

Scottish Parliament Region: Mid Scotland and Fife

Case 201101643: Scottish Prison Service

Summary of Investigation

Category

Scottish Prison Service: prisons/ admission; transfers and discharge; transfer to another prison

Overview

The complainant, Mr C, who was a prisoner, complained about the decision taken by Prison 1 to transfer him to Prison 2. Mr C said the decision was unreasonable because he was about to start medical treatment for his skin condition at Prison 1. Mr C also complained because he said Prison 1 did not explain to him why he was being transferred to Prison 2.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the decision taken by Prison 1 to transfer Mr C knowing he was about to start medical treatment was unreasonable (*upheld*); and
- (b) Prison 1 failed to communicate the reason for the decision to transfer Mr C to Prison 2 and that was inappropriate (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Scottish Prison Service:

- (i) take steps to put in place a national process for all prison establishments to follow when transferring prisoners to other establishments to ensure the process followed allows for significant and relevant information to be obtained, considered and recorded as part of the decision making process and;
- (ii) ensure Prison 1 apologise to Mr C for failing to respond to him directly about his complaint.

Completion date

12 December 2012

Completed
14 August 2012

Main Investigation Report

Introduction

1. Mr C was located at Prison 1 before being transferred to Prison 2 on 12 July 2011. Mr C was due to start phototherapy treatment for his skin condition at Prison 1 on 13 July 2011. Prison 1 had the phototherapy equipment available on site and nursing staff there were trained to use the equipment. In addition, prior to 1 November 2011, the Scottish Prison Service (SPS) were responsible for providing healthcare to prisoners. Treatment was provided to prisoners by healthcare staff employed by the SPS.

2. Following his transfer, Mr C complained to the Governor at Prison 2 on 18 July 2011. Mr C said he saw a dermatologist at Prison 1 who told him he would start phototherapy treatment on 13 July 2011. The Governor at Prison 2 responded to Mr C's complaint and confirmed that he had been referred to receive treatment locally.

3. Mr C returned to Prison 1 on 31 August 2011 and began receiving phototherapy treatment. However, Mr C's treatment was broken because he transferred to Prison 3 on 14 October 2011 and was liberated from prison custody in December 2011.

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

- (a) the decision taken by Prison 1 to transfer Mr C knowing he was about to start medical treatment was unreasonable and;
- (b) Prison 1 failed to communicate the reason for the decision to transfer Mr C to Prison 2 and that was inappropriate.

Investigation

5. In writing this report, my complaints reviewer has had access to Mr C's complaints correspondence and has made several enquiries of the SPS including interviewing key members of staff and discussing the complaint with Mr C.

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.

(a) The decision taken by Prison 1 to transfer Mr C knowing he was about to start medical treatment was unreasonable

7. Following his transfer, Mr C complained to the Governor at Prison 2. He said he saw a dermatologist at Prison 1 who told him that he would start phototherapy treatment in Prison 1 on 13 July 2011. Mr C said he was transferred to Prison 2 on 12 July 2011 despite the Health Centre at Prison 1 trying to stop the transfer. Mr C said his skin condition was getting worse and he was stressed because his health was being affected.

8. The Governor at Prison 2 responded to Mr C's complaint and told him he would ask the Health Centre Manager for an assessment of his treatment. The Governor wrote to Mr C again on 5 August 2011 confirming that he had been advised Mr C had been referred to receive treatment locally.

9. Mr C returned to Prison 1 on 31 August 2011 and began the phototherapy treatment. However, Mr C was transferred to Prison 3 on 14 October 2011 and was liberated from prison custody in December 2011.

10. Prison 1 were asked to confirm what process was in place for selecting prisoners for transfer to another prison establishment. Prison 1 said that a list of eligible prisoners would be drawn up and that list would be passed to the receiving establishment. The receiving establishment would select the prisoners they were willing to accept for transfer and the sending establishment would then process those transfers. The process would include contacting various staff within the sending establishment including the Health Centre to find out whether there were any concerns which would suggest an individual prisoner should not be transferred out of the sending establishment.

11. Prison 1 were asked whether there was evidence available to support that the process outlined above had been applied in Mr C's case and, in particular, whether advice had been sought and received from the Health Centre. Prison 1 said Mr C's medical treatment, as far as they were concerned, was not critical to his well being and because of that there was no reason to stop Mr C being transferred to Prison 2. Prison 1 were unable to provide documented evidence to show that advice had been sought from the Health Centre. Prison 1 also explained that the decision to transfer Mr C, and a number of other prisoners, was taken to ease severe overcrowding. Prison 1 noted that Mr C wanted a single cell and transferring him to Prison 2 may have facilitated that, although

when my complaints reviewer discussed Mr C's complaint with Prison 1, they accepted that a single cell was not guaranteed for him.

12. The Health Centre at Prison 1 were asked whether they had raised any concerns with prison staff about Mr C being listed for transfer. The Health Centre confirmed that Mr C had a long history of painful skin disorders including psoriasis and eczema and Mr C was due to begin treatment for his skin condition the day after he transferred to Prison 2. The Health Centre advised that on becoming aware that Mr C was listed for transfer, a member of staff from the Health Centre spoke with a member of prison staff to advise against Mr C being transferred. The Health Centre felt Mr C's medical needs could be met within Prison 1 because the phototherapy equipment was available on site and the nursing staff were trained to use the equipment. The Health Centre did not record the details of that conversation. In addition, the Health Centre explained that whilst they could advise against a prisoner being transferred, the final decision on whether or not to transfer an individual prisoner would lie with prison management.

13. SPS Governors & Managers Action (GMA) Notice 30A/09 was the relevant criteria for allocating prisoners to establishments and was in place at the time Mr C was transferred from Prison 1 to Prison 2. This GMA noted that the policy behind the criteria was to allocate prisoners to the establishment which:

- provided the most appropriate regime to meet the identified needs of that prisoner;
- wherever possible, was the establishment closest to the prisoner's home area that fulfilled the first condition; and
- when doubling up was required to concentrate that within newer build prisons which provided built for purpose accommodation.

(a) Conclusion

14. I am satisfied that, based on the evidence I have seen and the responses provided by the SPS, there were failings in Prison 1's handling of Mr C's transfer to Prison 2.

15. Individual prison establishments are entitled to take a decision to transfer a prisoner to another establishment. This office cannot question such a decision unless there is evidence of poor administration.

16. In Mr C's case, he complained that the decision taken by Prison 1 to transfer him to Prison 2 when he was about to receive medical treatment was unreasonable. In considering Mr C's complaint, I have sought to confirm whether appropriate steps were taken by Prison 1 to consider all relevant information prior to reaching their decision to transfer him to Prison 2. The limited evidence available suggests there is no formal process in place for prison establishments to follow when listing prisoners for transfer to alternative prison establishments. Instead, an informal process is used in which various members of staff are asked to comment on whether or not an individual prisoner should be transferred out of the establishment. That information is not documented. In addition, my investigation of Mr C's case identified two differing opinions – Prison 1 did not believe Mr C's medical treatment was critical enough to prevent him from being transferred to Prison 2, but the Health Centre felt Mr C should not have been transferred because he was about to undergo medical treatment for what was described as a painful skin condition. In addition, no documented evidence was retained by Prison 1 to evidence the steps that were taken to explore whether Mr C's transfer was appropriate and reasonable. I know this because Prison 1 were unable to supply documented evidence in support of their decision to transfer Mr C. Therefore, I have been unable to determine with certainty whether the decision taken by Prison 1 to transfer Mr C was taken after careful and proper consideration of all relevant information, in particular, the fact that Mr C was about to receive medical treatment that he was able to receive on site at Prison 1.

17. In addition, the SPS GMA was clear in stating that prisoners should be allocated to the establishment which provided the most appropriate regime to meet the identified needs of that prisoner. In Mr C's case, it was clear he had an identified need which, in my view, could have been met by allowing him to remain at Prison 1. That is also significant because, at the time of transferring Mr C, the SPS were responsible for providing healthcare treatment to prisoners and Mr C's healthcare needs could have been met by the SPS because the phototherapy equipment was available on site at Prison 1.

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

19. Mr C's complaint has highlighted the fact that transferring prisoners to other prison establishments can, in some cases, impact negatively upon individual prisoners. In light of this, I have made the following recommendation.

(a) *Recommendation*

20. I recommend that the SPS: *Completion date*
- (i) take steps to put in place a national process for all prison establishments to follow when transferring prisoners to other establishments to ensure the process followed allows for significant and relevant information to be obtained, considered and recorded as part of the decision making process. 12 December 2012

(b) Prison 1 failed to communicate the reason for the decision to transfer Mr C to Prison 2 and that was inappropriate

21. Mr C complained that no explanation had been given to him about why he had been transferred. Mr C said an officer at Prison 2 called Prison 1 to find out why he had been transferred but they were unable to tell him why. Mr C said he had not been given a reason for being transferred out of Prison 1 and staff were reluctant to provide one.

22. When Mr C first brought his complaint to my office, my complaints reviewer contacted Prison 1 and advised them that Mr C had asked my office to investigate his complaint. My complaints reviewer highlighted the fact that Prison 1 had not been given an opportunity to consider and respond directly to Mr C's complaint. Instead, Mr C received a response from the Governor at Prison 2. Prison 1 were asked whether they would like to take the opportunity to consider and respond to Mr C's complaint prior to my office investigating the complaint but they did not take up that offer.

23. Prison 1 were asked whether an explanation had been provided to Mr C as to why the decision had been taken to transfer him to Prison 2. Prison 1 said that as with any prisoner being transferred, Mr C was advised that he was being transferred to Prison 2 to relieve overcrowding at Prison 1. Prison 1 said Mr C would have been given 24 hours notice and this would have been done verbally.

(b) *Conclusion*

24. There is no documented evidence available to support Prison 1's position that Mr C was given an explanation as to why he was being transferred. I accept that prisoners will be told about any potential transfer on a face to face basis rather than anything being provided to them in writing and at short notice for security reasons. However, whilst I accept this, I believe steps should be

taken by the sending prison to record why a decision may have been taken to transfer a individual prisoner to another establishment.

25. In addition, prior to investigating Mr C's complaint, Prison 1 were notified that Mr C had complained to my office about his transfer to Prison 2 and I offered Prison 1 the opportunity to consider and respond directly to Mr C's complaint. Doing so would have given Prison 1 the chance to consider Mr C's complaint and respond to him directly about his concerns surrounding his transfer to Prison 2.

26. In reaching my decision, I must consider the evidence that is available. As noted earlier, I accept that Mr C was mostly likely told about his transfer to Prison 2 verbally at short notice. Whilst I accept that is reasonable given the circumstances, I believe Prison 1 should have taken steps to record why the decision had been taken to transfer Mr C to Prison 2. In addition, Prison 1 did not take the opportunity to consider and respond directly to Mr C's complaint about the transfer prior to my office investigating the complaint. I believe this would have been appropriate and would have ensured Mr C was provided with a clear explanation as to why he had been transferred. This could have prevented Mr C's complaint escalating to my office.

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

28. My office promotes the importance of good complaints handling and we encourage organisations to take opportunities to respond to complaints to ensure they are given a fair and reasonable chance to respond to a complaint and, if appropriate, resolve it. The benefits of doing this mean organisations can learn from complaints and make improvements to their service. It can also prevent complaints from escalating to my office.

29. On 23 May 2012, the SPS issued GMA Notice 25A/12 in light of recent recommendations made by my office. This was following my consideration of complaints brought to us by prisoners in which we identified failings in the complaints handling of individual prison establishments. The GMA was issued by the Assistant Director of Prisons reminding staff of the importance of handling complaints in line with best practice. Therefore, I do not believe an additional recommendation about the complaints handling failings identified in Mr C's case is necessary. However, I have made the following recommendation:

(b) Recommendation

30. I recommend that the SPS:

Completion date

- (i) ensures Prison 1 apologise to Mr C for failing to respond to him directly about his complaint.

Completed

14 August 2012

31. The Ombudsman asks that the SPS notify him when the outstanding recommendation has been implemented.

Explanation of abbreviations used

Mr C	The complainant
SPS	Scottish Prison Service
GMA	Governors & Managers Action Notice

List of legislation and policies considered

SPS Governors & Managers Action Notice 30A/09 – Prisoner Allocation Criteria

SPS Governors & Managers Action Notice 25A/12 – SPSO Recent Recommendations