

**HEADQUARTERS**

Calton House  
5 Redheughs Rigg  
Edinburgh  
EH12 9HW

**Tel:** 0131-244-8523

**Colin McConnell**  
Chief Executive

By E-Mail [steven.iserhoff@scottish.parliament.uk](mailto:steven.iserhoff@scottish.parliament.uk)

Mr Steven Iserhoff  
Committee Assistant  
Local Government and Regeneration Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

30 November 2015

Dear Mr Iserhoff

**IMPLEMENTATION OF SCOTTISH PUBLIC SERVICES OMBUDSMAN (SPSO) DECISION 201305414**

Thank you for your letter of 10 November in which you seek information on the implementation by the Scottish Prison Service (SPS) of the recommendations made by the SPSO in their decision 201305414. The decision contained 2 recommendations as follows:

**Recommendation 1:** SPS staff be reminded that the reason for refusing a request for assistance should be recorded within the ICC response.

**Recommendation 2:** SPS issue a reminder to the staff involved in handling this complaint that the issue complained about should be adequately investigated, in line with the prison rules and their staff guidance on prisoner complaints and disciplinary appeals.

To assist the Committee, it might be helpful to provide information on the statutory basis and complaints process for offenders.

**Complaints Process**

The complaints process for prisoners has a statutory basis in the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the "Rules"). SPS consulted with the SPSO in drafting the Rules and as such, the complaints handling process replicates the SPSO Model Complaints Handling Procedure (CHP). The terminology used by SPS in our complaints process necessarily

reflects the provisions in the Rules and the prison environment. The complaints process for prisoners contains 2 stages:

### **Stage 1: Complaint to the Residential First Line Manager**

The first stage of the complaint is dealt with by a Residential First Line Manager. This individual is responsible for the daily operation of the accommodation block in which the offender is located.

### **Stage 2: Internal Complaints Committee**

The second stage is dealt with by an Internal Complaints Committee (ICC). The Rules require that the Committee consists of 3 individuals, 2 of which must be officers or employees of SPS. The recommendations of the ICC must be considered by the Governor of the prison who can either agree or reject the recommendations. Where recommendations are rejected, the Governor can propose further action.

## **SPSO**

Where a prisoner remains dissatisfied, they may refer their complaint to the SPSO. Where the SPSO make recommendations in relation to our handling of a complaint, these are normally communicated throughout the prison estate by issuing a Governors and Managers Action Notice (GMA). They are also published and are used for audit purposes to provide further assurance of compliance.

SPS welcomes the recommendations from the SPSO and considers that they provide valuable independent analysis of our complaints handling. This allows us to focus on specific areas of service delivery and share best practice. Their independence and expertise provide a fresh and challenging oversight of our policies, guidance and procedures which allows us to learn lessons and make changes. This learning is also shared with our partners in Serco (HMP Kilmarlock), Sodexo (HMP Addiewell) and G4S, our escort service provider.

## **Statistics**

The SPSO CHP has informed the training for staff and management in complaints handling and good investigation skills. We make regular use of 'valuing complaints' which is the SPSO's Complaints Standards Authority (CSA) website. As a result of the close working and revised complaints process, we have found an increase in the number of complaints that are closed at the early resolution stage. We annually respond to more than 7,000 complaints, with around 90% being resolved by our own internal processes. Of those individuals that remain dissatisfied, only around 300 complaints are referred to the Ombudsman's office with 70% of these cases being closed either, at the SPSO initial advice stage or their early resolution stage. Of those cases that are fully investigated, the number of complaints upheld remains below the average for the public sector overall and, although stable at around 35% for the past 2 years, is now showing a reduction this current year at around 25%.

## **Decision 201305414**

SPS confirmed the actions taken to implement the recommendations in this decision on 23 March. The letter detailed each of the actions taken and included additional evidence that SPS had already taken following a previous decision letter on a similar case. The SPSO responded on

2 April and informed us of their satisfaction on all matters relating to the implementation of the recommendations. I enclose a redacted copy of this letter for the Committee's information. For completeness, I have also enclosed a copy of the Governors and Managers Action Notice issued at that time.

I trust this information is also helpful and provides you with a positive overview of actions SPS have taken to support the work of the SPSO. Should you require any further information in relation to either this case or information in general, I would be happy for you to contact our manager tasked with liaison between ourselves and the SPSO, Maurice Dickie. He can be contacted on 0131-244-8773.

Yours sincerely

A handwritten signature in black ink, reading "Colin McConnell". The signature is written in a cursive, flowing style.

**COLIN McCONNELL**  
Chief Executive

Enclosures

Tel: 0131-244-8523

Colin McConnell  
Chief Executive

**CONFIDENTIAL**  
Ms Annette Wilson  
Complaints Reviewer  
Scottish Public Services Ombudsman  
4 Melville Street  
Edinburgh  
EH3 7NS

23 March 2015

Dear Ms Wilson

**YOUR REF: 201305414**

Thank you for your letter of 3 March in which you upheld a complaint from [REDACTED] and made the following recommendations:

**Recommendation 1:** SPS apologise to you for the shortcomings identified in this letter.

**Recommendation 2:** staff be reminded that the reason for refusing a request for assistance should be recorded within the ICC response.

**Recommendation 3:** a reminder to the staff involved in handling this complaint that the issue complained about should be adequately investigated, in line with Prison Rules, and their staff guidance on prisoner complaints and disciplinary appeals.

In relation to **Recommendation 1**, I can confirm that the Governor-in-Charge of HMP Edinburgh, Mrs Teresa Medhurst, has written to [REDACTED] with an apology. A copy is enclosed for your information.

In relation to **Recommendation 2**, I can confirm that HMP Edinburgh has sent an E-Mail reminder to all ICC Chairs. A copy of the E-Mail is enclosed for your information. In addition, as previously notified under Case 201403224, SPS has issued a Governors' and Managers' Action Notice 77A/14 which incorporates a witness request form to be used in all such cases. A further copy of this action notice is enclosed for your information.

In relation to **Recommendation 3**, I can confirm that all staff at HMP Edinburgh directly involved in this case have been reminded and a copy of the E-Mail confirming this is again enclosed for your information.

Finally, we contacted your office by E-Mail to inform you that [REDACTED] was no longer in HMP Kilmarnock at the time of your letter of 3 March, and that you should re-issue your

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correspondence to HMP Addiewell where [REDACTED] currently located. We assume you were therefore informed of this change.

I trust this information is helpful.

Yours sincerely

A handwritten signature in black ink that reads "Colin McConnell". The signature is written in a cursive, flowing style.

COLIN McCONNELL  
Chief Executive

Enclosures

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|--|--|--|
| <b>READERSHIP</b><br><br><b>Governors-in Charge</b><br><b>Directors of Private Prisons</b><br><b>Controllers of Private Prisons</b><br><b>SPS Complaints Handlers</b><br><b>SPS Branch Heads</b> |  | <b>REFERENCE NO</b><br><br><b>77A/14</b>   |
|  |  | <b>DATE</b><br><br><b>19 December 2014</b> |
| <b>SUBJECT</b><br><br><b>SPS Complaints Handling</b><br><b>Scottish Public Services Ombudsman (SPSO)</b><br><b>Recommendations</b>   | <b>CONTACT</b><br><br><b>Maurice Dickie</b><br><b>HQ project Manager</b> |  |

The SPSO has made a number of recent recommendations on the handling of complaints which the Chief Executive has accepted. These are summarised for your attention below;

**Recommendation 1;** SPS remind staff to respond to each issue raised in a complaint including any complaint handling matters. (Case 201403224)

**Recommendation 2;** SPS review the staff guidance on prisoner complaints to ensure it is consistent with Part 12 of the prison rules. (Case 201403224)

Extract from the Guidance Version 2 dated 1 November 2011

Once the ICC receives the form, the Chair must check to see if there is a request to attend, be assisted or bring witnesses to the hearing. If the prisoner requests to: Attend the hearing; or to be assisted by: An officer; An employee; A member of the visiting committee; A person who ordinarily works at the prison **'then the Chair must arrange for their attendance at the hearing.'**

In accordance with Part 12 of the prison rules the statement above in **BOLD** should therefore read:

**'then the Chair may arrange for their attendance at the hearing if appropriate and providing the individual themselves are willing to attend.'**

**Recommendation 3;** SPS consider revising form PCF1 to include the information sought by the witness information form. (Case 201403224)

The SPS will only amend forms at appropriate intervals as they are controlled under statute and subject to directions to the prison rules. This GMA however authorises the inclusion of an Annex to the PCF1 'Witness Request Information Form' to be used in all cases where a witness request has been made until such a time as amendments to the PCF1 form have been implemented.

**Recommendation 4;** SPS review the wording of paragraph 2.9 of the disciplinary hearings guide to ensure it clearly reflects the SPS' position in relation to the attendance of the reporting officer at disciplinary hearings. (Case 201403945)

The SPS will only amend Guidance documents at appropriate intervals. Until such a review is scheduled this GMA provides further clarity to para 2.9 of the Disciplinary Hearings Guide 2012 – amendments in **BOLD**

Extract from the Guidance 2012

2.9 Once a prisoner has been charged, it is the responsibility of the reporting officer to identify and produce evidence in support of the charge. The reporting officer must be present should the prisoner or the adjudicator consider it necessary **prior to any evidence being led.** (ref: Form ADJ2 Question 7) Where the reporting officer is present he or she should present the case. The reporting officer should identify any witnesses to the alleged offence and may, if called, question any witnesses. **Where a prisoner accepts the evidence 'as presented' without requiring the reporting (Charging) officer and any other witnesses identified to appear and; the evidence is led, any further necessity to have the officer or witnesses present will be at the discretion of the adjudicator. The adjudicator should however be mindful of the guidance given in para 2.4 in all cases.**

**Required action;**

Can you please bring this to the attention of all relevant staff and undertake any necessary updating of local procedures and instructions for implementation. Please note the contents of this GMA will be incorporated into revised guidance on complaint handling which we will prioritise early in 2015. Thank you for your cooperation.



**Eric Murch**  
**Director of Operations**

# WITNESS REQUEST INFORMATION FORM

## ANNEX TO PCF 1

**\*\*Completed forms must be returned to the *establishment complaints handler* by..... to allow the ICC Chairperson to consider this request prior to the ICC meeting \*\***

|                    |  |                       |  |
|--------------------|--|-----------------------|--|
| <b>Name:</b>       |  | <b>Prison Number:</b> |  |
| <b>Witness(s):</b> |  | <b>Location:</b>      |  |
|                    |  | <b>Complaint No.</b>  |  |

### **Section 1:** *To be completed by complainer*

Why are you calling this witness and what added information will they bring to support your complaint?

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|--|

Have you discussed this witness request with the individual and confirmed they are happy to attend?

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Please provide any further information you believe would be of added value to the ICC chairperson when considering your request for a witness.

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Prisoners Signature:.....

Date:.....

### **Section 2:** *To be completed by the Chairperson*

**Prison Rule 123 (7)** *The Chair of the ICC may refuse to allow a prisoner to call a witness if, having discussed the matter with the prisoner, the chair is reasonably satisfied that the evidence which the witness is likely to give will be of no relevance or value in considering the complaint and, in that event, the chair must inform the prisoner concerned prior to the hearing.*

#### **Decision:**

*If witness is refused:*

Prisoner informed:      Date: ..... Time .....

ICC Chairperson:.....

Date: .....