

SPSO decision report

Case: 201303184, Scottish Prison Service
Sector: Scottish Government and devolved administration
Subject: testing for controlled drugs and alcohol
Outcome: upheld, recommendations

Summary

Mr C, who is a prisoner, was placed on report for having items in his pocket that he was not supposed to have. One of the items was a tablet that a nurse suspected was Mr C's prescribed medication. The prison tested it and confirmed that it was Mr C's medication. He was charged and punished at a disciplinary hearing. He said that he was told he could have the tablet independently tested, but was then told that the whole tablet was used in the testing process. Mr C complained that the prison inappropriately failed to retain the tablet so that he could have it tested.

In line with the Scottish Prison Service (SPS)'s drug testing policy, the prison should have completed a drug testing recording sheet and prepared a report for Mr C's disciplinary hearing. We asked to see that paperwork, but the SPS told us it was not available. They told us the approved drug testing kit was used and the result of the test was reported verbally to the adjudicator of the hearing. We asked them to confirm that prisoners were entitled to have substances that had given a positive result tested independently, and the SPS confirmed they were entitled to do that.

Mr C was denied the opportunity to have the tablet tested independently. The prison did not complete the required paperwork or prepare a report for the adjudicator. Because of that, we were unable to determine whether the prison correctly followed the process, and we upheld Mr C's complaint.

In addition, we noted that we had previously investigated a similar complaint (case number 201203443) in which we identified the same failings. At that time, we asked the SPS to remind all prison establishments of the obligation to follow the requirements of the drug testing policy, and they issued an action notice to all prisons in February 2013. In our decision on Mr C's complaint, we noted our disappointment that the same failing occurred in this case and made a recommendation relating to this.

Recommendations

We recommended that the SPS:

- review the circumstances of Mr C's case to decide whether appropriate corrective action should be taken;
- apologise to Mr C for not giving him the opportunity to have the tablet independently tested; and
- remind all prison establishments again of the obligation to follow the requirements of the presumptive drug testing policy.