

## SPSO decision report

**Case:** 201508390, Scottish Prison Service  
**Sector:** Scottish Government and devolved administration  
**Subject:** downgrading  
**Outcome:** some upheld, recommendations

### Summary

Mr C complained about a decision taken by the Scottish Prison Service (SPS) to downgrade him (return him to closed conditions from less secure conditions). He said that they did not follow the proper process in taking the decision, and that the decision was based on inaccurate evidence.

Mr C was unhappy that he was not placed on a disciplinary report for the incident which triggered the downgrading process. We found that the disciplinary process is a separate process and that it is at the discretion of staff whether to place prisoners on disciplinary reports. A disciplinary hearing does not have to take place before downgrade action can be taken. While Mr C was frustrated that he was not afforded a disciplinary hearing in order to protest his innocence, we noted that the downgrading process allows prisoners the opportunity to make representations against the decision. However, the SPS said that they had lost the relevant form and were unable to evidence that this happened in this case. We therefore concluded that the proper process was not followed and upheld this complaint.

Whilst Mr C denied the allegations made against him that triggered the downgrade action, we found nothing to indicate that the decision was taken based on inaccurate evidence. We noted that the SPS are entitled to take action to evaluate a prisoner's risk if they have concerns and that the decision in this case appeared to have been taken based on an accumulation of concerns and not solely on the one incident. We did not uphold this complaint. However, while we did not conclude that the SPS decision was based on inaccurate evidence, we considered that it may have been based on incomplete evidence (given the absence of evidence of Mr C's representations having been taken into account).

### Recommendations

We recommended that SPS:

- apologise to Mr C for their failure to follow the proper process when taking the decision to downgrade him;
- remind relevant staff of their responsibility to ensure all appropriate documentation is completed and transferred to the receiving establishment when a prisoner is returned to closed conditions; and
- invite Mr C to make representations against the decision to downgrade him and ensure that they are duly considered and responded to.