

SPSO decision report

Case: 201403597, Scottish Prison Service
Sector: Scottish Government and devolved administration
Subject: escorted day absence
Outcome: upheld, recommendations

Summary

Mr C complained that his prison refused his request for escorted day absence (EDA) so he could visit a relative who was medically unable to travel to the prison. Mr C said his previous prisons had granted him EDAs to see the same relative, and the situation had not changed, so he could not understand why his request was refused.

The Prisons and Young Offenders Institutions (Scotland) Rules 2011 and the Scottish Prison Rules (Escorted Day Absence) Direction 2011 set out the criteria for EDAs. It is clear from this legislation that prison governors have discretion to decide whether an EDA application is being made in exceptional circumstances. The SPSO cannot challenge this discretion. However, even where there is discretion, such decisions must be justified on the basis of available evidence, and this information should be recorded. This ensures that, where appropriate, the process used to reach such decisions can be scrutinised, to ensure that the process is followed appropriately and, therefore, the decisions are not arbitrary.

In Mr C's case, neither his prison nor the Scottish Prison Service centrally were able to provide us with a copy of his completed EDA application. Therefore, there was no evidence that the EDA process was followed appropriately to its completion. In addition, Mr C's prison did not explain in their responses to his complaints, or in their response to our enquiry, why they did not consider his case to be exceptional circumstances. Given this, we upheld Mr C's complaint.

While we understand the need for prison governors to be able to make decisions in their prison based on local conditions and the specific circumstances of individual cases, the apparent lack of guidance on what might be considered exceptional circumstances for an EDA could lead to apparent unfair inconsistency between individual prisons which is difficult to explain. Therefore, we made a recommendation to address this.

Recommendations

We recommended that the Scottish Prison Service:

- apologise to Mr C for failing to explain why his case was not considered to be exceptional circumstances;
- remind all prisons of the importance of keeping complete, accurate and current information in a prisoner's core file; and
- provide guidance to prison governors on what might constitute exceptional circumstances for an escorted day absence.