

Case 201101687: Scottish Prison Service

Summary of Investigation

Category

Scottish Government: Prisons; security; control and progression; policy

Overview

Mr C, who is a prisoner, arranged for his son (Mr A), who was 16 years old, and his daughter (Miss A), who was 15 years old, to visit him at HMP Kilmarnock (the Prison). Mr C's children were allowed to access the Prison but before accessing the visit, Miss A was searched after the metal detection alarm sounded when she passed through it. Following this, Mr C's children were denied access to the visit because Miss A was not accompanied by an adult.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) Mr C's daughter was inappropriately searched in the absence of an appropriate adult (*upheld*); and
- (b) the internal complaints committee's written response to Mr C's prisoner complaint form did not accurately reflect the discussion held (*not upheld*).

Redress and recommendations

The Ombudsman recommends that:

- | | <i>Completion date</i> |
|---|------------------------|
| (i) the SPS update my office on the steps taken to implement a relevant policy in relation to the age a person must be to accompany a child under the age of 16 to a visit within a prison; | 20 November 2013 |
| (ii) the SPS consider seeking the views of the Commissioner for Children & Young People before implementing their new policy; and | 20 November 2013 |
| (iii) the SPS take immediate steps to ensure staff within all prisons are fully aware of the policy in place in relation to the age a person must be to accompany a person under the age of 16 to a prison. | 20 November 2013 |

Main Investigation Report

Introduction

1. HMP Kilmarnock (the Prison) is a high security establishment which is privately operated by Serco on behalf of the Scottish Prison Service (SPS). The Prison, as with all Scottish prisons, is subject to the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Rules).

2. Mr C, who is a prisoner, arranged for his son (Mr A), who was 16 years old, and his daughter (Miss A), who was 15 years old, to visit him at the Prison. Mr C's children were allowed to access the Prison but before accessing the visit, Miss A was searched after the metal detection alarm sounded when she passed through it. Following this, Mr C's children were denied access to the visit because Miss A was not accompanied by an appropriate adult.

3. Mr C complained to the Prison about this but remained unhappy with their response. Because of that, Mr C referred his complaint to my office for consideration.

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

- (a) Mr C's daughter was inappropriately searched in the absence of an appropriate adult; and
- (b) the internal complaints committee's (ICC) written response to his prisoner complaint form did not accurately reflect the discussion held.

Investigation

5. In investigating Mr C's complaint, my complaints reviewer considered all of the evidence presented by Mr C. In addition, she also visited the Prison and walked through the visit process. She also took account of the Rules and information provided by the Prison and the SPS.

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) Mr C's daughter was inappropriately searched in the absence of an appropriate adult

7. In his complaint to the Prison, Mr C said he booked a visit for Mr A and Miss A. He said his children were given access to the Prison and their identities

were checked. Mr C said Miss A set off the metal detection alarm and because of that, she was searched. Mr C said an officer asked Miss A who her accompanying adult was and she told the officer that it was Mr A. Mr C said the officer searched Miss A and after that, when his children got to the door of the visit room, they were denied access by another officer because they were not with an accompanying adult. Mr C noted that the Prison had allowed his children to book in for the visit, have their identities checked and go through the metal detector before being told that they needed to have an accompanying adult.

8. In addition, Mr C noted that he had spoken with the visits manager who had shown him the relevant policy which stated that an accompanying adult had to be at least 18 years old. Mr C said the visits manager agreed that the Prison had made an error.

9. In response to Mr C's complaint, the ICC noted that following his discussion with the visits manager and the apology he had already received, there was nothing more internally that could be done or said. The ICC also confirmed that Mr C agreed and a further apology was provided. The Director of the Prison endorsed the ICC's response to Mr C's complaint.

10. Mr C submitted a further complaint to the Director of the Prison. Mr C said the response to his original complaint noted that he accepted the apology. He said that was not the case. Mr C said the situation had caused upset and distress to himself and his children and it was clear the Prison had breached policy by searching his daughter without an adult being present.

11. The Director advised Mr C that the Prison could not undo what had already occurred. He noted that Mr C had failed to say what would resolve the problem. The Director confirmed that he would authorise another visit for Miss A which would not need to come out of Mr C's visit allowance.

12. In bringing his complaint to my office, Mr C said prison staff had illegally searched Miss A because an adult was not present whilst the search took place. He said he had been able to book a visit with both of his children through the booking system and said his children attended the Prison thinking the visit had been permitted to go ahead. Mr C also noted that when his children arrived at the Prison, they were allowed to book in at the front gate and then proceed to the next stage when they had their identities checked on the ID scanner. After

this, they went through the metal detector and the alarm sounded when Miss A passed through. Mr C said Miss A was then taken to a separate room and the metal detection wand was used whilst Mr A was present. Mr C said Mr A was classed as an adult for the purpose of searching Miss A but was not considered to be of an appropriate age to accompany her to the visit. Mr C said SPS policy stated that a person had to be 18 to accompany a child to a prison visit.

13. In addition, Mr C also stated that despite the issue highlighted by his complaint, he was still able to book a visit with both of his children without an appropriate adult being identified to accompany them to attend the visit using the current booking system.

14. My complaints reviewer asked the Prison to explain how a visit is booked by a prisoner. The Prison explained that visits are pre-booked by the prisoner using the touch screen kiosk system. The Prison said the system was able to differentiate between a person under 16 and a person over 16 but it could not detect the nature of the relationship between the visitors. In addition, the Prison said the system could not detect that a person aged between 16 and 18 may attempt to bring a person under the age of 16 into the Prison. The Prison also confirmed the visit booking is not double checked by a member of staff. It is all done automatically by the system.

15. The Prison offered an explanation as to what happened on the day in question. They said staff had not identified that Miss A was not accompanied by an appropriate adult until she entered the visitor waiting area.

16. In addition, my complaints reviewer attended the Prison to walk through the visit process as Mr C's children had, to understand what had happened. Mr C's children presented themselves at the outside visit centre. This is a building located outside the main prison. Visitors are required to present themselves at the visits centre to have their identities and booked visit confirmed by staff before being given permission to go over to the main prison. In presenting themselves at the visit centre, Mr C's children provided their names to staff and the name of the person they were visiting. Visit centre staff checked the system to make sure Mr C's children were booked to visit him and after doing that, they were given permission to go to the main prison.

17. At the main prison, Mr C's children presented themselves to the visits entry clerk. The clerk double checked the system to ensure the correct persons

were presenting themselves for the visit. Following satisfactory completion of those checks, Mr C's children were admitted access to the visitors' search area.

18. In that area, visitors are required to pass through the metal detection portal. Once checks prove satisfactory, the visitors will be directed to the visitor waiting area. In the case of Mr C's children, the metal detection portal sounded when Miss A passed through it. Because of that, she was asked to step into a side room to allow for an officer to search her using the metal detection wand. Before doing that, the officer asked Miss A who her accompanying adult was to which she indicated it was Mr A. He was, therefore, asked to witness the procedure of Miss A being searched by the officer using the metal detection wand. The officer that conducted the search on Miss A was also female.

19. After that, Mr C's children were then instructed to go to the visitor waiting area just outside the main visiting room. It was at that point an officer recognised Mr C's children and approached them to explain that they would not be permitted access to the visit because Miss A was not with an appropriate accompanying adult. Because of that, both of Mr C's children were escorted out of the Prison. My complaints reviewer asked how the officer became aware that Miss A was not with an appropriate accompanying adult. The Prison advised her that this had been due to the prison officer's knowledge of Mr C's children from past visits.

20. My complaints reviewer also discussed Mr C's complaint with both the Prison's performance manager and visits manager.

21. In responding to my complaints reviewer's written enquiries, the Prison advised that the policy in place was that any person under the age of 16 must be accompanied to a visit within the prison by their legal parent or guardian. Alternatively, they may be brought to the visit by any other person aged 18 years or over with the parental permission of the child being brought. The Prison also advised that those aged 16 may attend a visit by themselves. In support of their position, the Prison referred to the SPS Child Protection Policy and Procedures for Children Visiting Scottish Prison (the Policy). In particular, the Prison referred to paragraph 2.9 which they quoted as saying:

'In general, a child under the age of 16 will normally be accompanied by an adult. Children aged between 16 and 18 years may make an unaccompanied visit provided there are no circumstances which indicate that it would not be in their best interest.'

22. Having reviewed the content of the Policy, it was established by my complaints reviewer that paragraph 2.9 quoted by the Prison at paragraph 21 of this report was actually taken from the SPS' draft version of the Policy. The final version of the Policy did not include the statement referred to by the Prison.

23. My complaints reviewer contacted the complaints manager at SPS headquarters to ask what the position was in relation to the age a person must be to visit a prison unaccompanied. The information provided at that time supported the position outlined by the Prison at paragraph 21 of this report – that a person under the age of 16 must be accompanied by a person who was aged at least 18.

24. In commenting on my proposed report, the SPS advised me that the Policy referred to at paragraph 21 had been shared with my complaints reviewer in error. The SPS confirmed that the Policy my complaints reviewer was sent was designed to provide advice to prison staff who may be concerned about the welfare of a child or young person who is visiting a prison. The SPS confirmed the Policy did not provide general advice or guidance about children visiting prisons. The SPS stated that our investigation had highlighted to them that there was a gap in their guidance. Because of that, they advised me that the director of operations had been asked to consider the SPS' policy on children visiting prisons and issue guidance which would clarify the age a person must be to accompany a child under the age of 16 to a visit within a prison.

25. The information provided by the SPS at paragraph 24 was not clear and because of that, I contacted them again to seek clarification on the age a person must be to accompany someone under the age of 16 into a prison. In addition, I wanted to know whether a relevant policy actually existed.

26. The SPS confirmed they did not have a national policy in place in relation to the age a person must be to accompany a child under the age of 16 to visit a prison. However, they went on to say that they would not allow a child under the age of 16 to enter a prison without an adult aged at least 16 years old being present.

27. The SPS told me that the position outlined at paragraph 26 would be adopted as the national policy for all prisons across Scotland. They explained

that upon receiving my proposed report, they undertook to check the local policies being operated by several prisons in relation to the age a person must be to accompany a child under the age of 16 to a prison. The outcome of those checks confirmed that some prisons allowed a person who was aged at least 18 to accompany a child to a visit but others allowed a person who was aged at least 16 to do that.

(a) Conclusion

28. My investigation of Mr C's complaint has highlighted that there is no standard policy in place in relation to the age a person must be to accompany a child under the age of 16 to a prison. The evidence available suggests that prisons across Scotland have been operating inconsistently because there is no standard policy in place.

29. However, as confirmed by the Prison, the policy being operated by them is that a person under the age of 16 would not be permitted access to the prison unless they were accompanied by a person who was at least 18 years old. In Mr C's case, Miss A was aged 15 and she was accompanied by Mr A, her brother, who was 16. Therefore, in light of the policy being operated by the Prison, it appears Miss A was not accompanied inside the Prison with an appropriate adult. Because of that, I have concluded that she was inappropriately searched within the Prison in the absence of an appropriate adult and I uphold Mr C's complaint.

30. I am disappointed the information provided to my office by the SPS to enable us to conduct a proper and thorough investigation of Mr C's complaint was identified as being irrelevant and inaccurate at such a late stage. This resulted in my office having to make several further enquiries with the SPS to ensure that the information we had been provided was clear and accurate. I expect all bodies to ensure that their responses to my office's enquiries are accurate and include all information which is relevant to the complaint under investigation.

31. In my proposed report, I had recommended that the SPS introduce a policy which clearly reflected the age a person must be to accompany a child under the age of 16 to a prison. However, as noted earlier, the SPS have told me that the director of operations has been asked to consider the SPS' policy on children visiting prisons and issue guidance which would clarify the age a

person must be to accompany a child under the age of 16 to a visit within a prison. Therefore, I make the following recommendations.

(a) *Recommendations*

- | | <i>Completion date</i> |
|---|------------------------|
| 32. I recommend that the SPS : | |
| (i) update my office on the steps taken to implement a relevant policy in relation to the age a person must be to accompany a child under the age of 16 to a visit within a prison; | 20 November 2013 |
| (ii) consider seeking the views of the Commissioner for Children & Young People before implementing their new policy; and | 20 November 2013 |
| (iii) take immediate steps to ensure staff within all prisons are fully aware of the policy in place in relation to the age a person must be to accompany a person under the age of 16 to a prison. | 20 November 2013 |

(b) The ICC's written response to Mr C's prisoner complaint form did not accurately reflect the discussion held

33. In response to Mr C's complaint, the ICC noted that all aspects of his complaint were discussed. The ICC also noted that they informed Mr C that after his discussion with the visits manager and the apology he received, there was nothing more internally that could be done or said. The ICC recorded that Mr C agreed with that position and after a further apology from the ICC chairperson, he left the meeting.

34. In bringing this complaint to my office, Mr C said the ICC had noted that he had accepted the apology. Mr C said he did not accept the apology. Mr C went on to say that what happened caused his daughter so much distress that she was scared to visit him again. Mr C said he wanted this office to look into the ICC's response because the written response provided contradicted what was agreed.

35. My complaints reviewer asked the Prison about the accuracy of the ICC's response and they confirmed that they were satisfied the written response accurately reflected the discussion held with Mr C.

(b) Conclusion

36. While the written response provided by the ICC appears to reflect the Prison's position as outlined to this office, it is difficult for my office to reach a view on what may or may not have been discussed at the ICC hearing. In addition, it is difficult for us to reach a view on the accuracy of the written response provided by the ICC and because of that, I do not uphold this part of Mr C's complaint.

37. The Ombudsman asks that the SPS notify him when the recommendations have been implemented.

Explanation of abbreviations used

The Prison	HMP Kilmarnock
SPS	Scottish Prison Service
The Rules	The Prisons and Young Offenders Intuitions (Scotland) Rules 2011
Mr C	Complainant
Mr A	Son
Miss A	Daughter
ICC	Internal Complaints Committee
The Policy	SPS Child Protection Policy and Procedures for Children Visiting Scottish Prison

List of legislation and policies considered

The Prisons and Young Offenders Institutions (Scotland) Rules 2011

The SPS Child Protection Policy and Procedures for Children Visiting Scottish Prisons