of the interim report, the investigation process was paused to allow the criminal proceedings against EF to reach a conclusion.

5. Page 4 of the interim report (Annex C) states that the terms of reference for the internal investigation are: *“To investigate the circumstances where [EF] was able to seriously assault [AD] on the Brunel Unit exercise yard on 26th June 2014”*.
6. On 19th September 2014 NOMS received a formal request (Annex D) from AD’s family Solicitors for an Article 2 investigation to be undertaken into the *“racist attack”* on AD. The letter states that EF has been charged with attempted murder and that *“the prosecuting authorities are treating this matter as a race hate crime”*. The letter continues *“the racist attack of [AD] leading to his near death in custody raises serious concerns that the Prison Service failed in its duty to provide safe custody to our client”*. The letter also takes issue with the lack of independence of the Governor 2 investigation and concludes that the solicitors will seek to judicially review any decision not to convene an article 2 compliant investigation. The solicitor’s letter enclosed earlier correspondence sent directly to Governor 2 dated 28 July 2014, noting the family’s interest and requesting details of his investigation. Governor 2 responded to the solicitors on the 18 August 2014 advising them that requests for information needed to be made to the Commissioning Authority, BB (Annex E).
7. On the 8 December 2014, EF pleaded guilty to the attempted murder of AD, and to a separate charge of manslaughter of a family member. He was sentenced to a hospital order under Section 37 of the Mental Health Act and placed under an indefinite order of detention at Broadmoor Hospital.
8. On 22 December 2014, FF from the ERDG sent an email (Annex F) to GG (Operations Manager for the South West) stating *“We have noted also that the interim report of the*

internal investigator is silent on the issue of race, which seems surprising in light of the way that the incident is being described by [AD's] representatives".... "I trust that this is one of the areas that will be explored in the final report".

9. On 15 January 2015 HH, Head of Safer Custody Case Work in the ERDG sent BB an email (Annex G) attaching a copy of a draft submission recommending that the Secretary of State authorise an Article 2 investigation. HH asked BB to check the accuracy of the case details within the submission and advised BB to resume the internal investigation and pursue it to a conclusion before the independent investigation begins: *"This is because we are committed to disclose the report of the internal investigation to [AD]'s representatives ...and it will provide evidence for the independent investigation. It would therefore seem important that the report is the best that it can be, demonstrating that we have complied with our own instruction on investigations and that we have done our utmost to learn lessons from the incident. We have concerns that the interim report (which will become disclosable if there is no final report) does not achieve these ends, and in particular that its silence on the issue of race, when the incident has repeatedly been described as racially motivated, would leave us vulnerable. At least one other independent investigation report has criticised us for failing to investigate thoroughly internally, and it would be good to avoid a repeat of that criticism."*
10. On the 16 January 2015 BB advises HH by email (Annex H) that he has instructed Governor 2 to resume the internal investigation and to aim to have it completed by the 13 February 2015. On the 3 February 2015 BB sent a letter to Governor 2, in which he asks Governor 2 to continue the investigation *"as discussed with you in person in January"*. The letter also states that *"The original TOR should cover the investigations and interviews that you need to continue and finish now that the Police and Courts have dealt with the perpetrator of the assault"*.
11. On 4 March 2015 Governor 2 submits a "final investigation" report to BB dated 4 March 2015 (Annex I). On 9 March 2015 BB confirms in an e-mail to HH that he has received the final investigation report from Governor 2, and commits to forwarding it once read, noting that significant redaction will be required if it is disclosed more widely (Annex J).

12. On 19 March 2015 HH sent an email to KK (Ministry of Justice Legal Team) (Annex K) in which he states: BB has advised that *“he has not formally accepted the internal investigation report, and has decided that further work is required - we had identified some key issues that we think need to be addressed in it and he was receptive to our views. Therefore, we are not in a position to disclose the internal report just yet.”*
13. On 31 March 2015 JJ (Head of ERDG) writes to AA to Commission an Article 2 ECHR investigation into the Assault on AD. The Terms of Reference include a requirement *“to consider evidence that the assault was racially motivated”*. (Annex L).
14. On 2 April 2015 at 14.09, Governor 2 sends BB an “amended” version of the final internal investigation report (Annex M). The email reads *“Please find attached the amended HMP Bristol report into events which happened on the 26 June 2014. For ease of reference the minor amendments can be found at: D1.2 penultimate paragraph, D6.9, D10.4”*. (Annex N).
15. On 2 April 2015 at 14.26, BB sends the amended report to HH by email stating *“I have received a final report from [Governor 2] and feel that I can now formally accept this. Do you share the same view?”* (Annex O).
16. On 18 May 2015, FF sends an email to BB which states *“I note the internal investigation is dated March 2015 and I wondered whether this could be amended to reflect that the final report was submitted in April or May (following your request for further work to be done) we can then share the internal investigation report with Mr Allen”*. (Annex P).
17. On 20 May 2015, BB emails FF to confirm that the date on the final report will be amended.
18. On 21 May 2015, BB writes to Governor 2 advising him of his removal from post as Governor of his prison following allegations of bullying by his senior management team.
19. On 3 June 2015, MM (who replaced GG as South West Operations Manager) emailed the final investigation report with the date amended to May 2015 to HH and FF. (Annex Q).
20. On 10 August 2016, Governor 2 alleges, while being interviewed by AA as part of the Article 2 investigation that he was asked by BB to *“soften the investigation report and lessen the impact on NOMS”* and was *“encouraged rather strongly”* to add a paragraph

to the report about racial motivation specifically: *“There is no evidence to substantiate that [EF] chose [AD] due to [AD]’s ethnicity”*. (Annex R p5).

21. On 30 June 2017, AA submitted his draft Article 2 Investigation report. Finding 46 states that while EF *“was undoubtedly suffering from mental illness the assault was motivated by hostility towards Muslims, although the extent of the hostility which was due to the mental illness is difficult to determine.”* Finding 47 states *“Apart from the Muslim Chaplain/Imam, staff at the prison considered that the assault was racially rather than religiously motivated”*. Recommendation V states HMPPS *“should investigate whether improper pressure was placed on Governor 2, the governor conducting the internal investigation”*. (Annex S).
22. On 25 September 2017 terms of reference for an internal investigation into allegations of professional misconduct by BB were issued to NN, an Acting Director from a different area to Governor 2 and BB; by the Executive Director for Prisons PP. The terms of reference instruct NN to investigate the allegation made by Governor 2 against BB in his interview of the 10 August 2016 and make recommendations about the appropriateness of formal disciplinary proceedings in relation to the allegation, and any other matter that she judges to be appropriate, including any performance related issues.
23. NN’s investigation report into alleged unprofessional conduct by BB dated 19 October 2017 (Annex T), did not find evidence to substantiate Governor 2’s allegations and concluded that there were no grounds to test any of the allegations made by Governor 2 at a disciplinary hearing.

METHODOLOGY

24. I was provided with a copy of the internal investigation report produced by NN, all evidence gathered by NN during the internal investigation and other associated documentation relating to this matter, including:
- All transcripts of relevant witness interviews and other material including correspondence that was available to NN during the internal investigation
 - The Article 2 investigation report into the serious assault on AD
 - The transcripts of relevant witness interviews conducted by AA, the Article 2 independent investigator
 - The interim and final internal investigation reports prepared by Governor 2
25. I read all of the documentation provided to me; however, only documents that have been directly quoted from or referred to have been annexed to this report.
26. I also read HMPPS guidance on Investigations and Learning Following Incidents of Serious Self-Harm or Serious Assaults (PSI 15/2014).
27. In view of the age of these allegations, and the extent of the written evidence already collated during previous investigations; I decided not to conduct substantive interviews with any of the parties or witnesses in this matter; because individuals cannot be expected to have a reliable independent recollection of events that occurred nearly 5 years ago. Following a meeting with the family of AD, I contacted Governor 2, BB and AA to request clarification on specific issues that had been raised with me. The notes of my additional meeting, telephone conversation and a copy of an email response to my requests for clarification are also annexed to this report.
28. When drawing conclusions from the available evidence/documentation I applied the civil standard of proof i.e. the balance of probabilities.

THE ALLEGATION

That BB directed Governor 2 to amend his internal investigation report to include a conclusion that there was no evidence to support a racial motivation to the assault on AD.

The evidence

29. During a recorded interview with AA on 10 August 2016, Governor 2 alleges that he was “strongly encouraged” by BB to insert the words in paragraph D.10 of his final amended report which states “*There is no evidence to substantiate that [EF] chose [AD] for the assault due to [AD]’s ethnicity*”. (Annex R p5).
30. During recorded interview with NN, Governor 2 states that the exact words were not directed “*but that I should add something in to say there was no racial motivation to the crime*”. (Annex U p7) Governor 2 also alleges (Annex U p5) that he received the direction from BB after the submission of his final report to BB and after BB had a conversation with HH.
31. Governor 2 states in his interviews with AA and NN that he informed the assist investigator EE that they were being directed by BB to change their report, and that she was “*shocked*” by this. Governor 2 also states that he advised EE that he would make the changes “*so that she would have nothing to do with it*”. (Annex U p7).
32. Governor 2 also states in his interviews with AA and NN that he informed RR of the improper pressure put on him by BB. Governor 2 claimed in both interviews that this disclosure happened during discussions with RR following his suspension from his post as a Governor. During his interview with NN, Governor 2 also stated that he had wanted to report the incident, or use it as part of his defence against allegations of bullying by his SMT (which had led to his suspension), but he was advised by RR not to do so, because this could lead to Governor 2 facing disciplinary action for failing to report the incident in a timely manner. (Annex U p19).
33. During his interview with AA, Governor 2 claims that he had a difficult conversation with BB during which voices were raised and he was “*pushed*” to make changes. He “*felt compelled to go with what his boss was saying ...as we were having discussions about*

promotion” (Annex R p 6). And in his interview with NN, he states that his promotion to Bristol was mentioned prior to and during his discussion with BB about changing the report and that the ‘*implicit*’ link between the direction to change the report and the conversations about Bristol being his next posting “*made it even worse quite frankly...not only am I being asked to change the investigation report but 'there, there, go away and be a good boy'*”. (Annex U p10).

34. During his interview with NN on 12 October 2017, AA confirmed that he had only seen the final version of Governor 2’s investigation report dated 15 May 2015 (Annex V p2). He also states that the comment about there being no racial motivation was one of the main reasons why he wanted to speak to Governor 2. He states that strictly speaking AD was selected for the assault because of his religion rather than his race but “*I felt that that sentence didn’t do justice to the reality of what had happened in that...it was at best partial, I think it was just wrong really, and that’s what I was concerned about*”. (Annex V p4/5).
35. AA also agreed, during his interview with NN, that the implication that he had drawn from Governor 2 during interview, was that Governor 2 would not necessarily have concluded that there was **not** a racial element, that actually he was somehow pressured by his line manager to state that there was no evidence to substantiate that EF had used ethnicity to select the person assaulted. “*I asked him if that was in the original draft that he submitted and he said no and went on to say that, well I put it to him that he was encouraged to insert the sentence along those lines and he said that he was*”. (Annex V p3).
36. I met with AA on the 23 September 2019 and asked him whether he had formed any opinion on Governor 2’s credibility as a witness of truth prior to recommending that Governor 2’s allegations should be investigated. AA told me that he thought that the allegations made by Governor 2 during his initial telephone conversation and during interview on the 10 August 2016 were serious; but as they were outside the scope of his investigation he did not explore any of the detail of what was being alleged. He also had not formed any opinion about Governor 2’s credibility as a witness, or the truth of the allegations, he just felt that the allegations needed to be investigated. (Annex CC).

37. EE was interviewed by NN on the 5 October 2017. When asked about racial motivation, she recalls that the CSRA “*may have said something about [EF] being racist*” but had no recollection of discussing potential racial or faith based motivation for the offence with Governor 2 (Annex W p6).

38. EE states that she has no recollection of any conversation with Governor 2 where he informed her that they were being asked by BB to change the report she states (Annex W p 8):

“I just want to say that [Governor2] was the type of person that would exaggerate things... so even if he did say it, I would have taken it with a pinch of salt”

“Because he used to exaggerate and make, kind of, statements about things that weren’t actually true” “And I mean I absolutely don’t recall the conversation”

“In terms of context, he used to say, kind of various sweeping statements about things”

39. EE also states that she has no recollection of Governor 2 claiming that he would make the changes to the report and “*keep her out of it*” and didn’t recall “*feeling part of something that felt compromised in any way*” (Annex W p9). She also asserts that she would not have wanted any part in an investigation that was being compromised, and that if she had been told that there were requirements to change the report in the way suggested that she would have told Governor 2 to refuse and sought advice herself. (Annex W p11).

40. RR was interviewed by NN on the 4 October 2017. RR explained that following Governor 2’s removal from post on the 21 May 2015, he had met with him on several occasions, in his (RR’s) capacity as an official in Governor 2’s professional association. RR recalled, having a conversation with Governor 2 during which Governor 2 talked about pressure being placed on him by BB in “*broad terms*”. However, “*He didn’t say it to me on the basis that I’m his rep and he wanted me to do something about it, he was painting a picture of the context in which he was removed*”...“*He [Governor 2] was definitely of the view that [BB] had asked him to do it. I can’t recall the exact detail of what he was asked to do, but he used it in a way to ... as a ... kind of an example of the relationship between them, which he felt was very difficult.*” (Annex X p5).

41. RR didn't recall thinking [at the time of Governor 2's disclosure] that something significant might have happened (Annex X p9). RR also did not recall Governor 2 suggesting to him that NOMS/the organisation had put pressure on BB to ensure that Governor 2 made changes to his report. (Annex X p10).
42. BB was first interviewed by NN on the 5 October 2017. He accepted having a conversation with Governor 2 about the content of the final investigation report, but he completely disputed the version of the conversation put forward by Governor 2. He states: "*There was no direction, there was no influence, it was a case of these are the questions that I've got coming out of this, can you just assure yourself as the Investigating Officer that, that there's enough evidence to take people through a disciplinary hearing and can you please look at motives because there is, there are things in here around the CSRA and also [EF]'s suggestion to the police that it might have been around belief*". BB also denies that the conversation was aggressive or that there was any shouting. (Annex Y p15).
43. BB confirmed that Governor 2 was on the South West succession plan to be the next Governor of HMP Bristol and that the succession plan had existed prior to BB's appointment; but he denied that Governor 2's potential future promotion to HMP Bristol was discussed in any way in connection with the report – "*no, there was nothing linked to the investigation report, his career and his next move*". (Annex Y p31).
44. BB also questioned the rationale of Governor 2's allegation stating: "*... if I really wanted to bury news about the organisation why would I ask him to go and look at something again. ... if I wanted to keep it quiet, if that was my motivation I wouldn't have asked him to look at it.... I'd have taken the report because actually ...it's silent on it*". (Annex Y p17).
45. BB is also clear that he was not asked by staff in ERDG, or anyone else in NOMS, to ensure that the report concluded that ethnicity was not a factor in EF's motivation for the attack. (Annex Y p19).
46. When BB was asked by NN during his second interview to explain why he accepted Governor 2's amended final report; BB stated that he felt there would have been nothing

further to be gained from going back to Governor 2 to consider the evidence again having already made the request that he consider the motive. “...you get to a point sometimes, where despite some conversations or questions that might go back and forth, you accept the report for what it is despite asking for more clarity on some things”. BB also stated that Governor 2’s writing style was not “*expansive in his commentary on things*” ... “*I don’t recall whether I’d just got to the point where I go well, I’ve asked him to consider it, that’s his consideration*”. (Annex Z p9).

47. In response to an email request from me asking BB to explain why his letter of the 3 February 2015, (which asks Governor 2 to resume his investigation) made no specific reference to Governor 2 ensuring that his final report deals with the issue of racial motivation, BB responded on the 31 October as follows: “*I cannot explain why the letter has the omission in regards to racial motivation, although I am confident that it was certainly something that I spoke to [Governor 2] about ... Sorry I can’t add anything else than what has already been presented to you*”. (Annex EE).
48. HH was interviewed by NN on 19 October 2017 he stated that at the time of the assault on AD he was the Head of Safer Custody Case Work within the ERDG, with responsibility for overseeing the Article 2 investigation process. (Annex AA p2). He explained that it can often take some time before the decision to commission an Article 2 investigation can be made because they need to assess the nature of the injuries suffered. “*So in that interim period one would expect an internal exercise in terms of learning lessons quickly, so to prevent reoccurrence and to deal with any issues that have arisen from the incident*”. He confirmed that the ERDG receive the daily incident reports from prisons, and as such, he would have become aware of the assault on AD very shortly after 24 June 2014. Because of the seriousness of the assault the case was immediately put onto their monitoring list as a potential Article 2 investigation. (Annex AA p4).
49. HH recalls receiving a copy of Governor 2’s interim report and being aware that the internal investigation was paused for a period of time. He confirmed that he had an email exchange with BB prior to making his submission to the Minister to commission the Article 2 investigation. He explained that the ERDG “*were under pressure*” from AD’s family’s lawyers to make the decision quickly and the ERDG felt that the interim report was in need of “*some further work because we knew it would come under scrutiny in the*

independent investigation". Some of the further work related to racial motivation because *"the interim report had been entirely silent on race which we thought was a major omission given the circumstances of the assault. And so we thought that it needed to be revisited with that in mind"*. (Annex AA p5).

50. HH also stated that he was generally concerned about the lack of thoroughness of the internal investigation and potential criticism from AD's family and the external investigation; due to Governor 2's failure to consider racial motivation, the issue of whether EF was acting in collusion with anyone and risk given EF's comments about race at his induction. HH also confirmed that the concern was not to tone down any consideration of race, but the exact opposite in that the concern was that there hadn't been sufficient consideration. (Annex AA p6 &7).
51. HH stated that he received a further copy of Governor 2's report from BB's office *"which was largely unchanged and certainly didn't pick up the issue about race or collusion"* so he had a telephone conversation with BB in which he made the same points from his earlier exchange. After this conversation HH states that he received the final amended version of the report which included the reference to their being no racial motivation which *"reads oddly, in the final report because it comes out of thin air and seems at odds with some of the other evidence"*. At this point he does not push back because BB's email attaching the report indicated that BB was *"minded to accept"* the report and HH did not feel that it was his role to *"push it back again, I'd already done it twice"*. HH also described himself as being *"surprised"* by BB's decision to accept the report *"on the basis of what he'd said to me on the phone...that was clearly his decision and not mine, so that's how it ended"*. (Annex AA p10 & 11).
52. On 22 December 2014, FF from the ERDG sent an email (Annex F) to GG (Operations Manager for the South West) stating *"We have noted also that the interim report of the internal investigator is silent on the issue of race, which seems surprising in light of the way that the incident is being described by [AD]'s representatives" "I trust that this is one of the areas that will be explored in the final report"*.
53. On 15 January 2015 HH sent BB an email attaching a copy of a draft submission recommending that the Secretary of State authorise an Article 2 investigation. HH asked BB to check the accuracy of the case details within the submission and advised BB to

resume the internal investigation and pursue it to a conclusion before the independent investigation begins: *“This is because we are committed to disclose the report of the internal investigation to [AD]’s representatives ... and it will provide evidence for the independent investigation. It would therefore seem important that the report is the best that it can be, demonstrating that we have complied with our own instruction on investigations and that we have done our utmost to learn lessons from the incident. We have concerns that the interim report (which will become disclosable if there is no final report) does not achieve these ends, and in particular that its silence on the issue of race, when the incident has repeatedly been described as racially motivated, would leave us vulnerable. At least one other independent investigation report has criticised us for failing to investigate thoroughly internally, and it would be good to avoid a repeat of that criticism”*. (Annex G).

54. On 19 March 2015, HH sent an email to KK (Ministry of Justice Legal Team) in which he states: BB has advised that *“he has not formally accepted the internal investigation report, and has decided that further work is required - we had identified some key issues that we think need to be addressed in it and he was receptive to our views. Therefore, we are not in a position to disclose the internal report just yet”*. (Annex H).
55. The Cell Share Risk Assessment (CSRA) on which SS states that EF *“would only share [a cell] with own ethnicity and not a homosexual”* (Annex BB) is referred to in Governor 2’s interim internal investigation report (Annex C); and is included as annex N in both versions of Governor 2’s final reports (Annex I & M).
56. The MG5 (police report) in which EF makes reference to believing that AD is a Muslim, and believing that AD *“posed a significant threat to him [EF] this nation and the people of this nation”* and a view that *“if the Muslims had a crusade here there would be a lot of bloodshed”* (Annex A), is included as an annex in both versions of Governor 2’s final reports.
57. Governor 2 makes no reference to any consideration of race/religion as a motive for the assault in the interim report (Annex C), or his final report dated 4 March 2015 (Annex I). The following sentences were inserted into the final amended report (Annex M):

D1.2 “There is no evidence to suggest collusion by these prisoners with [EF’s] subsequent act against [AD]”

D6.9 “There is no evidence that other prisoners on the exercise yard knew what was about to happen or colluded with [EF] in any way”

D10.4 “There is no evidence to substantiate that [EF] chose [AD] for the assault due to [AD]’s ethnicity”.

58. When Governor 2 was asked by AA during interview to comment on whether the evidence in the annexes to his report (EF’s police statement) provided “some evidence of racial motivation”, Governor 2 said “You could go either way”. (Annex R p6).
59. On the 3 October 2019 I had a telephone conversation with Governor 2 (Annex DD). He stated that this incident had ended his 30 year career and that he was as clear today about what had happened as he was “*when my director told me to soften my report when there were clear procedural failings*”. I asked Governor 2 why he had made some of the changes to his report, that he states he was asked to, and not others. He responded that he did not change any of the procedural errors that he had referred to in his interim and final report because the procedural errors were “*fact based*” so they could not be changed. He added the comments about the lack of racial motivation, “*even though I didn’t want to,*” because motivation is subjective.
60. I also asked Governor 2 why he had made no reference to racial motivation in the interim and first draft of his final report. He stated that he had not been commissioned to look at motivation, he was commissioned to look into what happened in order to prevent a re-occurrence. He also stated that it was difficult to consider motivation “*as no one saw the assault, or the lead up to it, staff only heard the screams. So without interviewing [EF] I was unable to deal with motivation*”. He confirmed that he had read EF’s statement which dealt with his (EF’s) motivation when he resumed his investigation, but stated that he was unable to say “*what I thought about that*”.

Analysis

61. There is no dispute between BB and Governor 2 that they discussed the content of Governor 2's final investigation report (Annex I) after BB had a discussion with HH and before Governor 2's final amended report (annex M) was submitted to BB, as the Commissioning Authority, in which the following sentences had been inserted:

D1.2 "There is no evidence to suggest collusion by these prisoners with [EF] subsequent act against [AD]"

D6.9 "There is no evidence that other prisoners on the exercise yard knew what was about to happen or colluded with [EF] in any way"

D10.4 "There is no evidence to substantiate that [EF] chose [AD] for the assault due to [AD]'s ethnicity"

62. BB and Governor 2 provide very different accounts of the tone of their conversation and of what was said. There are no independent witnesses to the conversation/s, or notes of their discussions; therefore, it is necessary to look for evidence which may corroborate or undermine the differing accounts given by BB and Governor 2 in order to assess their individual credibility and the credibility of their different accounts.
63. Governor 2 claims that he had a difficult conversation with BB in which voices were raised and he was "*pushed*" to make changes to the report that he didn't want to. He also "*felt compelled to go with what his boss was saying ...as we were having discussions about promotion*". In my opinion, Governor 2's assertion of extreme pressure is significantly undermined by the fact that he refused to make any changes to the procedural failings that he had highlighted in his report, which are directly relevant to/critical of NOMS. Whereas the changes that he made to his final amended report relate to collusion between prisoners and the issue of motivation which have no bearing on the organisation.
64. In my opinion, Governor 2's explanation for making some of the changes that he was allegedly asked to make and not others, also lacks credibility. He stated that, the procedural errors were "*fact based*" so they could not be changed. However, he felt able to ignore the clear evidence/facts on the CSRA form and in EF's police statement, which support a finding that racial/religious motivation was a factor in this case, and insert the words: "*There is no evidence to substantiate that [EF] chose [AD] for the assault due to [AD]'s ethnicity*".

65. Governor 2 also claimed that he informed EE and RR about the pressure that was/had been put on him by BB to change the content of the internal investigation report; but neither of these witnesses fully corroborate his account of their conversations. EE denied having the alleged conversation and described Governor 2 as someone that was prone to exaggerate and make statements about things that weren't actually true; and RR, who represented Governor 2, recalled having a conversation about BB putting pressure on Governor 2 to change a report in "*broad terms*" as part of a conversation about the relationship between BB and Governor 2. Therefore, in my opinion the evidence of these witnesses undermines the credibility of Governor 2 and his evidence.
66. BB denies putting any pressure on Governor 2 to include the statement that there was no evidence of racial motivation. He stated in interview: "*There was no direction, there was no influence, it was a case of these are the questions that I've got coming out of this, can you just assure yourself as the Investigating Officer that, that there's enough evidence to take people through a disciplinary hearing and can you please look at motives because there is, there are things in here around the CSRA and also [EF]'s suggestion to the police that it might have been around belief*".
67. The letter that BB sent to Governor 2 asking him to resume his investigation, does not explicitly ask Governor 2 to consider motivation but it does state that the investigation should be continued "*as discussed with you in person in January*". And that "*The original TOR **should cover** the investigations and interviews that you need to continue and finish now that the Police and Courts have dealt with the perpetrator of the assault*". Although the letter does not specify what was discussed in January, it does make it clear that BB was of the opinion that the original terms of reference "*should cover*" what Governor 2 needed to address when he resumed his investigation. In my opinion, this statement would be unnecessary if Governor 2 had been asked to take something out of his report, but it would be necessary if Governor 2 had been asked to widen the scope of his original investigation. Therefore the contents of this letter provides some support to the version of events given by BB.
68. BB also questions the rationale of Governor 2's allegation, given that the first draft of the final report was still silent on the issue of motivation "*... if I really wanted to bury news*

about the organisation why would I ask him to go and look at something again. ... If I wanted to keep it quiet, if that was my motivation I wouldn't have asked him to look at it.... I'd have taken the report because actually ... it's silent on it". In my opinion, the fact that the interim and first draft of Governor 2's final report were both silent on the issue of motivation, supports BB's assertion that there was no need to ask Governor 2 to lessen the impact of a finding that he had not made.

69. HH's account in interview of his/ERDG's concerns about the omissions in Governor 2's internal investigation reports, and the potential reputational harm to NOMS is fully corroborated by the emails from FF (Annex F) and HH (Annex G) which both express concern about **the absence** of any reference to possible racial motivation in the interim report, and ask for the issue of racial motivation to be explored in the final report.
70. HH also stated in interview that following receipt of Governor 2's final report dated 4 March "*which was largely unchanged and certainly didn't pick up the issue about race or collusion*" that he had another conversation with BB and made the same points from his earlier exchanges (Annex AA p9).
71. HH stated in interview that he did not form the impression that BB disagreed with the views of the ERDG in respect of the omissions in the report, and the need for the final report to address the issue of racial motivation. This view is also expressed in HH's email to the MOJ legal team, in which he states that BB "*has not formally accepted the internal investigation report, and has decided that further work is required - we had identified some key issues that we think need to be addressed in it and he was receptive to our views*".
72. As noted above, there is no written record or note of BB's discussion with Governor 2 following the submission of the final report dated 4 March 2015 (Annex I), however, the "minor amendments" that Governor 2 made to the final amended report relate to the issues of collusion and racial motivation, which are issues that the ERDG had raised concerns about and on which Governor 2's earlier reports were silent. Therefore, in my opinion, this tends to support BB's assertion that he did convey ERDG concerns about the omissions in the report onto Governor 2.

73. The ERDG/HH had been monitoring the assault on AD from the point of notification, as there was a strong possibility that an Article 2 independent investigation would be required. HH was Head of Safer Custody Casework with previous experience of the level of external scrutiny and criticism that NOMS could expect if the internal investigation was not thorough. On the 19 September 2014, NOMS received a request from AD's family solicitors for an independent Article 2 investigation into the "racist attack" and the letter also stated that the assault on AD had been treated as a "hate crime" by the prosecuting authorities. By January of 2015 a submission was being prepared by HH for the Minister to agree to the commissioning of an Article 2 investigation.
74. In my opinion, once the likelihood of an independent Article 2 investigation became clear, there would be no conceivable benefit to HMPPS in producing an internal investigation report that ignored the obvious racial/religious aspects of AD's case. Therefore, in my opinion, Governor 2's allegation that he was "strongly encouraged" by BB **after** he had spoken to the ERDG sometime in March 2015 to include a conclusion that there was no evidence of racial motivation, lacks credibility.
75. Governor 2's interim investigation report into the assault on AD dated the 24 July 2014 made no reference to any consideration of possible racial or religious motivation for the assault. Governor 2 told me during our telephone conversation that he believed that the terms of reference did not extend to the consideration of motivation for the assault. He stated that he had not been commissioned to look at motivation, he was commissioned to look into what happened in order to prevent a re-occurrence. The terms of reference were in fact "*To investigate the circumstances where [EF] was able to seriously assault [AD] on the Brunel Unit exercise yard on 26th June 2014*". Therefore, Governor 2 clearly applied a very narrow and in my opinion incorrect interpretation of what would normally be captured in a consideration of the circumstances of an assault.
76. In my opinion a consideration of the "circumstances" of an assault requires a consideration of possible motives in addition to a consideration of procedural and individual failings. Although, the interim report was completed quickly, and without the benefit of the police report, a consideration of the circumstances of the assault, should in my opinion, have led a reasonably competent investigator to consider the possibility of a racial/religious motivation for the assault. The assault was unprovoked, the victim of the

assault was a Black Muslim male and the perpetrator was a white male who had expressed a desire not to share a cell with a person of a different ethnicity.

77. Governor 2's final report dated 4 March 2015, included the evidence of the police report in which EF expresses his beliefs about the risks that Muslims pose in addition to the CSRA which expressed EF's unwillingness to share a cell with a person of a different ethnicity. However, Governor 2's report is still silent on the possibility of a racial or religious motivation for the assault. When asked by AA whether this evidence supported a racial motivation Governor 2 replied "*It could go either way*" and when I asked him what he thought about this evidence he said that he didn't know what he thought.
78. AA had only (in accordance with policy) been provided with a copy of Governor 2's final amended report dated 15 May 2015, and decided to speak to Governor 2 because he was concerned by the conclusion that there was no racial motivation; which he believed to be wrong in the light of the evidence to the contrary. AA did not ask Governor 2 about the content of the first draft of the final report; and whether deliberately or inadvertently, Governor 2 left AA with the impression that he (Governor 2) did not agree with the statement about the absence of racial motivation.
79. AA confirmed during his meeting with me that the serious allegations made by Governor 2 were beyond the scope of his investigation, and that consequently he had not considered Governor's 2 credibility as a witness or the truth of the allegations themselves.
80. In my opinion, the fact that Governor 2's interim report and the first draft of his final report are completely silent on the issue of possible racial or religious motivation, and the fact that he believed that the issue of motivation was not relevant to the circumstances of the assault, tends to suggest that the words inserted at paragraph D.10 namely that "*There is no evidence to substantiate that [EF] chose [AD] for the assault due to [AD's] ethnicity*" was included by Governor 2 to support/justify **his own opinion**, which was contrary to the opinion of the prosecuting authorities, AD's family, the ERDG and the available evidence.

Conclusion

81. I have found no evidence to support Governor 2's allegation that BB directed him to amend his internal investigation report to include a conclusion that there was no evidence to support a racial motivation to the assault on AD. On the contrary, the weight of the evidence suggests that the ERDG and to a lesser extent BB, were concerned about the Governor 2's failure to address the issue of racial motivation, in respect of an incident that had been treated as a hate crime in criminal proceedings, and was widely perceived as being potentially racially if not religiously motivated.

82. Although I have concluded that no improper pressure was placed on Governor 2 to diminish the role that racial or religious motivation played in the assault on AD. I am concerned that the Commissioning Authority/BB made a decision to accept Governor 2's amended final report, whilst in the full knowledge that the report had failed to explore the fundamental issue of possible racial or religious motivation. In my opinion, BB should have given consideration to possible alternatives, including the feasibility of removing Governor 2 from his role as lead investigator given his inability to identify the salient issues in the case and investigate them thoroughly.

83. This issue goes to the heart of the circumstances surrounding the allegation of improper pressure by the Commissioning Authority in this case; therefore, I recommend that HMPPS consider issuing guidance to all staff undertaking the role of commissioning authority on how to address legitimate concerns about the content/quality of investigation reports.

ANNEX LIST

Annex A	MG5 Police Report EF
Annex B	HMPPS Guidance on “Investigations and Hearings Following Incidents of Serious Self Harm or Serious Assaults” (PSI 15/2014)
Annex C	Governor 2’s Interim Internal Investigation Report dated 24 July 2014
Annex D	Letter from AD’s Family Solicitors
Annex E	Letter from Governor 2 to AD’s Family Solicitors
Annex F	Email from FF to GG dated 22 December 2014
Annex G	Email from HH to BB dated 15 January 2015
Annex H	Email from BB to HH dated 16 January 2015
Annex I	Governor 2’s Final Internal Investigation Report dated 4 March 2015
Annex J	Email from BB to HH dated 9 March 2015
Annex K	Email from HH to MOJ legal 19 March 2015
Annex L	Article 2 Investigation – Commissioning letter
Annex M	Governor 2’s Final amended Internal Investigation Report dated May 2015
Annex N	Email from Governor 2 to BB dated 2 April 2015 enclosing final amended report
Annex O	Email from BB to HH dated 2 April 2015
Annex P	Email from FF to BB dated 18 May 2015
Annex Q	Email from MM 3 June 2019
Annex R	Governor 2 interview with AA
Annex S	AA Article 2 Investigation Report
Annex T	NN internal investigation report
Annex U	Governor 2 interview with NN
Annex V	BB Interview with NN
Annex W	EE interview with NN
Annex X	RR interview with NN
Annex Y	BB 1 st interview with NN
Annex Z	BB 2 nd interview with NN
Annex AA	HH interview with NN
Annex BB	Cell Share Risk Assessment for EF

- Annex CC Note of meeting between Dale Simon and AA on 23 September 2019
- Annex DD Note of telephone conversation between Dale Simon and Governor 2 on 3 October 2019
- Annex EE Email from BB to Dale Simon dated 31 October 2019