

Scottish Parliament Region: South of Scotland

Case 200402258 & 200501168: Scottish Prison Service

Summary of Investigation

Category

Scottish Executive & Devolved Administration: Prisoner; Policy

Overview

In May 2005 the Ombudsman accepted a complaint from a prisoner (Mr C) against the Scottish Prison Service (SPS) about his dissatisfaction with their handling of his application to transfer to an open prison. In a subsequent complaint against the SPS, Mr C complained of delay and other administrative shortcomings in the handling of his compassionate visit application by HMP Peterhead and HMP Dumfries. Both complaints were handled together and the combined investigation is the subject of this report.

Specific complaints and conclusions

The complaints that have been investigated are:

- (a) dissatisfaction with the SPS handling of an application to transfer to an open prison (*not upheld*); and
- (b) dissatisfaction with the SPS handling of his compassionate visit application (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. Mr C complained that he had experienced difficulties in applying to be transferred to open conditions from HMP Peterhead: initially, in obtaining a form to apply for transfer (obtained a form from another prisoner); subsequently, when his transfer request was denied. One of the grounds for refusal was that he was a 'High' supervision level prisoner and he would require to be categorised as 'Low' before his application could be considered for onward movement to an open establishment (the different categories of supervision are described at Annex 3).

2. Mr C sought a review of the matter and applied to the Scottish Prisons Complaints Commission (SPCC). In response to the SPCC's enquiries, the Governor in Charge of HMP Peterhead (GIC) agreed that there were shortcomings in following the published process and confirmed that the supervision level would be revisited. After review, Mr C was allocated a 'Low' supervision level. However, his transfer request was still denied. Mr C alleged that the actions of the SPS, in their handling of his application for transfer, failed to conform with policy, established procedures and guidelines relating to prisoner transfer requests.

3. Mr C's mother was admitted to hospital for surgery. Mr C complained of delay and other administrative shortcomings by the SPS in the handling of his request for compassionate leave to visit his mother in hospital.

4. The complaints from Mr C which I have investigated are:

- (a) dissatisfaction with the SPS handling of an application to transfer to an open prison; and
- (b) dissatisfaction with the SPS handling of his compassionate visit application.

5. The investigation of this complaint involved obtaining and reading the relevant documentation and obtaining comments from the SPS and the SPCC. The remit of the SPCC is to conduct an independent review of prisoners' complaints that have not been resolved through the internal grievance system of the SPS.

6. I have referred to the Prisons (Scotland) Act 1989, the Prisons and Young Offenders Institutions (Scotland) Rules 1994 (known as the 1994 Rules) and the

current Rules (2006) which came into force in March. I have also considered the HM Inspectorate of Prisons Reports on HM Prison Peterhead (March 2003 and 2005) and information on the SPS management rules for open conditions and the programmes, including STOP (the Sex Offender Treatment Programme).

7. I have been provided with a copy of the form used for the assessment of prisoners for transfer to the Open Estate (SPS Criteria Checklist for Admission to Top Ends/Open Prisons) and copies of the criteria for Open Estate and the Prisoner Selection Process for Transfer to Open Estate.

8. My findings of fact and conclusion for the complaints are set out below and, while I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C, the SPS and SPCC have been given an opportunity to comment on a draft of this report.

Background to the complaint

9. On 1 April 2002 the SPS abolished security categories and in their place introduced the Prisoner Supervision System (PSS). Mr C is defined as a Long Term Prisoner (LTP). His supervision level is subject to review by the SPS on, at least, a yearly basis. This review is completed on a standard form (PSS2) and there are three different categories of supervision (see Annex 3).

10. Rule 92 of the 1994 Rules (which were in force when Mr C made his request for compassionate leave) specifies that escorted exceptional day absence of a prisoner for the purpose of enabling him to visit a near relative (who it appears to the GIC is dangerously ill or to attend at any place for any other reason where the GIC is of the opinion there are exceptional circumstances) may be granted on written application, if the GIC is satisfied that the purpose of the application is genuine and appropriate.

11. Part II of the 1994 Rules (Requests and Complaints) sets out the procedures for making a complaint. Form CP1 is the pro forma which prisoners can use when submitting a complaint. Part 1(A) is referral of the complaint to the Residential Officer (an officer who is required by the Governor to supervise a specific area of living accommodation for prisoners) and (B) that officer's response. If dissatisfied, the prisoner completes Part C and the response is by the Residential Manager (an

officer who is required by the Governor to manage a number of areas of living accommodation for prisoners). It can then be referred to the Internal Complaints Committee (ICC) and, finally, to the GIC.

(a) Dissatisfaction with the SPS handling of an application to transfer to an open prison

12. Mr C's grievance started when he returned to HMP Edinburgh in 2004, after a period of interim liberation in the local community. At this time, his supervision level was recorded as 'High'. Mr C claimed that he tried, unsuccessfully, to obtain a form to apply for a transfer to a prison with open conditions but was told that no forms were available. He referred the matter to local management and was told that he could complain electronically (by e-mail) but declined to do so as he would be unable to 'sign off' his request.

13. Mr C wrote to the SPS HQ for assistance and, with their intervention, he received a response from local management, stating that the matter had been discussed with him at some length and that he had been advised that he was 'not currently eligible for transfer to open or semi-open conditions'; also, that 'your next transfer will see you relocated to HMP Peterhead your prison of allocation'. He was dissatisfied with this response because it did not provide detailed reasons why he was not permitted to progress to open conditions.

14. Mr C obtained a form from another prisoner and submitted a transfer request on 29 November 2004. The transfer request form includes information about the sentence and length of time being served, parole eligibility and supervision level. There are sections to be completed by Personnel/ Casework Officers, a medical report, the Supervisor's comments and, lastly, the Unit Manager.

15. The SPS staff completing the form did not support his transfer request. Comments included that 'Open conditions are inappropriate for [Mr C] at this time' and that '[Mr C] clearly does not fit the criteria for onward movement to more open conditions'. It was also noted that since the start of his sentence, Mr C had: 'purposefully declined to participate meaningfully in any of the offence and non offence specific work available to him in his prison of allocation' and that he had 'not progressed within his sentence'. The application was not supported for reasons relating to the 'High' supervision level; not due a review until March 2005;

and absence of evidence to suggest Mr C had addressed any identified needs.

16. On 14 December 2004, Mr C made a formal complaint (CP1) stating that he was very disappointed that his application had not met with approval. He asked for a review of the decision. On 15 December 2004, the Residential Officer informed Mr C that he did not fit the criteria for transfer to open conditions and that this had been explained to him.

17. Mr C took his complaint to the next stage (Residential Manager) and complained that he had been unable to establish precisely what the criteria for transfer to open conditions were and asked for written, detailed information. The Residential Manager's response on 17 December 2004 was that there were 'several factors prior to considering any formal application for transfer to an open establishment'. One of the main factors was that Mr C was currently classified as being High supervision and the Residential Manager understood that he must be classified as Low supervision prior to being considered for onward movement to an open establishment.

18. Mr C pursued the issue of the criteria for transfer and indicated that he expected his supervision level to be re-classified (as he disputed the assessment having recently returned from a period of liberation). At the penultimate stage (ICC), he opted not to attend the hearing in person. The ICC informed him of the outcome of the hearing on 24 December 2004 and advised him that it was not just the supervision level which is taken into account in a transfer request:

'What does a prisoner have to do to progress to a 'top end' and open?

The supervision level is just one part of the sentence management system. To progress a prisoner must be serving 18 months or over, obtain a Low supervision level, have addressed their identified needs and have reached the point in their sentence where they are eligible to enter into a pre-release programme.

All Long-term prisoners are eligible for parole. To be eligible for a pre-release programme you must meet the following criteria:

- a. Served a minimum of one year in a closed establishment and have addressed your identified needs appropriate to stage in your sentence
- b. Be within 2 years of PQD for consideration for a top end

- c. Be within 1 year of your PQD for consideration for open prison and having served a minimum of 3 months in a top end hall.

There are dynamic risk factors you have to ask yourself. Do I have the appropriate supervision level and have I addressed my offending behaviour, response to programmes, participation etc [outcomes] failed to complete offence specific programmes. You have to ask yourself, have I achieved target of Low supervision level. If not why not and what can I do [to] for consideration of low risk.

Have I made a satisfactory response within prison and have I addressed my offending behaviour and can I be trusted in terms of knowledge, to move on to Top End in Peterhead and then Open Conditions.'

The hope was expressed that Mr C would understand what is required before HMP Peterhead could give serious consideration for 'positive onward movement'.

19. Although he expressed his gratitude for the 'more comprehensive explanation', Mr C continued with his complaint to the final step (the GIC) because he considered that it had not addressed his suggestion that his supervision level be reviewed in early course (he saw this as the most obvious impediment to any onward movement). He also wanted local management to review the identified needs referred to and hoped that a positive outcome would be achieved on his transfer request.

20. The GIC responded to Mr C on 4 January 2005 that he would recommend a review of his current ('High') supervision level by 15 January 2005. He assured Mr C that all relevant information would be taken into account in considering his application for a transfer to a less secure condition.

21. On 7 January 2005, Mr C complained to the SPCC about the integrity of the transfer request process to open conditions. Amongst the issues which had been raised was Mr C's non-participation in the available programmes. He complained that although STOP is a voluntary programme, HMP Peterhead insisted it was a mandatory pre-requisite to transfer and that this was 'blatant discrimination' against those who were not prepared to take part in the programme.

22. On 21 January 2005, Mr C wrote again to the SPCC. He complained about the GIC's failure to respond formally with confirmation of the review of his supervision level in the timescale promised. He complained also that information about the change in supervision level was referred to variously under different dates and, in the circumstances, he questioned the information held on record about him. He was concerned as a parole application was due to commence at the end of the month and 'false and misleading' statements might be included in the Report. SPCC replied on 3 February 2005. (NB Mr C was assigned a Low supervision status on 27 January 2005.)

23. In his initial approach to this office, Mr C noted that the SPCC had advised him that a checklist should have been completed as standard procedure and issued to him, outlining the reasons why his application to progress to open conditions had been refused. He complained about not getting access to forms and the problems he continued to experience (for example, a checklist was not completed in respect of his application; it was not passed to SPS open estate prisons for their consideration; the supervision level review was issued without the proper review and approvals – which he regarded as an attempt to get him to accept a supervision level which was wrong). He believed that a discriminatory blanket policy was being implemented and that his application and others from LTPs in HMP Peterhead were being blocked from progression to open conditions.

24. Mr C clarified that he was not seeking a decision by the Ombudsman about whether or not he should have been granted transfer, but the failure by the SPS to adhere to procedures and national policy and the non-conformity with the 1994 Rules. Mr C also confirmed that he was not making a complaint about the SPCC.

25. Enquiries were made to the SPS and the SPCC on both complaints to establish whether there had been a breach in the procedures and what action had been taken as a result of any recommendations made by the SPCC.

26. The SPS were asked to clarify whether or not the information held on Mr C's file on the level of supervision and changes made had been deleted in accordance with his request, and if not the reasons for the decision; and on his allegations of (i)

delay in considering his transfer request and (ii) the blanket discrimination policy of turning down requests from LTP to open prisons.

27. In their response, SPS commented that:

'... progression [to an Open prison] is a very important part of our system and we are keen to encourage all long-term prisoners to progress. This is a long-standing objective. Indeed we have recently expanded the Open Estate to provide an additional 141 places. However, filling places in the Open Estate must also take into account public safety and the additional risk that holding prisoners in such circumstances may present to the public.

We vet all such applications very carefully using a number of factors including what the prisoner has done to try and address his offending behaviour. In [Mr C's] case, as a convicted sex offender, this would mean participation in the Sex Offender Treatment Programme known as STOP. [Mr C] has not availed himself of the opportunity to participate in this programme, and as a result, was transferred from HMP Peterhead to HMP Dumfries. Whilst it is accepted that the application was not processed properly – in terms of time frames, which is of course a matter of regret – the overall risk assessment attached to transfer of prisoners to Open Conditions is of such importance that it requires careful and exhaustive assessment.

The refusal of any prisoner to participate in appropriate programme work to address their underlying offending behaviour would be of considerable influence in any final decision being made about such transfer. The contention that there is a discriminatory blanket policy of turning down transfer requests from sex offenders to Open Prisons is simply incorrect. There currently are small number (5) sex offenders currently in the Open Estate all of whom have completed the STOP Programme and were transfers from HMP Peterhead...'

28. The SPCC had raised concerns that:

- (i) Mr C was not provided with a copy of the criteria checklist detailing the issues that staff consider in applications to transfer to semi/open prisons.
- (ii) Mr C's Personal Officer did not discuss with him how he met or failed to meet the criteria.

(iii) Mr C was not advised that if he had not 'addressed all of his high risk offending programme needs' (as per the criteria) semi/open prisons would not accept him.

29. The SPCC stated that they did not file any formal recommendations with the SPS as these were dealt with at the local level, through correspondence and discussions with the CIC at Peterhead. They were satisfied that the concerns which they raised with the GIC were dealt with 'sufficiently and it was not necessary to file formal recommendations with the SPS HQ'. The SPCC were satisfied that the GIC had ensured that:

- 1 [Mr C] was provided with a copy of the criteria checklist that is considered when a prisoner applies for a transfer to semi open/open prisons.
- 2 [Mr C's] Personal Officer went through his application with him and discussed how he met or failed to meet the criteria. [Mr C] requested this meeting on a few occasions before it took place but, nonetheless, it is our understanding that it did take place.'

30. I made a further enquiry about any changes in the process in the light of the SPCC's involvement. In particular, as I had noted in the report, issued in 2003 by the HM Inspectorate of Prisons on HMP Peterhead, that there is a section entitled 'Deniers' which recognised that there were prisoners who did not wish to engage in any of the STOP programmes and that some had reported feeling under pressure to attend. It was commented that prisoners should still be given every opportunity to engage in sex offender treatment and also offered places on other relevant programmes, as was the case at Peterhead where their Sex Offender Awareness Programme was aimed at prisoners who did not wish to participate in the STOP programme: this was an example of good practice. Overall, the message was one of a good choice of group work programmes in Peterhead but recognition that preparing prisoners for release, particularly sex offenders, required a 'whole regime approach of which STOP and other offending behaviour programmes are just a part'.

31. The survey undertaken recorded that the main complaint received from prisoners about the programmes was how long they had to wait to get onto a STOP programme. Reference was made to a long waiting period before prisoners

were able to attend (between 18 months and four years) and that they appeared to be unaware that they were not eligible until they were approaching their Parole Qualifying Date (PQD). One of the recommendations made was that Peterhead should run sufficient programmes to meet the 'identified needs of its population'.

32. In the correspondence between the SPCC and the SPS, there was a reference to concerns which had been raised about there being no room for progress in the prison system for prisoners who refused to take the STOP programme. I asked if there had been any change since this discussion.

33. I was informed that STOP, and other programmes which are provided, are part of the procedures employed to encourage prisoners to make progress in the prison system with rewards and/or incentives to take part. It is a way of helping to assess whether a prisoner has used his time inside to rehabilitate and prepare for reintegration into society.

34. HMP Peterhead has achieved 42 completions of the various STOP programmes in 2005/06 (the same as 2004/05). Two additional social workers were coming on stream in 2006/07 and with this - and a successful bid for more programme staff - there was an expectation that the number of completions would increase to around 60 a year in future.

35. It was also clarified that there are only three units in Scotland which are classified as 'top ends' where there are open conditions (Greenock, Edinburgh and Friarton). In Peterhead, there is a section known as top end which has a less rigid regime in place; however, top end prisons differ from Open Prisons, of which there are two in Scotland – Noranside (to which Mr C had made a request to be transferred) and Castle Huntly. I have been informed that there are, currently, over 600 sex offenders in the prison system in Scotland – half of whom are located at Peterhead which is the main centre for STOP.

36. It is noted that, in January 2006, Mr C was offered a place at HMP Edinburgh to undertake a 'Rolling Stop' programme (which he declined). He understood also that he was being considered for a transfer to open conditions and thought that this may have been due to a change in the process. However, there has been no suggestion in the responses to my enquiry that the process has changed.

Ultimately, there was no progress on a move for him because he incurred a discipline report barring him for three months from further consideration. Mr C has been released from prison.

(a) Conclusion

37. When Mr C made his original complaint to this office, he made it clear that he wished to highlight the flaws he saw in the procedures. This was because he believed that these had hampered his progress to open conditions, despite meeting the necessary criteria, and there was evidence of a blanket discriminatory policy being operated against prisoners who chose not to take part in the programmes on offer at Peterhead. I have not found evidence to support his contention.

38. I agree with Mr C that there were procedural faults, most notably the lack of information available on moving to top ends/open conditions and availability of the requisite form, but these were dealt with by the SPS and SPCC before Mr C brought his complaint to the Ombudsman.

39. These faults in themselves, while undoubtedly being a source of frustration to Mr C, were not the reason his application for transfer was unsuccessful. The reason his application was refused was simply because he did not meet the criteria for a move. I have seen nothing which links the handling of his application and the procedures and policy for transfer to top end/open conditions with a blanket discrimination against sex offenders.

40. Taking part in STOP and other programmes is a matter of choice and there is an alternative. However, a decision not to take part in any of the available programmes has consequences, as these programmes are part of the criteria for assessment. Although Mr C saw his supervision level being the main criterion against his move – and considered that its reduction should be sufficient grounds for a successful review of his application to transfer – it was only one of the reasons given for refusal. He exercised his discretion not to take part in any of the programmes available, as was his right, but the consequence was that he did not fulfil the criteria and was not considered suitable to be considered for transfer to a less rigid regime. This was in accordance with policy and, in the circumstances, I am unable to uphold his complaint.

(b) Dissatisfaction with the SPS handling of his compassionate visit application

41. Mr C made a further complaint against the SPS in July 2005, in relation to the handling of his application for compassionate leave to visit his mother after she had major surgery. He complained that his application was treated in an insensitive and inhumane fashion.

42. Mr C described the sequence of events of his request to visit his mother as follows:

- His family contacted the GIC, who provided guidance on how to expeditiously progress the application. Assurance was given that it would be processed sympathetically.
- He experienced difficulty in getting hold of the appropriate form from staff.
- He submitted an application on 9 April 2005 to visit on 22 April 2005 (her surgery was scheduled for 20 April).
- Medical particulars confirmed by GP (fax) on 12 April 2005.
- Mix up by SPS resulted in delay in obtaining GP response (SPS tried to obtain information without a mandate from the family).
- Visit arrangements for 22 April 2005 not put in place.
- On 3 May 2005, Mr C complained that he had not had a reply to his request for a visit.
- On 4 May 2005, a reply was received informing him that since his mother had been discharged, there was no need to visit hospital (in the meantime, she had been re-admitted and discharged again) and if he wished a 'home' visit, he would have to fill in another application form; he did so the same day.
- Mr C unable to establish progress of his application (he made several complaints (CP1) highlighting that he had been unable to gain information due to his Personal Officer not being on duty; his complaints were not satisfactorily resolved; and, no-one in prison could provide him with an update).
- Social Worker visited Mr C's family on 23 May 2005.
- GP was contacted again and asked the same questions as before (he replied on 7 June 2005).
- On 10 June 2005, Mr C transferred to HMP Dumfries without having had a

visit to his mother.

- HMP Dumfries 'lost' his application and he had to submit another application (2 July 2005).
- On 19 July 2005, he received a response to his (third) application.

43. Mr C completed five CP1s (9 April, 3, 5, 6 June – while in HMP Peterhead - and on 9 July in Dumfries) before a decision was taken (recommendation that he was transferred to HMP Aberdeen to facilitate a visit).

44. Mr C complained to the SPCC and claimed that his experience was not an isolated instance. The SPCC investigated and informed him that the GIC had promised to tighten up on such applications. In making his complaint to the Ombudsman, Mr C remained of the view that lessons had not been learnt from previous similar incidents at HMP Peterhead.

45. Enquiries were made to the SPS and the SPCC to establish whether there had been a breach in the procedures and what action had been taken as a result of any recommendations made by the SPCC. The SPS are also asked to comment on whether any recommendations made by the SPCC were acted upon fully. The SPS commented that:

'There were clearly some problematic issues about communication and consistency in dealing with his request which we have recognised and have addressed. Normally we process such requests timeously and as far as possible in a compassionate fashion. Some of the unacceptable delay was due to the transfer of Mr C to another prison. In this case, the matter was not clear cut but a visit was finally approved. This situation was further complicated by the time taken to receive the GP's assessment.'

46. In their comments, the SPCC clarified that they did not file any formal recommendations with the SPS as these were dealt with at the local level through correspondence and discussions with the GIC at Peterhead. They were satisfied that the concerns which they raised with the GIC were dealt with 'sufficiently and it was not necessary to file formal recommendations with the SPS HQ'. The concerns were:

- (i) Mr C was not provided with the appropriate application form to apply for a compassionate leave to visit his mother.

- (ii) Consideration to Mr C's application for compassionate leave was not given timeously.
- (iii) The written response provided to [Mr C] by his Personal Officer on his application for compassionate leave was inappropriate.

47. The SPCC commented further that:

'... we believe the manner in which the SPS dealt with [Mr C's] transfer application and compassionate leave application was unacceptable and revealed that procedures were in need of improvement. It is because we believe these improvements were made that it was unnecessary to file any formal recommendations in Mr C's case.'

48. The SPCC were satisfied that the GIC had ensured that application forms for compassionate leave would be made readily available to prisoners and improvements would be made to the process.

(b) Conclusion

49. Mr C has a continuing sense of grievance relating to this complaint. He has not complained about the SPCC findings but clearly he is not reassured that the problems he experienced with his visit application will not be repeated.

50. While his concerns are readily understandable given that the SPCC finding was that his complaint was justified, they are satisfied that the necessary improvement to the procedures has been carried out. There is an expectation, therefore, that this will obviate the likelihood of a similar complaint arising in future and, on the basis of the SPCC finding, I have no further recommendation to make for improvement to the procedures. In all the circumstances I do not uphold this aspect of the complaint.

26 September 2006

Explanation of abbreviations used

GIC	Governor in Charge
ICC	Internal Complaints Committee
LTP	Long Term Prisoner
Mr C	The complainant
PQD	Parole Qualifying Date
PSS	Prisoner Supervision System
SPCC	Scottish Prison Complaints Commission
SPS	Scottish Prisons Service
STOP	Sex Offender Treatment Programme

Glossary of terms

CP1	Prisoner's complaint form
PSS2	Form completed at a prisoner's six monthly review and, as a minimum, annually thereafter
Top end	A facility which exists in a variety of establishments for prisoners who have progressed through management plan and have increased level of privilege as part of a reward/incentive package.

Extract from *The Prisons and Young Offenders Institutions (Scotland) Rules 2006*

Column 1 Supervision Level	Column 2 Description
High Supervision	A prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer
Medium Supervision	A prisoner for whom activities and movements are subject to limited supervision and restrictions
Low Supervision	A prisoner for whom activities and movements are subject to minimum supervision and restrictions and who may be given the opportunity to participate in supervised or unsupervised activities in the community