

SPSO decision report

Case: 201400436, Scottish Prison Service
Sector: Scottish Government and devolved administration
Subject: home detention curfew
Outcome: upheld, action taken by body to remedy, recommendations

Summary

Mr C complained about the Scottish Prison Service (SPS)'s decision to refuse his application for release on home detention curfew (HDC) because the immigration department were considering deporting him at the end of his sentence. We found that prisoners can only be statutorily excluded from release on HDC when they have been formally notified of a decision to deport them, and when Mr C's application was refused, no formal decision had yet been taken on his case.

Following this refusal, the SPS issued guidance to staff clarifying how to interpret the relevant legislation. This guidance was issued before Mr C appealed the decision on his case but, despite this, the SPS did not identify that they had previously interpreted the legislation incorrectly. The appeal was rejected but the SPS later realised that this should not have happened and reopened the case. They then contacted the immigration department for an update and found out that there were no plans to issue a formal decision until nearer the end of Mr C's custodial sentence. However, as the SPS had highlighted the importance of receiving a formal decision for HDC purposes, one was issued, which allowed the SPS to properly determine Mr C's application.

As updated staff guidance had already been issued, and Mr C's case had been reopened and assessed appropriately, all that was left in this particular case was for us to ask the SPS to apologise to Mr C. However, we were concerned that receipt of a formal deportation order is crucial in terms of processing HDC applications, and the immigration department do not routinely issue the orders until late in the prison sentence. We, therefore, made a recommendation about this.

Recommendations

We recommended that the SPS:

- review their HDC policy to ensure that, where possible, their requirements are compatible with the policies of the UK Visas and Immigration department; and
- apologise to Mr C for the failings we identified.