

## SPSO decision report

**Case:** 201301677, **Scottish Prison Service**  
**Sector:** Scottish Government and devolved administration  
**Subject:** disciplinary charges - orderly room proceedings  
**Outcome:** upheld, recommendations

### Summary

Mr C, who is a prisoner, was placed on report because a mobile phone was found in his cell. Prisoners can be placed on report when an officer suspects that they have broken prison rules. Mr C complained because he said that the adjudicator (the person who decides whether he did break prison rules) did not follow the correct process at the disciplinary hearing. In particular, he said the adjudicator spoke to the witness when Mr C himself was not present. Because of that, Mr C said he was unable to ask the witness questions.

We upheld Mr C's complaint, as it was clear that the adjudicator did not follow the correct procedure. Our investigation found that prison rules and related guidance confirm that a prisoner must be given the opportunity to question witnesses. In addition, the SPS' legal services team told us that an adjudicator did not have the authority to question a witness called to a disciplinary hearing when the prisoner being charged was not present.

### Recommendations

We recommended that the Scottish Prison Service:

- revisit the circumstances of Mr C's disciplinary hearing with a view to determining whether appropriate corrective action is required; and
- remind prison staff that they cannot question a witness at a disciplinary hearing without the charged prisoner being present.