

## Scottish Parliament Region: Central Scotland

### Case 200801907: Scottish Prisons Complaints Commission

#### Summary of Investigation

##### **Category**

Scottish Government and Devolved Administration: Justice: Complaints handling

##### **Overview**

The complainant (Mr C) was aggrieved that the Scottish Prisons Complaints Commission (SPCC) failed to properly investigate his complaint that he was being kept unnecessarily in segregation by the Scottish Prison Service (SPS). He complained that, having decided to re-investigate his complaint, the SPCC later dropped it because he had been moved to another prison.

##### **Specific complaint and conclusions**

The complaints which have been investigated are that:

- (a) the decision by the SPCC to suspend Mr C's complaint when a new Interim Commissioner was appointed in July 2008 was unreasonable and caused him injustice (*upheld*);
- (b) the decision by the SPCC to re-investigate Mr C's complaint was flawed and caused him hardship and injustice given that the previous Commissioner had already made recommendations to the Executive Committee for the Management of Difficult Prisoners (ECMDP) (*upheld*);
- (c) the SPCC misinterpreted Mr C's complaint concerning a specific prison, and as a result dropped it (*upheld*);
- (d) the decision by the SPCC to drop Mr C's complaint entirely was flawed and based on insufficient, or untested, evidence that the SPS were managing his case (*upheld*);
- (e) there were unreasonable delays by the SPCC in dealing with Mr C's complaint (*upheld*); and
- (f) the administrative handling and service quality of Mr C's complaint was poor (*upheld*).

### ***Redress and recommendations***

The Ombudsman recommends that the SPCC:

- (i) apologise to Mr C for the shortcomings and failings identified in this report;
- (ii) go back to the SPS and urgently establish if there is a long-term management plan and/or reintegration plan in place for Mr C and provide evidence of the plan to this office;
- (iii) give proper consideration to the need for impact assessments when introducing service changes;
- (iv) in future, carefully consider a complainant's original complaint, and all the circumstances surrounding it, as well as consulting fully with the complainant to ensure that they understand the complaint and his/her point of view before deciding to drop any of the heads of complaint;
- (v) take steps to introduce their internal timescale targets as quickly as possible and include them in their complaints leaflet so that complainants are aware of what they can expect from the SPCC; and
- (vi) review their complaints handling processes and systems with a view to improving their communication with complainants. In addition, they should consider putting in place better information gathering techniques and improve their file management procedures.

## **Main Investigation Report**

### **Introduction**

#### *Role and remit of the Scottish Prisons Complaints Commission (SPCC)*

1. The Scottish Prisons Complaints Commission (SPCC), including the Office of the Commissioner, is an administrative creation with a remit from Scottish Ministers and is completely independent of the Scottish Prison Service (SPS). The role of the SPCC is to investigate complaints relating to maladministration and/or service failure made by prisoners against the SPS that have not been resolved through the SPS's internal grievance system. The SPCC can investigate most complaints; exceptions are complaints that relate to conviction or sentence awarded by the Courts, decisions relating to parole or life licence, or complaints relating to medical matters that involve clinical judgement. The SPCC has no statutory powers to request evidence and has to obtain any evidence needed from the SPS in the spirit of co-operation. The Commissioner's role is to decide whether the complaint is to be upheld in full, or in part, after investigation and whether to make any specific formal recommendations to the Chief Executive of the SPS. The Chief Executive of the SPS will consider the recommendations made and advise if they are accepted or not.

2. In June 2008, the Commissioner at that time (Commissioner 1) left office and a new Interim Commissioner was appointed (Commissioner 2) in July 2008. On taking office, Commissioner 2 was asked by the Justice Directorate of the Scottish Government to introduce what were, at that time, Scottish Public Services Ombudsman (SPSO) type investigative methods into the SPCC and to establish as closely as possible the SPCC as an operational 'mirror' of the SPSO. The SPCC was reorganised and revised processes put in place, however, in application, they were not exactly the same as the SPSO. In commenting on the proposed report, Commissioner 2 said that it was never claimed, or intended, that the processes would be exactly the same. Commissioner 2 was far less directly involved with cases himself than Commissioner 1 had been which meant that there was only one investigator, assisted by a casework officer, dealing with all cases. A major change, introduced by Commissioner 2, was a single point of contact at the SPS which meant the SPCC no longer contacted each prison separately with their enquiries. He also introduced a two-week target turnaround time for the SPS to respond to formal SPCC enquiries.

3. Against the above background, the complainant (Mr C) was aggrieved that the SPCC failed to properly investigate his complaint that he was being kept unnecessarily in segregation by the SPS. He complained that, having decided to re-investigate his complaint, the SPCC later dropped it because he had been moved to another prison.

4. The complaints from Mr C which my office investigated are that:

- (a) the decision by the SPCC to suspend Mr C's complaint when Commissioner 2 was appointed in July 2008 was unreasonable and caused him injustice;
- (b) the decision by the SPCC to re-investigate Mr C's complaint was flawed and caused him hardship and injustice given that Commissioner 1 had already made recommendations to the Executive Committee for the Management of Difficult Prisoners (ECMDP);
- (c) the SPCC misinterpreted Mr C's complaint concerning a specific prison (which I will refer to as HM Prison 1), and as a result dropped it;
- (d) the decision by the SPCC to drop Mr C's complaint entirely was flawed and based on insufficient, or untested, evidence that the SPS were managing his case;
- (e) there were unreasonable delays by the SPCC in dealing with Mr C's complaint; and
- (f) the administrative handling and service quality of Mr C's complaint was poor.

### **Investigation**

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, the SPCC and the interim Commissioner from 2009 onwards (Commissioner 3) were given an opportunity to comment on the proposed report. The SPCC were also asked by my office to ensure that former staff who had an interest in the complaint and my proposed report were given an opportunity to comment on it and I received and considered detailed written comments from Commissioners 1 and 2.

6. In investigating Mr C's complaint, a member of my staff obtained and examined copies of correspondence and documentation from the SPCC. They made detailed written enquiries of the SPCC and interviewed Commissioner 3 and the staff. They examined the SPS's Regulations, policies and procedures in relation to prisoner segregation. The SPCC did not have detailed procedures for investigating complaints but provided copies of leaflets sent to complainants

during the tenure of Commissioners 1, 2 and 3 explaining their various processes. In commenting on the proposed report, both Commissioners 1 and 3 made the point that because the SPCC had so few members of staff it was not necessary to formally set out the investigative process for internal purposes.

**(a) The decision by the SPCC to suspend Mr C's complaint when Commissioner 2 was appointed in July 2008 was unreasonable and caused him injustice**

7. When he took up his new post, Commissioner 2 took the decision to temporarily suspend all current investigations, apart from those where formal recommendations had already been made to the Chief Executive of the SPS. The SPCC told me that this affected approximately 40 to 60 complainants. The suspension was to allow for in-house staff training and meetings with SPS staff to take place in order to discuss and agree the changes to their procedures. Mr C was notified of the temporary suspension, of the reasons for the suspension and that his case, which had been received by the SPCC four months earlier, on 1 March 2008, was among those to be suspended.

8. Having initially taken the decision to temporarily suspend all the current investigations, Commissioner 2 then decided to apply the new processes to all the current cases, no matter what stage they were at in the investigation process. There is no record of his justification for making this decision and no discernable audit trail of his reasoning. In commenting on the proposed report, Commissioner 2 said the suspension was not just to allow training and discussion on procedural changes, it was primarily to ensure that a new process could be introduced that would benefit complainants. He said it was not a practical option to introduce the changes gradually and believed it would have been difficult, time-consuming and confusing for staff, complainants and the SPS. I accept that that does not mean a sound assessment of the risks and impact of the proposed changes was not undertaken, however, the fact remains there is no record. The SPCC have said that when the temporary suspension was lifted in August 2008 all the current cases were reconsidered and redefined in line with the new processes and then investigated in strict date order. This meant there was a backlog of cases to be investigated, resulting in cases taking longer than normal to bring to conclusion. Mr C was told on 7 August 2008 that all current complaints, including his, would now be reconsidered and redefined in line with the new revised processes, and was sent a copy of the SPCC's new leaflet which set out their revised processes. He was told he could expect to receive a formal letter from the SPCC in the near future confirming whether or

not they would be investigating his complaint. A letter was then sent on 13 August 2008 advising Mr C of the heads of complaint the SPCC would be investigating.

*(a) Conclusion*

9. The new way of working was fundamentally different to the way the SPCC worked prior to July 2008 and it is clear that Commissioner 2 had the discretion to introduce new processes and procedures. It is also clear that, with cases open and new cases continuing to arrive, the transition from the old process to the new would have to have been managed carefully to avoid backlogs and significant inconvenience to service users and the SPS. I consider that there should have been an assessment of the impact and a weighing/measuring of the risks in suspending the open investigations. However, I have seen no evidence of any documented assessment of risks or impact.

10. In my view, the decision to suspend all current cases, no matter what stage of the process they were at, was taken without adequate assessment of the risk or impact, and apparently in the absence of a structured approach. This led to backlogs for staff, delays for complainants and frustration for Mr C. I consider that the change of Commissioner should have been a seamless process, particularly for those complainants, like Mr C, who were already in the process of having their complaints investigated. In commenting on the proposed report, Commissioner 2 said, 'The decision to suspend and restart was not taken lightly but it was in the best interest of the complainers'. As Mr C had, at that stage, received a copy of the recommendations already made to the ECMDP (the role of the ECMDP is explained in Annex 2 to this report) on his complaint by Commissioner 1, (see head of complaint (b) below), the uncertainty of not knowing if his complaint was going to be investigated at all caused Mr C unnecessary confusion. So, while I am clear that Commissioner 2 was entitled to take the decision to suspend, I can see no evidence that it was taken with due consideration to the risks and impact of suspending the investigations. Accordingly, I uphold this complaint.

*(a) Recommendation*

11. I recommend that the SPCC give proper consideration to the need for impact assessments when introducing service changes.

**(b) The decision by the SPCC to re-investigate Mr C's complaint was flawed and caused him hardship and injustice given that Commissioner 1 had already made recommendations to the ECMDP**

12. Mr C's complaint to the SPCC was about being kept in segregation and was initiated while he was a prisoner in HM Prison 1. The SPCC acknowledged receipt of this complaint on 10 March 2008 but there is no further paperwork on file until a letter from Commissioner 1 to Mr C, dated 28 May 2008.

13. In that letter, Commissioner 1 referred to a meeting he had with Mr C on 16 May 2008 and advised him that, following his investigation, he would be filing a submission with the ECMDP recommending that they give immediate consideration to transferring him to a protection unit. On 2 June 2008, Commissioner 1 wrote to the ECMDP setting out his concerns, and, to all intents and purposes his recommendations, though he did not use the word recommendations. Instead, he said, 'I am writing to ask you to consider actioning one of two alternative requests. Please advise me of any decision you make so that I may determine whether a formal recommendation should be made'.

14. Commissioner 1 pointed out that this was the second complaint he had dealt with from Mr C on the subject of his continued segregation. He said he was disappointed that 16 months later, little or no progress had been made to find a placement for Mr C other than segregation units. He asked the ECMDP to consider Mr C's mental suffering and what he described as 'the well-documented irreparable harm a prisoner experiences through extended periods of segregation'; Mr C had already spent two and a half years in segregation at that time. He asked the ECMDP to treat the matter as a priority and to make a decision on the most appropriate placement for Mr C outside of a segregation unit. If the ECMDP decided to continue to house him in segregation, Commissioner 1 asked them to consider a second important issue. He said this was the well-established legal principle that prisoners are entitled to all the rights they enjoyed in the community save those that are restricted as a natural consequence of their sentence and he quoted European legislation on the matter. He argued that, while it was initially justifiable for security reasons to separate Mr C from other prisoners, after such a lengthy period of time the restrictions on his circumstances were no longer proportionate to the legitimate objective. Commissioner 1 said it was now incumbent on the SPS to ensure that any further restrictions on Mr C's entitlements or rights were a natural consequence of his sentence.

15. Commissioner 1 sent Mr C a copy of this letter on 3 June 2008 and told him that he had copied it to the Chief Executive of the SPS to ensure that it was the subject of ongoing consideration; there is, however, no copy of the letter to the SPS in the SPCC file. In closing, Commissioner 1 said that he was leaving the SPCC on 18 June 2008 and Mr C should contact the SPCC at the end of the month for an update. In commenting on the proposed report, Commissioner 1 confirmed that he emailed a copy of the letter to the Chief Executive and followed it up with a telephone call. He said that he had felt it was premature to file a formal recommendation on the matter until the ECMDP had been given the opportunity to take action. He was disappointed to learn that the ECMDP had not responded to his submission and the SPCC had not followed this up. He accepted that any confusion over whether he filed his submission with the Chief Executive, and instructions to SPCC staff to follow this up on his departure, could have been avoided if he had included something in writing in the file.

16. The SPS's Assistant Director of Prisons wrote to Commissioner 1 on 18 June 2008 saying that he would not be in a position to provide a detailed response before Commissioner 1 left office (it is not clear if he was replying on behalf of the SPS Chief Executive or the ECMDP). He said that Mr C's case was reviewed monthly, like all prisoners removed from association, and he was satisfied that Mr C continued to be held appropriately on Rule 94 conditions (Rule 94 is explained in Annex 2 to this report). He did, however, promise to look into the issues Commissioner 1 had raised and said he hoped to be in a position to respond in detail to the SPCC before the end of the month. Commissioner 1 responded saying that he was not questioning whether or not the Rule 94 process had been correctly followed. He said the issue was whether, after such a lengthy period of time, it was legally and morally justifiable to keep Mr C segregated when his being kept on Rule 94 was not the result of his having created behavioural problems. Commissioner 1 emphasised that if the SPS were to prove somewhat intransigent on these matters a court might be the final arbiter which could prove expensive and reflect poorly on the SPS's commitment to the humane treatment of prisoners.

17. The SPCC were asked if Commissioner 1's recommendations were considered to be formal recommendations to the SPS Chief Executive and they said no, as his letter of 2 June 2008 was addressed to the ECMDP only. Later,



however, both Commissioner 2 and the SPS referred to the letter of 2 June 2008 as being 'Commissioner 1's recommendations'.

18. The SPCC recalled that before Commissioner 1 closed a case, his practice was to speak to the prisoner first to ensure that he/she was happy with what he was proposing. In a letter to Mr C, dated 28 May 2008, Commissioner 1 said that he 'would file a submission with the ECMDP recommending that its members give immediate consideration to transferring you into a protection unit'.

19. All formal recommendations to the SPS are made directly to the Chief Executive. The SPS will consider the recommendations made and advise if they are accepted or not. At the time of the meeting with the SPCC, they said that most recommendations were accepted.

20. During discussions, the SPCC told my staff that Mr C had previously raised several other complaints with the SPCC and, in their view, he would have been well aware of the difference between formal recommendations to the SPS Chief Executive and a letter to the ECMDP. They pointed to the leaflet which they said he would have seen which stated 'The Commissioner or a member of the Commission will investigate the matter. If the Commissioner agrees with the complaint, he will suggest a solution to the local Prison authorities. If the suggestion is not followed, then the Commissioner may make a formal recommendation to the Chief Executive of the SPS'. Despite evidence of Mr C repeatedly asking what the SPS's response was to Commissioner 1's letter, the SPCC failed to tell him that his recommendations were not considered to be formal.

*(b) Conclusion*

21. In terms of informing complainants of their process, the new SPCC leaflet produced under Commissioner 2 was sent to all prisoners who submitted a complaint, but prior to that, the existing leaflets were sent in batches to individual prisons. There can, therefore, be no guarantee in my view that Mr C would necessarily have been aware of the process of formal recommendations being made to the SPS ie what constituted a 'formal recommendation' as opposed to a written request, or the circumstances in which a formal recommendation would be made or followed up.

22. The crux of Mr C's complaint was his continuing to be kept in segregation and he was, therefore, very happy with Commissioner 1's powerful letter recommending that the SPS give immediate consideration to transferring him to a protection unit. In my view, however, Commissioner 1 did not identify that there did not appear to be a long-term management plan in place for Mr C by the ECMDP.

23. The decision by Commissioner 2, only two months later, to redefine and re-investigate his complaint was a disappointment to Mr C. During my investigation, the SPCC were unable to explain the reasoning behind the decision to re-investigate Mr C's complaint when Commissioner 1 had, to all intents and purposes, made his recommendations to the SPS. They said there were no records of any factors taken into consideration when the decision was made, or of the decision itself, which they said was taken by Commissioner 2. However, Mr C was notified on 18 August 2008 that all available evidence, including correspondence from Commissioner 1, had been considered when identifying the heads of complaint. Two months later the SPCC told him that Commissioner 2 did not wish to prejudice the SPCC's ongoing investigation by endorsing Commissioner 1's opinions before reaching his own conclusions.

24. The SPCC have confirmed that Commissioner 1's letter of 2 June 2008 was not a formal recommendation to the SPS, however, they failed to clarify this with Mr C at the earliest opportunity, and continued to refer to Commissioner 1's 'recommendations' in correspondence with him, perpetuating Mr C's belief that these were formal recommendations. My investigation revealed that they were not formal recommendations and that there was a lack of clarity in what actually constituted formal recommendations. Indeed, the SPCC initially failed to tell this office that Commissioner 1's request was not considered to be a formal recommendation and did not clarify the matter until interviewed. Although Mr C's complaint to my office was based on the wrong assumption that formal recommendations had already been made to the SPS, the fact that the recommendations were not made formally to the Chief Executive of the SPS was not made clear to him. Accordingly, I uphold this complaint.

**(c) The SPCC misinterpreted Mr C's complaint concerning HM Prison 1, and as a result dropped it**

25. The SPCC 'owns' the investigation and was, therefore, responsible for defining the scope, method and value of that investigation. Investigations can be terminated or suspended for a number of reasons including lack of evidence,

change in prisoner circumstances (release etc) or unacceptable behaviour by the prisoner.

26. On 13 August 2008, following the lifting of the suspension, the SPCC advised Mr C of the heads of complaint they would be investigating. These were:

1. The SPS decision to place [Mr C] in segregation was unreasonable.
2. The SPS did not follow correct procedure regarding the periodic review of [Mr C]'s placement in segregation.
3. The SPS decision to place [Mr C] in segregation in HM Prison 1 was unreasonable.
4. The SPS failed to consider the adverse effects on [Mr C]'s mental health due to extended periods in segregation.'

27. I have examined Mr C's complaints form which was used by the SPCC to redefine his complaint and note that, although he was being held in HM Prison 1 at that time, his specific complaint was that he was not being given the opportunity to change, ie reduce, his risk category from high, due to his being held in segregation.

28. At his representation to the case conference held on 15 August 2008, during the Rule 94 application extension, Mr C said, 'I would prefer mainstream, but till then I am happy to remain in [HM Prison 1] segregation unit for the time being'. On a later representation for the case conference to be held on 16 September 2008, he said 'I would like to go mainstream, but if I have to be segregated I would like to remain within [HM Prison 1] because I am provided facilities (ie gym) which I wouldn't get anywhere else'.

29. On 2 October 2008, the SPCC wrote to Mr C in an attempt to clarify matters and asked if he meant that he was happy for the SPCC not to proceed with head of complaint 3. In response, Mr C said, 'I make it very clear in my Rule 94 form that I would like to go mainstream and that is not going to change so unless I tell you I want to remain in segregation, clearly I want to go mainstream' (the underlining is Mr C's own emphasis). He went on to say he only wanted to stay in HM Prison 1 until he could get into mainstream because the prison had recently upgraded the segregation unit's gym facilities. He asked if this was an excuse by the SPCC not to implement Commissioner 1's recommendations to the ECMDP and SPS. Mr C sought to clarify his position a

week later and wrote to the SPCC to say, 'I don't mind being held in [HM Prison 1] segregation unit till I am put into mainstream'.

30. After discussing the case with Commissioner 2, the SPCC wrote to Mr C on 9 October 2008 to say that it had been decided to drop the head of complaint relating to HM Prison 1 because of what he had said in his representation dated 16 September 2008. There is no record of the discussion with Commissioner 2 in the case papers but the SPCC advised my member of staff that the decisions on Mr C's case were made by Commissioner 2 himself. My member of staff asked the SPCC about the recording of outcomes of discussions of individual cases and was told that there were no formal records of these as the SPCC did not have the resources to take formal notes and only informal handwritten notes were taken at their case conferences. In commenting on the proposed report, Commissioner 2 said that these discussions were not formal 'case conferences' and the outcomes were reflected in the formal correspondence issued by the SPCC. My member of staff asked if Commissioner 1's opinions, as set out in his letter of 2 June 2008, to the ECMDP had been taken into consideration when deciding to drop this head of complaint and were told that they were not.

*(c) Conclusion*

31. In my opinion, Mr C could not have made his position any clearer – he did not want to remain in segregation, he wanted to go mainstream. His position was that if he had no choice but to remain in segregation then he would prefer to remain in HM Prison 1. He was quite clear, however, that he only wanted to stay in HM Prison 1 because of the facilities available to him. I believe Mr C's statement was made in the context of the number of movements he had had, totalling six up to that point, between various prisons since 2005 and the facilities available to him in each of them. I consider that the SPCC misinterpreted what he had said, did not take into consideration the number of prison moves he had already had, and dropped the head of complaint relating to HM Prison 1. Accordingly, I uphold this complaint.

*(c) Recommendations*

32. I recommend that the SPCC;

- (i) apologise to Mr C for the shortcomings and failings identified in this report; and
- (ii) in future, carefully consider a complainant's original complaint, and all the circumstances surrounding it, as well as consulting fully with the

complainant to ensure that they understand the complaint and his/her point of view before deciding to drop any of the heads of complaint.

**(d) The decision by the SPCC to drop Mr C's complaint entirely was flawed and based on insufficient, or untested, evidence that the SPS were managing his case**

33. On 5 March 2009, the SPCC wrote to Mr C to say that they believed there was no value in continuing with their investigation of the other heads of complaint. They said that the key to their decision had been Mr C's acceptance of being held in segregation within HM Prison 1 until the SPS considered he was suitable for transferring to mainstream. The letter went on to say that once he had made this acceptance, he effectively withdrew both his complaint about being held in segregation and his detention in HM Prison 1. As a result, they had concluded that the only aspect of his case remaining was the overall management of his case and they were satisfied that the SPS were managing his case according to Rule 94. In particular, they said they were content that the ECMDP was the appropriate forum for overseeing his detention and making decisions about his status and location. There were no details of what, if any, evidence had been taken into consideration before taking that decision.

34. Before coming to the decision to drop the complaint entirely, the SPCC had written to the SPS, on 12 August 2008, for information on the policies and procedures for prisoners being held in segregation. As the questions posed by the SPCC were general and not specifically about Mr C, the SPS responded by sending a copy of a Governors and Managers Action Plan covering the Procedures and Guidelines for the Management of Prisoners under R94/114 (Rule 94). Evidence suggests it is likely that there was further correspondence between the SPCC and the SPS, however, there are no copies in the file until 25 August 2008 when the SPCC wrote to the SPS concerning the case conference relating to Mr C held on 17 March 2008. The SPCC then asked about the reasons for each of the transfers between the various prisons where Mr C had previously been held. Additionally, the SPCC asked for the paperwork following the last review of his status as a segregation prisoner and asked how many reviews had taken place since his transfer to HM Prison 1. In response, the SPS said, on 17 September 2008, that all his transfers had taken place as part of the agreement of the ECMDP until a long-term plan could be put in place and that Mr C had had eight reviews whilst in HM Prison 1.

35. As explained in Annex 2, the Rule 94 Guidance covers a common problem with the completion of the narrative in that the reasons for removal can be confused with the purpose of the removal. I examined all the Rule 94 application forms in Mr C's case and found that, latterly, they all refer to him as being kept in segregation solely for his own safety and the safety of others within the mainstream environment. They all refer to Rule 94 conditions being appropriate until a long-term management plan can be put in place by the ECMDP. Two applications refer to threats having been made against him and one of him attempting to intimidate other prisoners while being escorted from the segregation unit for visits etc.

36. Mr C sent to my office a copy of a leaflet entitled [HM Prison 2] – Essential Information Form for Prisoners on Admission. It stated, 'In the past a victim of bullying would be put on protection, but today it is the bully not the victim who is targeted. If you are a bully, you will be given the chance to change while you are monitored. If you choose to go on bullying then you will be the one to be penalised, segregated and transferred out, not the victim'. While Mr C did not say he was being bullied, he believed that he was being penalised by being kept in segregation unnecessarily by the ECMDP. The last Rule 94 application on the file, supplied by the SPCC, is dated 14 February 2009 when he was moved back to HM Prison 1 from another prison (HM Prison 3). It stated 'this move is part of an agreement at the recent ECMDP. There is [...] considerable bad feeling towards Mr C [...] and we could not make any guarantees about his safety or others within the mainstream environment here at [HM Prison 1]. On that basis we feel Rule 94 conditions to be appropriate at this stage until a long term management plan can be put in place via ECMDP'.

37. The SPCC wrote again to the SPS on 14 October 2008 asking, amongst other things, if the ECMDP had developed a long-term management plan for Mr C and to provide a copy, or explain why, a plan had not been drawn up and say when this would be done. The SPCC also asked if Mr C had been referred to the Mental Health Team (MHT) as stated in the latest Rule 94 renewal of authority application to Scottish Ministers and for copies of the paperwork from the reviews of his case by the ECMDP. In response to the question of whether or not there was a long-term plan the SPS said on 22 October 2008 that Mr C's case was reviewed on a monthly basis and up until the last application it had been assessed that he needed to remain on Rule 94 for his own safety. The SPS said that a psychiatric report had been completed on Mr C in June 2008 and that, following the latest referral, he would be seen shortly by the MHT.

The SPCC asked the SPS in October 2008 for copies of the ECMDP meetings where Mr C's case had been discussed. The SPS sent extracts of the earlier minutes and full minutes of the meetings held in May 2007 and January, March, May and July 2008. The last minute was dated three months prior to the SPS response, however, there is no evidence that the SPCC asked for the latest minutes or clarification on the matter.

38. The paperwork provided from the reviews of his case were the extracts concerning Mr C from the 'cases for review' section of the ECMDP meetings held between January 2006 and July 2008. They are sparse in content and do not record any decisions having been made about moving him between the various prisons. There was no evidence of his case having been reviewed at all between May 2007 and January 2008. Thereafter, his case was reviewed bi-monthly until July 2008. The last minuted entry, in July 2008, said that Mr C would be interviewed by a named person on behalf of the ECMDP but gave no further details.

39. The SPCC failed to follow-up outstanding questions on this or ask for any further evidence that Mr C's case was being regularly reviewed. The SPCC did, however, ask the SPS about the comment made on a complaints form by the Governor of HM Prison 1, dated 14 October 2008, that a named SPS Officer (SPS Officer) was dealing with the recommendations of Commissioner 1 and Mr C's present position. The SPS response did not refer to Commissioner 1's recommendations about Mr C being moved out of segregation. The SPCC pursued the matter with the SPS on 21 October 2008 and again on 13 November 2008 and finally got a response on 26 November 2008.

40. There was considerable confusion around what exactly the SPS Officer was dealing with and the SPS themselves wrote to Mr C on 11 November 2008 but did not refer to Commissioner 1's recommendations about moving Mr C out of segregation. The SPCC attempted to clarify what exactly the SPS Officer was dealing with and if the ECMDP had in fact considered Commissioner 1's recommendations. They finally elicited the information on 26 November 2008 that Commissioner 1's recommendations had not been considered and that the SPS Officer had not been involved at all, which contradicted what Mr C had been told by the Governor in Charge of HM Prison 1. The SPS again said that Mr C's case was regularly reviewed by the ECMDP.

41. During the period of my investigation, Mr C has been moved from HM Prison 1 to two other prisons (HM Prison 2 and HM Prison 3) and he has said that he fully expects to be sent back to HM Prison 1 and to be held in segregation there. From the time he was first admitted to HM Prison 1 in October 2005 he has been transferred eight times to different prisons; twice back to HM Prison 1, and each time to a segregation unit. The SPCC were asked if they considered it reasonable for Mr C to have to start the complaints process all over again if he was moved back to HM Prison 1. In response, the SPCC said that if and when Mr C was transferred back again to HM Prison 1, and he remained dissatisfied with the regime there, then he would have to complete the internal complaints process again.

42. This was raised again by my staff at the meeting with the SPCC who still considered it to be reasonable given that Mr C's previous and subsequent complaints were all about being kept in segregation. They did concede, however, that it could be seen to be unreasonable if the continuing injustice was not being dealt with, but still felt that even if things had been done differently, it would not have stopped Mr C from complaining.

43. Although Mr C had expressed his fears about the effect on his health of being kept in segregation (and this was one of the heads of complaint identified by the SPCC when they redefined his complaint), it was not addressed at all in the SPCC's determination letter of 5 March 2009.

*(d) Conclusion*

44. Had the SPCC properly analysed all the information supplied by the SPS I consider it would have been clear that the ECMDP were not regularly reviewing Mr C's case. The SPCC did not ask the SPS what reviews had taken place since July 2008 and they did not ask the SPS what the outcome of the interview planned for the same month had been or, indeed, if it had been the last one to be held for Mr C. They failed to establish if there was a long-term management plan and/or reintegration plan and accepted that the SPS had considered that Mr C was being managed correctly by the ECMDP. It was particularly disappointing to find that, despite asking the SPCC to make enquiries about the long-term plan, they had not done so at the time of the interview.

45. I consider it to be unreasonable, in the circumstances, to expect Mr C to have to complete the SPS's internal complaints process each time before the SPCC would consider his complaint for two reasons. Firstly, the SPCC's role is



not solely to investigate complaints about prisoners' current conditions and, secondly, due to the sheer number of transfers Mr C has had already between different prisons, it is highly unlikely that any of his complaints would ever be investigated if, as soon as he is transferred, his complaint is dropped.

46. During my investigation, the SPCC were unable to provide evidence that a long-term management plan does actually exist, or whether it is simply that the SPS have not shared it with the SPCC. I can understand that there may be sensitivities in sharing such information but, unless and until the SPS had said if there was a plan and the SPCC had seen the evidence, I consider that they should have continued to pursue the matter with the SPS. Accordingly, I uphold this complaint.

*(d) Recommendation*

47. I recommend that the SPCC go back to the SPS and urgently establish if there is a long-term management plan and/or reintegration plan in place for Mr C and provide evidence of the plan to this office.

**(e) There were unreasonable delays by the SPCC in dealing with Mr C's complaint**

48. The suspension described above meant there was a backlog of cases to be investigated when the new procedures were implemented, resulting in cases taking longer than normal to bring to conclusion. During the interview with the SPCC, they said that they were still working their way through the backlog of cases. They stressed that throughout all the changes, there had only ever been three staff at the SPCC, the Interim Commissioner, the assistant to the Commissioner and the casework officer.

49. The SPCC acknowledged receipt of Mr C's complaint on 10 March 2008 and Commissioner 1 made his recommendations to the ECMDP on 2 June 2008. Mr C was notified on 18 July 2008 that his complaint had been suspended and, on 13 August 2008, of the heads of complaint which the SPCC would be investigating. The SPCC made their initial enquiry to the SPS very quickly on 12 August 2008 and appear to have received the final piece of information they needed on 26 November 2008. However, it was not until 5 March 2009, some four months later, that the SPCC wrote to Mr C, who had by that time been moved to HM Prison 2, to say that they would not be investigating his complaint as they said that he had effectively withdrawn his complaint (see head of complaint (c) above). In the interim, Mr C had written to

the SPCC on 16 October 2008 and did not receive a response until the letter of 5 March 2009. I consider that it is highly likely that it was Mr C's move to HM Prison 2 in March 2009 which prompted the SPCC to take action to close the complaint. In the letter advising Mr C of this, the SPCC officer said that Commissioner 2 had reviewed all the evidence and believed there was no value in continuing the investigation, however, there is no record of that decision or the reasoning behind it.

50. I asked the SPCC about the timescales for their investigations and the targets they had for doing so. I was told that although a two-week target time had been introduced for SPS responses to SPCC enquiries, there were no formal targets for the SPCC themselves under either Commissioner 1 or 2. The SPCC said that they were now developing internal targets for themselves.

*(e) Conclusion*

51. As stated above, the decision to re-investigate all complaints, no matter what stage of the process they were at, caused unnecessary delays within the SPCC. Having begun their re-investigation in August 2008, it was not until March 2009 (almost a year after his complaint was first received) that Mr C was notified that the SPCC were not going to investigate it. Bearing in mind that Commissioner 1 had already told Mr C that he had made recommendations to the ECMDP and the SPS which, if accepted, might have resolved Mr C's complaint, I consider the delays caused by the re-investigation had an impact on him. Accordingly, I uphold this complaint.

*(e) Recommendation*

52. I recommend that the SPCC take steps to introduce their internal timescale targets as quickly as possible and include them in their complaints leaflet so that complainants are aware of what they can expect from the SPCC.

**(f) The administrative handling and service quality of Mr C's complaint was poor**

53. I have identified what I consider are several instances of poor complaints handling in the SPCC's handling of Mr C's complaint including poor record-keeping and poor communication with Mr C. In addition, I consider that during my investigation there was a poor service to my office.

54. At times the SPCC failed to ask the relevant questions of the SPS and when they received only partial answers (or in some instances no answers at all) to the questions they did ask, they failed to follow these up with the SPS.

55. While it has been acknowledged above that the SPCC do not have statutory powers relating to evidence gathering I consider it inappropriate for them to respond as they did to Mr C in a letter dated 9 October 2008. They said 'we are aware of [Commissioner 1]'s letter of 2 June 2008 to the ECMDP. We have not received a reply but as we have no powers or duty of enforcement, we will not be taking any further action. In addition, [Commissioner 2] does not wish us to prejudice our ongoing investigation of your complaint by endorsing his predecessor's opinions before we have reached our own conclusions'.

56. In their letter of 5 March 2009 to Mr C, the SPCC said that Commissioner 1 had expressed his opinions to the ECMDP but they were entitled to reject some, or all, of his arguments. As the SPS had specifically told the SPCC in November 2008 that Commissioner 1's letter of 2 June 2008 to the ECMDP had not been considered by the ECMDP members, this was clearly untrue. They also told Mr C they were closing his file without reaching a conclusion but did not explain or outline what information provided by the SPS had led them to their conclusion not to investigate. In my opinion, it was a poor determination letter. The SPCC have acknowledged that, with hindsight, the letter should have said 'without reaching a conclusion in your favour'.

57. Mr C wrote immediately to challenge the decision to close his file and in response, the SPCC again told him that they had no powers or duty to force the SPS to take any action.

*(f) Conclusion*

58. In my view, Mr C received a poor service from the SPCC, particularly in relation to their correspondence with him. Accordingly, I uphold this complaint.

*(f) Recommendation*

59. I recommend that the SPCC review their complaints handling processes and systems with a view to improving their communication with complainants. In addition, they should consider putting in place better information gathering techniques and improve their file management procedures.

**Explanation of abbreviations used**

SPCC	Scottish Prisons Complaints Commission
SPS	Scottish Prisons Service
Commissioner 1	SPCC Commissioner from June 2003 to July 2008
Commissioner 2	SPCC Interim Commissioner from July 2008 to March 2009
SPSO	Scottish Public Services Ombudsman
Mr C	The complainant
ECMDP	Executive Committee for the Management of Difficult Prisoners
HM Prison 1	A prison in the SPS estate
Commissioner 3	SPCC Interim Commissioner from April 2009 onwards
MHT	Mental Health Team
SPS Officer	A named SPS Officer
HM Prison 2	A prison in the SPS estate
HM Prison 3	A prison in the SPS estate

**Rule 94 and the ECMDP**

1. The Prisons and Young Offenders Institutions (Scotland) Rules 2006 makes provision under Rule 94 for the removal of a prisoner from association with other prisoners either generally or during any period the prisoner is engaged or taking part in a prescribed activity. The Rule 94 Consolidated Guidance – November 2006 states that in terms of Human Rights the legitimate aim of a decision to segregate a prisoner would be for the maintenance of good order and discipline, protecting the interests of any prisoner or ensuring the safety of other persons. It is the role of the Prison Governor to balance secure custody and good order against the rights and welfare of individual prisoners and to keep that balance under regular review in each case. The Governor may authorise the removal of a prisoner from association for up to 72 hours and approval of Scottish Ministers must be sought for applications for extensions to the conditions. In all applications for extension, the prisoner must be given the opportunity to make written representations against the decision and in order to do so he/she should be provided with a written copy of the reasons for the Governor is applying for the extension. The initial extension of Rule 94 is effective for a period of one month which may be renewed; a case conference must have been held for second and subsequent applications. When a prisoner who is subject to a Rule 94 order transfers to another prison, the order ceases to have effect and the Governor of the receiving prison must consider the matter afresh and only make a new order if there is sufficient reason to do so.

2. It is essential that appropriate monitoring and action plans are put in place for all prisoners held on Rule 94 and that role falls to the ECMDP. The ECMDP carry out an important role in monitoring the Rule 94 process and regularly review the progress of such prisoners, recommend action to assist with the progress and re-integration of difficult prisoners to mainstream conditions and determine where a prisoner is to be held. They are accountable to the Director of Custody who has executive authority for the placement of all prisoners held out of association for 3 months or more under Rule 94 and for the management policy applicable to them.

3. The progress of prisoners held on Rule 94 conditions is, therefore, regularly monitored and it is important that the information provided by prisons to support applications for extensions of Rule 94 conditions is detailed, robust

and able to adequately explain to the prisoner and to outside agencies the reasons for the continuing necessity for segregation and the re-integration plan.

4. The Guidance covers a common problem with the narrative in the Rule 94 guidance in that the reasons for removal can be confused with the purpose of the removal and sets out the considerations required before making any decision on imposing or continuing Rule 94 segregation. The purpose must be to maintain good order or discipline, protect the interests of any prisoner or ensure the safety of other persons. The reasons should fully explain why the order is considered necessary to fulfil the stated purpose. Reasons can include, but are not limited to, violence to other prisoners or staff, damage to property or involvement in subversive activities.

5. At any time, the Governor or responsible manager can decide to return a prisoner to circulation or vary the terms of Rule 94. The exact circumstances depend on the individual prisoner, but normally follow a case conference in more complex cases.

6. The SPS's Procedures and Guidelines for Management of Prisoners under Rule 94 sets out the role and purpose of segregation units within the SPS and the standard basic practices and principles to be followed. One principle is that segregation is not an end in itself but is part of a wider process which surrounds the prisoner's response to identified needs and to threats against safety and good order. While different prisoners will require to be segregated for different timescales, the temporary status must continually be emphasised. Other principles are adopting a multi disciplinary case conference approach to formulate appropriate action plans tailored to the individual and suggested considerations include a phased return to general circulation. The impact of segregation on mental health must be given a high priority with action planning robust enough to ameliorate this. Every prisoner held in segregation for a month is subject to a Mental Health Nurse assessment prior to the case conference. The reasons for moves between segregation units are normally because there is an operational need for segregation space in a particular prison or a move is in the best interests of the prisoner and it has been agreed that it is not appropriate for the prisoner to be moved into circulation in either the home or receiving establishment.

**List of legislation and policies considered**

The Prisons and Young Offenders Institutions (Scotland) Rules 2006

Procedures and Guidelines for the Management of Prisoners under R94/114

Rule 94 Consolidated Guidance November 2006

Governors and Managers: Action Ref 38A/06 10 November 2006 – Removal from Association under Prison Rule 94/114 Segregation Units Revised Guidelines and Procedures

Governors and Managers Advice Ref 60A/98 11 June 1998 – Executive Arrangements for the Management of Difficult Prisons