

Case 201002487: Scottish Prison Service

Summary of Investigation

Category

Scottish Prison Service: Prisons; security; testing for controlled drugs

Overview

The complainant Mr C raised concerns about the process applied by HMP Shotts (the Prison) in testing a container found in his cell for the presence of drugs. Mr C considered that it was unfair of the Prison to adapt an existing Scottish Prison Service (SPS) process, and then not apply that process properly.

Specific complaint and conclusion

The complaint which has been investigated is that the Prison adapted the existing SPS Mandatory Drug Testing procedure to test the container found in Mr C's cell for the presence of drugs but in doing so, the Prison did not apply that process properly (*upheld*).

Redress and recommendations

The Ombudsman recommends that the SPS:	<i>Completion date</i>
(i) put a policy in place for prison staff to follow when testing liquids or substances for the presence of drugs;	19 March 2011
(ii) take steps to make prisoners aware of this process;	19 March 2011
(iii) remind prison staff to record the timings of cell searches and drug testing confirmation results accurately; and	19 March 2011
(iv) issue an apology to Mr C for the failings identified in this report.	2 February 2011

The SPS have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 26 March 2010 the complainant (Mr C)'s cell was searched and a container with a small amount of green liquid was found. The container was taken to the Mandatory Drug Testing (MDT) unit within HMP Shotts (the Prison) and tested where the liquid was confirmed as being methadone. Mr C was then placed on report for a breach of discipline under Schedule 1(i) (i) of the Prisons and Young Offenders Institutions (Scotland) Rules 2006 (the Prison Rules) which reads '... a prisoner shall be guilty of a breach of discipline if he or she have in his or her possession, or concealed about his or her body or in any body orifice, any article or substance which he or she is not authorised to have or a greater quantity of any article or substance than he or she is authorised to have'. Mr C was subsequently found guilty in the Orderly Room and punishment was awarded.

2. Following the Orderly Room hearing, Mr C complained that the charge brought against him was illegal because of the process that was applied by the Prison in testing the container found in his cell for the presence of drugs. Mr C remained dissatisfied with the Prison's response and on 21 May 2010 complained to the Scottish Prisons Complaints Commission (SPCC). The SPCC closed on 1 October 2010 and this Office took over that role, and responsibility for considering Mr C's complaint.

3. The complaint which has been investigated is that the Prison adapted the existing Scottish Prison Service (SPS) Mandatory Drug Testing procedure to test the container found in Mr C's cell for the presence of drugs but in doing so, the Prison did not apply that process properly.

4. I would point out that it is not my office's role to question the grounds for placing Mr C on report nor is it my role to look at the decision reached in the Orderly Room. My role is restricted to considering the process that was applied, and followed, by the Prison leading up to their decision to charge Mr C.

Investigation

5. In writing this report my complaints reviewer has had access to Mr C's Orderly Room paperwork and complaint correspondence with the Prison. In addition, my complaints reviewer examined the SPS's 'Urine Drugs of Abuse Chain of Custody, Specimen Collection Procedures' which is the Mandatory

Drug Testing Policy and the accompanying step by step procedure that is applied by prison staff. My complaints reviewer has also considered Section 107 the Prison Rules, Section 41B of the Criminal Justice and Public Order Act 1994 and Part V of the Police and Criminal Evidence Act 1984.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the SPS were given an opportunity to comment on a draft of this report.

Complaint: The Prison adapted the existing SPS Mandatory Drug Testing procedure to test the container found in Mr C's cell for the presence of drugs but in doing so, the Prison did not apply that process properly

Mr C's complaint to the Prison

7. Following his Orderly Room hearing, Mr C raised a complaint with the Prison on 27 March 2010. He complained that the charge brought against him in the Orderly Room was illegal because of the process that was applied by the Prison in testing the container found in his cell for the presence of drugs. Mr C stated that water was added to the container and a dip testing strip was then used. Mr C pointed out that this is the method used when testing prisoners' urine for the presence of drugs. However, Mr C stated that when a prisoner's urine is tested, the prisoner is present to witness the process. In Mr C's case, he stated that he was not present when the container was tested.

The Prison's response to Mr C's complaint

8. The Prison's Internal Complaints Committee and Governor in Charge responded to Mr C's complaint. The responses confirmed that the charge brought against Mr C in the Orderly Room was legal as he was in possession of the container found in his cell. The Governor also confirmed that the Prison's procedure for testing liquids in such circumstances was sound and within the Prison Rules.

The SPS's response to enquiries on Mr C's complaint

9. The SPS say that the container found in Mr C's cell was not connected with the methadone prescribing process. They confirmed that it was a standard white plastic medicine cup; the type a prisoner may use if he is being prescribed vitamin tablets. The SPS also confirmed that prisoners are not entitled to have in their possession or hold back any methadone that may be prescribed in line with the methadone prescribing process.

10. The SPS further confirmed that there is no formal process in place for prison staff to follow when testing a substance or liquid (other than urine) for the presence of drugs. In this case, the SPS confirmed that the dip testing process was used to confirm what the green liquid in the container was. Specifically, they confirmed that steps 8, 9, 10 and 12 of the Mandatory Drug Testing procedure were applied. That document states that the prisoner, whose urine was being tested, would be present when the urine sample was being tested and when the results were being recorded. The SPS confirmed that Mr C was not present when the container found in his cell was tested.

11. The charge sheet issued to Mr C confirmed that he was being charged with a breach of discipline under the Prison Rules because he had in his possession a container with an amount of methadone in it. Following my complaint reviewer's examination of Mr C's Orderly Room paperwork, the SPS were asked to confirm what time Mr C's cell was searched, what time the substance in the container was confirmed as being methadone and to confirm what time Mr C was placed on report for having the container in his cell. The SPS confirmed that Mr C's cell was searched at 09:30 and the substance in the container was confirmed as being methadone at 09:40. However, the SPS was unable to provide my office with evidence to support this. The SPS also confirmed that Mr C was placed on report at 09:45 and the charge sheet issued to Mr C supported this.

Conclusion

12. I am satisfied that, based on the evidence I have seen and the responses provided by the SPS, there were failings in the Prison's handling and approach to testing the container found in Mr C's cell for the presence of drugs.

13. This investigation has identified that the Prison failed to apply the adapted version of the SPS Mandatory Drug Testing procedure fairly and consistently. This resulted in Mr C not being provided the opportunity to witness the container being tested. Failing to allow prisoners to witness the testing of liquids or substances in these circumstances could leave the SPS open to allegations of tampering with evidence.

14. Furthermore, the SPS were unable to provide evidence which confirmed the time Mr C's cell was searched and the time that the liquid in the container was confirmed as being methadone.

15. For these reasons, I uphold Mr C's complaint.

16. However, I have seen no evidence to support Mr C's claim that the charge brought against him was illegal. It is clear that Mr C had the container in his possession and this was not allowed under the Prison Rules. Therefore, the Prison was entitled to charge Mr C under Schedule 1 of the Prison Rules.

Recommendations

	<i>Completion date</i>
17. I recommend that the SPS:	
(i) put a policy in place for prison staff to follow when testing liquids or substances for the presence of drugs;	19 March 2011
(ii) take steps to make prisoners aware of this process;	19 March 2011
(iii) remind prison staff to record the timings of cell searches and drug testing confirmation results accurately; and	19 March 2011
(iv) issue an apology to Mr C for the failings identified in this report.	2 February 2011

18. The SPS have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the SPS notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
MDT	Mandatory Drug Testing
The Prison	HMP Shotts
The Prison Rules	Prisons and Young Offenders Institutions (Scotland) Rules 2006
SPCC	The Scottish Prisons Complaints Commission
SPS	The Scottish Prison Service

List of legislation and policies considered

Criminal Justice and Public Order Act 1994

Police and Criminal Evidence Act 1984

The Prisons and Young Offenders Institutions (Scotland) Rules 2006

Urine Drugs of Abuse Chain of Custody, Specimen Collection Procedures (the Mandatory Drug Testing procedure)