

Prisons








This is one of a series of reports through which we are continuing to put key messages, information and analysis of complaints about the prison sector into the public domain.

We expect the Scottish Prison Service (SPS) and other providers of prisons services to use this report to enhance their learning about the issues prisoners bring us and about the quality of their complaints handling. We anticipate that Parliamentary committees, government departments, regulators and other improvement and scrutiny bodies will use it to identify issues arising from the complaints we see.

Equally, we hope it will prove useful to prisoners and members of the public and advice and advocacy groups that represent them, by providing information about the kinds of complaints that are escalated to the SPSO, how we handle them, and how we put things right through our recommendations, where we can.

December 2014

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Ombudsman's introduction

We are the body with responsibility for reviewing all complaints relating to prisons, looking at both general prisons complaints and those about prisoner healthcare. Complaints about prisons (not including healthcare) represent a not insignificant 7% of the total complaints we received in 2013/14.

In this annual report, relating to our third full year of handling prisons complaints, we provide analysis of the issues raised by prisoners and the themes and learning we have seen, including case studies demonstrating our impact for individuals.

Key trends in our figures – volumes and issues

In my overall annual report for 2013/14 I reflected on the fact that, as an office, we had received a record number of complaints, up 8% on the previous year, with 2013/14 being the fifth consecutive year we have seen an increase in complaints. It is reassuring that prisons complaints remain out of step with this long term trend with the number of complaints we received about prisons (excluding healthcare complaints) remaining fairly static in 2013/14. We received 311 (just under 7% of the total complaints sent to us), compared to 318 (just under 8% of the total) in 2012/13. There were, however, some changes in some of the other key statistics. Upheld rates (32%) and premature rates (21%) were both up on the previous year (26.5% and 19% respectively) representing a less welcome trend but also staying well below the average rates for other sectors.



Communications and records became the most common subject of complaint, increasing by 50% in 2013/14 from the third most common complaint in 2012/13. This includes complaints about the accuracy of a prisoner's records and communication between the prisoner and prison staff or those in the wider community. Security, control and progression through the prison system remained one of our largest subjects with 18% of all complaints made about this area, closely followed again by complaints about privileges and prisoner property. Complaints about health, welfare and religion also increased by 50% in 2013/14 and complaints about prison discipline increased in number significantly on the previous year. In most of the cases we uphold, the main issue relates to failure to correctly follow the procedures set out in the prison rules, which is something reflected in the analysis and case studies that follow.

Ombudsman's introduction

Barriers to prisoners raising complaints

We are again including some analysis of prisoner healthcare complaints in this report, although we have reported more extensively on this in our NHS annual report. For some considerable time now, I have been voicing my concern about prisoners' access to the NHS complaints procedure following the transfer of this responsibility to the NHS in 2011. There has been a rise in the number of healthcare complaints from prisoners to SPSO, but our experience from some of the cases we have seen in 2013/14 suggest that there remains some confusion about the process and that some boards are failing to give prisoners the same access to complaints as the wider community.

Sharing the learning

To ensure transparency and to help facilitate the sharing of learning from the complaints we receive, we continue to publish our decisions where we are able to do so. In 2013/14, we publicly reported 98 complaints about prisons to the Scottish Parliament, including two detailed investigation reports, and made these available on our website. This included 63 recommendations for redress and improvement. Making these reports public allows providers to analyse trends and identify potential improvements they can make to reduce any common failings. Similarly, prisoners and members of the public can see the kinds of complaints that are made about prisons and find examples of the kinds of redress we are able to recommend when we see something which has gone wrong.

Improving complaints standards

Improving complaints standards remains a part of our on-going focus in our engagement with all of the sectors under our jurisdiction. A key aspect of our role is to work closely with service providers, regulators and other stakeholders to offer advice, support and guidance on effective complaints handling. Over the course of 2013/14 we continued to provide support to prisons providers and worked closely with the SPS in a number of ways to help improve complaints handling. We also responded to consultations relating to future developments in this area and the work of Her Majesty's Inspectorate of Prisons. Further detail on this is outlined later in this report.

I hope that this report will prove a useful source of information and learning for all providers and furthers the goal we all share of improving the quality of the services provided to the public.

Jim Martin, SPSO



Casework

Complaint numbers

In 2013/14 the number of complaints we received about prisons remained fairly static. We received 311 (just under 7% of the total complaints sent to us), compared to 318 (just under 8% of the total) the year before. Of these complaints, the rate of those coming to us too early (premature complaints) rose slightly this year, to 21%. The number of premature complaints has, however, remained fairly constant across the three years since we started taking complaints about prisons – in the first full year we saw 20%, and in the second 19% – and is well below the rate across all the complaints we receive (34%). We think that this may be because, in most cases, the SPS complaints system is generally well understood and accessible, although we have some anecdotal evidence that there may be issues with access for some prisoners, which we discuss later in this report.

Complaints investigated

We investigated 103 of the complaints in detail, and published 98 of them on our website, including two detailed investigation reports. In a very small number of cases we did not publish specific details of the case, usually to prevent any possibility of the individuals concerned being identified.

We upheld or partly upheld 33 of the complaints we investigated in detail. This meant that the rate of upheld complaints was 32%, up from 26.5% last year, which we would expect the SPS to review as part of the new requirement for them to consider and benchmark their annual complaints handling performance. This was, however, still well below the year's overall rate across all sectors, which was 50%. We published two public interest reports, one about children visiting their father in prison (case 201101687) and the other about a prisoner's access to treatment programmes aimed at addressing offending behaviour (case 201202918).

What do people complain about?

Top areas of prison complaints received 2013/14

| Subject | Complaints received | As % of all prison complaints |
|--|---------------------|-------------------------------|
| Communication and records | 57 | 18 |
| Security, control and progression | 55 | 18 |
| Privileges and prisoner property | 51 | 16 |
| Health, welfare and religion | 33 | 11 |
| Physical and personal environment | 26 | 8 |
| Discipline | 25 | 8 |
| Work, education, earnings and recreation | 25 | 8 |
| Admission, transfers and discharge | 15 | 5 |
| Leave from prison (including home detention leave) | 11 | 4 |

Compared to 2012/13, the most notable increases were in complaints about communications and records, which jumped from third to first in the table, and in complaints about health, welfare and religion, (which had dropped by half the year before). In both areas, numbers increased by 50% in 2013/14. Complaints about prison discipline more than doubled, although on relatively small figures – from 11 in 2012/13 to 25 in 2013/14. Complaints about leave from prison dropped by a similar amount, from 21 to 11.

As we reported last year, we continued to receive a number of complaints that we cannot take forward as we do not receive enough information to enable us to do so. We can only contact people in prison by letter, although they can call us to discuss their complaint. It is not, therefore, possible to say why the person has not got back in touch with the information we need.

Issues in prison complaints

Communications and records

Cases within this category included issues about what is written in a prisoner's records, communication with the prisoner about various aspects of prison discipline or processes and their own communication with those in the community, such as family members or their legal representative. In one example, a man complained that the prison sent the parole board a report that said he had not done any educational work, which was wrong (case 201204519). He said they had also given the board irrelevant information about him and that all this reduced his chances of a fair hearing and having parole granted. We found that the prison had provided a supplementary report correcting the education information, but maintained that the other information they gave the parole board had to be disclosed. They had acted quickly to provide the missing educational information, so we noted that the parole board had correct information at the hearing. We did not uphold his complaints, as we also found that the prison acted appropriately in disclosing information to the board in line with their guidance. In another case, about personal communication, a man was being taken to hospital and he asked a prison officer to phone his sister to let her know (case 201300691). The prison officer agreed but another officer then said it could not be done. The prison said the officer could not recall the

man asking for this, and the evidence we saw did not allow us to ascertain if he did. However, even if he did not, the prison rules say that steps must be taken to ask a prisoner whether they would like a relative or friend to be told. We upheld the complaint and recommended that the SPS remind staff of this rule, as this clearly did not happen here.

Security, control and progression

We fully investigated 21 cases under this heading in 2013/14. The issues involved included testing for controlled drugs and alcohol, searching of prisoners and their cells, and prisoners' progress through the prison system.

In terms of drug testing, we have in the past recommended that the SPS remind all staff to follow the requirements of their drug testing policy (case number 201203443), and they did so in February 2013. In a recent case, however, we found similar failings when a man was found to have inappropriate items in his pocket, including a tablet thought to be his prescribed medication (case 201303184). The prison tested it, confirmed that this was what it was, and after a disciplinary hearing the man was punished. He wanted the tablet independently tested, but was told that the whole tablet was used in the testing process. The SPS confirmed that prisoners were entitled to have substances that had given a positive result independently tested. We upheld the complaint as we found that the man was denied this opportunity, and that the prison did not complete the required paperwork or prepare a written report for the adjudicator of the hearing as they should have done. We noted our disappointment that the same failing occurred in this case and made a recommendation relating to this. Among other things, we said they should review the case to decide whether appropriate corrective action should be taken and again remind all prisons about the policy. In a case involving search procedures a man complained that staff carried out a personal search in an unreasonable manner (case 201303897). The search procedures said that, after a search, the final stage was to complete relevant paperwork. The prison could not provide this, so we could not say whether they followed the correct procedure. We said that the SPS should amend body search procedures to make clear in which cases this paperwork should be completed.



Finally, although progress through the prison system is an issue on which we receive many complaints – the highest number in the area of security, control and progression – we did not uphold any about this during 2013/14. In one example, a man complained about his progress in prison (case 201204118). At his parole tribunal, the board had not recommended his release but agreed to review this in 18 months. His management plan said that before the next tribunal he should progress to a less secure prison and participate in a work placement. There was delay in moving him to less secure conditions, and when he wrote to us more than three months after his tribunal, he complained he had still not been moved. The prison told us that as he had failed drug tests two months before his parole tribunal, he did not meet the progression criteria for a further three months, but as soon as he was eligible he was referred to the risk management team. The referral paperwork explained that this process could take up to a further eight weeks. The risk management team reviewed his case within six weeks and he was approved for progression. He then had to wait for a space to become available and was progressed around two months later. We considered this reasonable in the circumstances and did not uphold the complaint.

Privileges and prisoner property

Although complaints in this area were the third highest, many of the cases we received were either premature, or the person did not provide more information when we asked them to do so. Of the 16 cases we did take forward, the majority were about issues to do with prisoners' personal property. In one case a man complained that the prison would not allow him to buy a particular make of games console (case 201205062). The prison said that he was not allowed this as consoles could be modified for internet provision, and this was a security risk. We upheld his complaint, as we found that although prison governors can decide to refuse items for security reason, the SPS had issued advice to all prisons that certain games consoles could be allowed if they did not have wireless connectivity capability. In view of this, the prison reconsidered their original position and now allow prisoners to buy the make of console the man wanted, although not those with wireless connectivity.

In another case, a man who went on home leave from prison put his belongings in a sealed box before leaving (case 201304464). While on leave, he was arrested and returned to a different prison. When his belongings were forwarded there, he said that a number of items were missing. He made a claim for these but this was refused, and he complained that the SPS had not investigated this properly. We found that they had in fact considered all the relevant information in making their decision – in this case all the documents about the claim, including the lists of the items recorded at various points in the process. During our investigation, however, we noted that the main issue was that what the man said went into his box was not what came out and he was not there when it was opened. Normally a prisoner will see the box being unsealed and opened, but if they cannot be there, prison staff open the box instead. As this could lead to a claim that items were missing, boxes are opened in front of two members of staff. Because this is not in the guide for dealing with prisoners who do not return to the prison they were in, we suggested that the SPS consider including this. And in a case where the matter was resolved after we became involved, a man complained that the SPS had not investigated his complaint that four packets of tobacco were stolen from his cell (201303813). When we contacted the SPS for further information they said that he had never submitted a claim to be reimbursed for the tobacco. They agreed to send him the relevant form and information about how to claim. The man told us that as the SPS were going to consider reimbursing him, he was happy for us to close his complaint.

Health, welfare and religion

Complaints in this area increased by 50% during 2013/14, rising back to the levels we saw at in 2011/12. Again, in many cases, we did not receive enough information to enable us to take the complaint forward. One case that we did investigate in detail and where we upheld the complaint was that of a man who said that he had told the prison that he was Jewish and asked for a kosher diet (case 201300584). The prison, however, said that he would only be provided with this after he met with a rabbi. When he refused to do so, the prison refused his request, and he complained to us that this was inappropriate.

Prison rules confirm that a prisoner must be treated as having a particular religion, belief or non-belief if they declare so at any time, and that they are not obliged to provide any information about this. The rules also say that the governor should, as far as practicable, provide a prisoner with food that takes into account their age, health and religious, cultural, dietary or other requirements. We asked whether any other rule gave prison staff the authority or discretion to assess and test whether a prisoner had shown or was showing evidence of their declared religion, and the SPS confirmed that none existed. We found that the prison had breached prison rules as they were not entitled to insist that the man had to meet with a rabbi before his dietary needs would be met, and we recommended that the SPS issue guidance reminding staff what this rule says.

In most cases in this area, however, we found no reason to uphold the complaint. For example, one man complained that he was subjected to discriminatory abuse by a fellow prisoner (case 201205112). Our investigation considered what the SPS did to deal with the abuse, and we were satisfied that this was reasonable. We noted that the SPS also made sure that he could report any further abuse to prison staff. In another case, a man complained that prison staff provided medical assistance against his will after he self-harmed, and that staff ignored instructions provided by a hospital doctor (case 201300679). The SPS confirmed that although a prisoner was entitled to refuse medical treatment, they were not able to refuse emergency life-saving interventions from prison staff trying to prevent a prisoner from harming himself. Staff have a duty of care towards prisoners, and the interventions in this case did not constitute medical assistance or treatment. We also found that the man had discharged himself from hospital and because of that, no medical instructions were received. And in a final example, a man with a disability said that the prison would not arrange for members of staff to help him move round the prison (case 201302458). Although they had arranged for another prisoner to do this, the man said he did not feel safe and believed that the prison were failing in their duty of care. We found that the other prisoner had undertaken appropriate training and that the task would be carried out in

the presence of a prison officer. As prison rules allow the governor to require a prisoner to work in the service of another prisoner, they believed this was appropriate as long as the person's suitability was assessed and health and safety and training issues considered. We did not uphold the complaint, as we were satisfied that the prison were entitled to have a suitable and appropriately trained prisoner to help the man.

Complaints handling

We received eleven complaints that were directly about complaints handling, although this also featured in many other cases where the main subject was something else. Despite the complaints process being relatively well understood within the prison system, we remain concerned that prisoners in some areas may still not be able to access complaints forms as readily as they should and that there may be some wider issues with access to the complaints process. In most of the cases we upheld during 2013/14, we found that the main problem was that staff were not following the procedures in the prison rules, and this is reflected in some of the recommendations we made. For example, a man who was unhappy about his progression through the prison system also told us that his complaints were not being properly handled (case 201300527). He had made a number of complaints raising issues about progression and asking for explanations of what had happened. We found that the prison had only responded to a couple of these and had not addressed all the issues he raised. We upheld his complaint and pointed out that had they carefully investigated and provided a full and detailed response, this might have meant he did not need to bring his complaint to us. And in another case, a man told us that when he made a complaint, the hall manager did not discuss it with him (case 201203900). The prison's internal complaints committee agreed that the hall manager should have discussed the complaint with him, but the man came to us as he was concerned that they had not taken any action to ensure this failure did not happen again. He said this had also happened in other complaints he submitted. Prison rules say that within 48 hours of receiving a complaint, managers must allow the prisoner the opportunity to discuss this with a view to resolving it.



Key figures in prison complaints 2013/14

We received **311** complaints and dealt with **306***

The rate of upheld complaints was **32%**, up from 26.5% last year, and higher than the year's overall rate of 50%

The rate of complaints coming to us too early rose slightly, from 19% to **21%** compared to last year (the overall rate for all sectors is 34%)

People who received advice, support and signposting **152**

Cases decided after detailed consideration pre-investigation **51**

Complaints fully investigated **103**, with **98**** publicly reported to the parliament during the year, including two detailed investigation reports

We made **63** recommendations for redress and improvement

* There is some carry forward each year.

** Some cases published in 2013/14 will have been handled in 2012/13. In a small number of cases, we do not put information into the public domain, usually to prevent the possibility of someone being identified.

Casework

We had previously investigated a complaint about failure to comply with this rule and so were concerned that this seemed to be continuing. When we looked at the relevant section of the prisoner complaint form, we found that it did not prompt managers to record their attempts to discuss the complaint with the prisoner, so we upheld the complaint and recommended that the SPS revise the form.

In the complaints system itself we have identified a concern about whether staff fully understand the rules for calling witnesses at internal complaints committees. We drew attention to this in last year's report about prisons, but we continue to see and uphold complaints about this. For example, we received a complaint about how a prison handled requests to call witnesses to a man's complaint hearings (case 201300729). Each time, the chair

of the hearing refused the requests. Prison rules allow the chair to do this if they think that the witness will be of no relevance or value in considering the complaint, but the man said that the refusal reasons he was given were not in line with this. He also said that the chair did not discuss the requests with him and tell him the decision before the hearings. The prison told us that the requests were assessed for relevance and value, but we found that the reasons given for refusing them did not reflect this. The prison acknowledged that there were no discussions with the man on three complaints but said they have introduced changes so that the correct process is followed in future. We said that they should also brief any staff who act as complaints committee chair on the terms of the relevant prison rule.



Prisoner healthcare

Prisoner health complaints are not included in the figures earlier in this report for complaints received about prisons – instead we record them in the complaint numbers for the health sector. We report on the figures in the statistics for each of the health boards that have prisons in their area, and examine them in more detail in our 2013/14 health report¹.

We first received complaints about healthcare in prisons during 2011/12, so this is the second full year for which we have statistics for these. The table below shows the subjects and numbers of prison health complaints we received.

| Subject | Complaints |
|--|------------|
| Clinical treatment/diagnosis | 104 |
| Appointment and admissions/waiting lists | 8 |
| Complaints handling | 8 |
| Communication/staff attitude/dignity/confidentiality | 6 |
| Policy/administration | 2 |
| Nurses/nursing care | 1 |
| Total | 129 |

We commented last year that we did not receive as many complaints as we originally anticipated when we took these on. This year, however, the number received more than doubled. In contrast to the 62 complaints received and the 50 determined in 2012/13, in 2013/14 we received a total of 129 complaints about prison healthcare and determined 122. We fully investigated 32 of these determined complaints, of which we partly

or fully upheld 17 and did not uphold 12. In the remaining cases we were either unable to complete our investigation as the complainant did not provide us with information, or they left prison and we were unable to contact them. As last year, and in common with complaints received across the Scottish population, by far the main issue complained about was clinical treatment and diagnosis. In the case of prisons, this accounted for more than 80% of the healthcare complaints received, and included complaints about not being prescribed particular medication, lack of communication about test results and delay in, or allegedly incorrect, diagnosis. We also saw a rise in the number of complaints about delay in being provided medical or dental care.

Complaints about complaints handling dropped from 15 in 2012/13 to eight in 2013/14, although we still identified concerns about prisoner access to the NHS complaints process. This is a subject on which we commented last year, and which we have highlighted again this year in our health report and later in this report. It is clear from some of the cases we have reported that access by prisoners to the NHS complaints process remains problematic. We hope that the rising numbers of healthcare complaints from prisoners to SPSO means that there has been improved access to the system and may reflect our recommendations in such cases, although, as we highlight later in this report, numbers remain well below the levels escalated to Scottish Ministers under the previous complaints system.

Of the complaints we investigated in detail, we issued detailed public reports on three – two about access to the NHS complaints process (cases 201203514 and 201203374) and one about the loss of medical records and treatment for glaucoma (case 201200953). We upheld all three complaints, and the reports can be read on our website².

¹ 2013/14 SPSO health report pp14 – 16 www.spsos.org.uk/information-health-sector

² www.spsos.org.uk/investigation-reports

Case studies

This is a selection of case studies from investigations we published for 2013/14. Some illustrate the double injustice that can happen when a poorly delivered service is compounded by poor complaints handling. Other case studies are included to show some of the positive actions that organisations take in response to complaints. To share this good practice, in the report on our website we normally highlight where an organisation has taken such action. Others are included as examples of where organisations have delivered a service and investigated the complaint properly.

These case studies are brief summaries and may not contain all the information we published about the complaints. You can find more information online at www.spsso.org.uk/decision-reports.

Visits from children

A father arranged for his children, who were 16 and 15, to visit him in prison. When they got to the visit room, they weren't allowed in because they weren't with an accompanying adult (a person over 18). Their father complained that the prison allowed them to book in for the visit, have their identities checked and go through the metal detector before being told that they both had to be with an adult. The younger child had been searched during the process, and had told staff then that the accompanying adult was her older brother.

The prison policy said that a person under 16 would not be allowed in unless they were accompanied by a person who was at least 18. Mr C's younger child was, therefore, not accompanied by an appropriate adult, according to the policy, and was searched without an appropriate adult being present. We were concerned that there was no standard policy about this across the prison service. After repeated requests to the prison service, they confirmed they did not have a national policy, although they also said that they would not allow a child under the age of 16 to enter a prison without an adult aged at least 16 being present. They checked on local policies during our investigation and found that prisons were not operating consistently, with some allowing the accompanying adult to be 16 or over, and others 18 or over. We said they should explain what they had done to put a consistent policy in place, consider discussing this with Scotland's Commissioner for Children and Young People and once they had a policy take immediate steps to make their staff fully aware of it.

Case **201101687**



Case studies

Complaints handling; access to the process

A prisoner was unhappy with how his healthcare complaints were treated. He had sent the board a lot of feedback forms and a complaint form. Although the amount of work involved meant that these would have taken time to deal with, we found that the board did not handle them properly. We said they should apologise and ensure that their local process is in line with the guidance.

Of even more concern, however, was that we found that prisoners' access to the complaints process was restricted. Although the board said that they thought forms were available to those who wanted to complain, and that prisoners could write directly to them with a complaint, we found that prisoners normally had to complete a nurse referral form, then ask for a complaints form. Even then, they sometimes only received a feedback form, unless they said that they didn't want one. This meant that in some cases the feedback process was used as an extra level of the NHS complaints process. NHS users don't have to do this before accessing the complaints process, and this should still be the case when people are in prison. We recommended that the board make sure that in future prisoners have easy access to NHS complaint forms.

Case **201203374**

Use of restraints

A man complained after the prison decided to place him under restraint, using a body belt. We found that the prison were authorised to decide to restrain him, and they explained that they did so for his own safety. In terms of how long he was restrained, however, the prison rules say a prisoner cannot be placed under restraint for more than 12 hours without Scottish Ministers' authority. Before the man complained, the prison had already identified that they had held him in restraints for too long without this authority. They had reviewed the process and ensured staff were aware of it. The rules also say that an officer must monitor a prisoner continuously while they are under restraint. The prison said that this happened, but the man disputed this. Although there was no closed-circuit television evidence, log sheets confirmed that most of the time staff recorded information about him at least once every 15 minutes. However, for a two and a half hour period, the prison could not provide evidence that he was checked. The documented evidence also indicated that he was provided with a drink and access to the toilet only once while he was restrained, which we found unacceptable. In light of our findings, we upheld the man's complaints and made recommendations, including that the SPS improve their practices for when prisoners are restrained.

Case **201300592**

Supervision level

A man complained that the prison didn't follow the right process when reviewing his supervision level. He said that they updated their computer record before considering his written representations about this and signing off the paperwork. We found that the prison rules say that the governor must consider what a prisoner has said about assignment of a supervision level before making a decision, but in this case that did not happen. The prison told us that they had revised their procedure and had taken steps to ensure that in future this would not be amended on computer until written representations are considered and the paperwork is signed off by the appropriate manager. We did not, therefore, need to make any recommendations.

Case **201300831**

Communication and complaints handling

A woman complained to the prison governor that an officer discussed her personal information with another prisoner. The governor said that the other prisoner had tried to do so, but that the officer responded with a dismissive comment, and did not disclose personal information. The governor said that the incident had led him to remind staff to exercise caution, to guard against potential breaches of confidentiality. The woman then complained to us that the governor had not fully investigated, as he had spoken to the officer but not the other prisoner. We asked why this was, and the governor said that he did not feel that the other prisoner would have given a balanced or accurate account. He was also concerned that doing so might have had a negative impact on that prisoner's relationship with the woman.

We were not persuaded that the governor's reasons justified his decision not to interview the other prisoner. We did not consider it appropriate for him to simply accept the officer's account without getting the other side of the story. We recommended that in future, where possible, all relevant parties to a complaint are interviewed before a finding is reached.

Case **201304535**



Case studies

Prisoner escorting – risk assessment

A man who uses a mobility aid and has a heart condition was escorted from prison to court. He said that, despite his disability, he was handcuffed in an inappropriate way. The escort service agreed that they should have risk-assessed this, but could not be certain whether he had been handcuffed in the way he described. They said they would develop guidance for staff on how to deal with this in future. We could not find out exactly what happened, but we upheld the complaint, as staff did not record whether they had made a risk assessment to show that he had been safely and securely escorted. We recommended that they consider recording the handcuffing style used in future and let us see a copy of their new guidance.

Case **201201756**

Treatment of prison visitor – complaints handling

A man complained about the way he was treated by a prison officer in the reception area of a prison he was visiting. He told us that the prison did not investigate his complaint appropriately and hadn't interviewed independent witnesses to the incident. The prison told us that a manager had investigated, including interviewing the member of staff complained about and viewing closed circuit TV footage. They said that other members of staff were interviewed, but couldn't provide us with evidence of that, and the investigating manager provided a statement instead.

We upheld the complaint, as we were concerned that the prison hadn't interviewed independent witnesses. Although the prison has discretion to decide whether to do this, they should have explained to the man why they did not do so here. They said that it was not normal practice to interview members of the public about incidents. However, we said that they should consider whether interviewing independent witnesses might bring something new to the investigation, just as they would when deciding whether to interview staff. We told them that doing this would ensure that investigations are seen to be fair and balanced, and that decisions are based on as much relevant evidence as possible.

Case **201203348**

Payment for education classes

A man complained that he wasn't correctly paid when attending education classes. The prisoner wage earning policy says that prisoners should be paid their normal wage where they attend education for a limited number of sessions each week instead of work. As the man had continued to receive his normal wage (which was above the minimum rate of payment for education classes) when he attended classes, we found that this was in line with the policy. However, we found that he'd attended two classes before starting his job in the prison, and should have received extra payment. We said that the SPS should pay him for these and consider whether others in his prison had also been underpaid for education classes while unemployed.

Case **201203551**

Security categorisation

A man told us that he had been categorised as a medium security risk, when he should have been rated as low risk. When we investigated, however, we found that drug paraphernalia (articles used in a particular activity) was found during a routine search of his cell. Although the man said that this belonged to his cellmate, the SPS provided reasonable evidence of their suspicion that he had been a participant, and we did not uphold his complaint. We also noted, however, that they had kept his security category under review and had since recategorised him with a low rating.

Case **201301562**

Lost property claim

A man told us that a visitor had handed in some items to the prison for him. The prison logged these as received, but when they didn't reach the man, he put in a missing property claim. He complained that the prison took too long to consider this, and although they did offer compensation they then withdrew the offer. The paperwork showed that the investigating officer recommended offering compensation. This was at first rejected as the officer who logged the items gave a statement saying the items were not allowed in the prison and were handed back to the visitor. That initial decision was then reviewed and reversed, and compensation offered. As, however, the prison director then opposed that decision the offer was withdrawn.

After we began our investigation, the prison reviewed how they'd handled this and agreed they took too long, which they said was due to internal disagreements about whether to pay the claim. They said they should have been clearer with the man and told him what was happening. In recognition of this, they reinstated the compensation offer. We found it reasonable to expect some disagreement where there is contradictory evidence about an event, but upheld the complaint as the prison had accepted that there were failings. As, however, they had already reviewed this and reinstated the offer we made no recommendations.

Case **201205132**



Case studies

Accuracy of prisoner records

A man complained that the prison had not amended an intelligence report (adverse information that affects an individual prisoner) on him to accurately reflect the outcome when he was suspected of drug use, and hadn't sent an accurate version to the parole board. He also complained that he was ignored after he asked to speak to the early release liaison officer, and was unhappy about how the prison handled his complaint.

Our investigation found that the prison did send amended information, but that the wording was confusing in terms of the outcome. This was not in line with what the prison said they would do in response to his complaint, or with guidance on dealing with the parole board. We also found that the prison did not have an early release liaison officer for such prisoners, and there was no evidence to confirm how and when he was told this, and no records of discussions with him about related matters. Finally, we found that the prison did not address one of the main points in his complaint. As well as apologising we said the SPS should immediately correct the information with the parole board, provide a liaison officer and ensure that relevant staff are trained on handling complaints.

Case **201300588**

Delay in dental treatment

A prisoner said that the prison dental hygienist did not see him quickly enough, and that when he reported a broken tooth it was nearly four months before he saw a dentist. The board told us that when they took over responsibility for prison healthcare they had no guidelines for the treatment of prisoners but this was now in hand. They also said that the prison had audited their practice against the board's new dental services standard statement.

The hygienist had recommended that the man be seen again after three months, which our adviser said was appropriate, and we could not find out why it took eleven months for this to happen. The man's gum disease got worse while he was waiting to be seen. It also took too long for him to see a dentist, which was likely to have contributed to his tooth decay and the possibility that he might lose a tooth. We were concerned that the board did not identify this while investigating his complaint. As well as asking the board to apologise to the man for the delays, we asked them to show us evidence of the audit they carried out.

Case **201204744**

Sharing the learning

We share learning from the complaints we see through:

- publishing decisions on the SPSO website
- publishing statistics, including details of complaints received and dealt with, along with premature and uphold rates, compared with the previous year.
- consultation and inquiry responses
- conferences, meetings, presentations and visits.

We expect the SPS and other prisons providers to look systematically at the cases that are escalated to the SPSO. These cases provide a substantial body of free, independent and impartial learning on the issues raised by prisoners and their handling of matters. Through systematically reviewing these complaints, prisons providers can reassure themselves that they are aware of any common or systemic concerns and take steps to address them.

Publishing reports

Each month, we publish reports of as many cases as we can and lay them before Parliament. In 2013/14 we published 96 decision reports about the prison sector making them publicly available to raise awareness and to support learning within and across sectors. In doing this, we are careful to protect the identity of the person who complained and any individuals about whom the complaint was made. Although we publish the vast majority of our decisions, in a very small number of cases we take the view that even publishing anonymously might identify someone, or that there are other reasons for not publishing, such as a person's vulnerability. In these circumstances we will exclude a case from publication.

The bulk of the reports we publish are summary reports of decision letters. These detail the complaint, our decision and whether recommendations were made. We also publish some full investigation reports each month (there were two about the prison sector in 2013/14) where the public interest makes it important that all the detail is in the public domain. All the reports are searchable on our website by organisation, date and outcome and they provide a wealth of information for complainants and organisations. We promote learning from the reports through the Ombudsman's monthly e-newsletter which highlights themes and issues from our casework. It is sent to over 2,000 recipients, including MSPs, scrutiny bodies, service providers, advocacy agencies and the media.

Improving Complaints Standards

The SPSO's Complaints Standards Authority (CSA) works closely with public sector organisations across Scotland, including the SPS, to provide advice, guidance and support in relation to the handling of complaints, and compliance with our complaints standards. The SPS has a duty to comply with the *SPSO Statement of Complaints Handling Principles* and the complaints handling arrangements as set out in *'The Prisons and Young Offenders Institutions (Scotland) Rules 2011'*, which were developed in line with key CSA principles. The aim for all complaints, irrespective of the sector involved, is that they are handled effectively, consistently, and are resolved at the first point of contact, wherever this is possible.

To read our decisions or search by subject, organisation or case reference number, visit www.spsso.org.uk/our-findings

To read our information leaflets, visit www.spsso.org.uk/information-leaflets



Sharing the learning

During the year we provided particular support to the Scottish Prison Service through participating as observers in their internal audit of complaints handling arrangements across the prison estate. Our role was to provide advice and guidance to the SPS in relation to SPSO's knowledge of prisoner complaints and good standards of complaints handling. We welcomed the opportunity to observe complaints handling in prisons and offer our advice and expertise on various aspects of how complaints are handled, including compliance with the complaints handling provisions of the prison rules. We fed back our observations, including suggestions of best practice in areas around complaints handling culture, access to the process, consistency of information and signposting and consistency and regularity of recording and monitoring of complaints information. We also agreed to further work with the SPS and its complaints handlers in relation to some of these aspects of complaints handling. This included providing further detailed support and advice on complaints handling through our participation in a network of SPS complaints managers, facilitated by the SPS.

Key areas of policy contribution

The complaints that prisoners bring us provide a valuable source of information about their direct experiences of prison services and complaints systems. We use this knowledge to inform our responses to inquiries and consultations.

Changes to prison monitoring

In 2013/14, we responded to two calls for evidence on proposed changes to prison monitoring and the role of prison visiting committees (PVCs). In general, we welcomed the proposal to provide lay monitors with a role in complaints handling, building on the existing role of PVCs. However, we said that further clarity is needed to ensure that complaints handling roles are defined well and work together, and that the existing process for handling complaints, particularly that of the prison service, remains the principal avenue through which prisoners can raise complaints. We also said

there should be greater clarity on the status of reports and recommendations, and highlighted the importance of transparency of decisions and consistency in what is reported. We have met with Her Majesty's Inspectorate of Prisons, the Association of Prison Visiting Committees, Howard League and the Scottish Human Rights Commission to discuss our response to these proposals and will continue to engage with this important area of reform.

Standards for the Inspection of Prisons in Scotland

We also responded to the consultation from HM Inspectorate of Prisons in Scotland on their draft Standards for the Inspection of Prisons in Scotland. We recognised that the draft standards outline a sound framework for the inspectorate's work and will provide valuable guidance to the prison service on the standards expected in the treatment of and conditions for prisoners. We highlighted how the standards could more comprehensively reflect the new complaints handling standards that we have set all public organisations through the work of the CSA.

Barriers to prisoners raising complaints

As we highlighted earlier in this report, we have previously highlighted an important issue in relation to prisoners gaining access to the NHS complaints procedure. We continue to have concerns in this respect as our experience indicates that there is confusion about the process, which is leading to prisoners being denied access to the NHS complaints procedure.

We raised these concerns early on, most publicly in January 2013 when the Ombudsman gave evidence to the Health and Sport Committee. In a May 2013 investigation (case 201203514) we found that a prisoner had been unreasonably denied access to the process. We were pleased to be able to report that the Scottish Government was being proactive but also commented in our newsletter and subsequent evidence to the Health Committee that: 'It is now 18 months since the transfer of responsibility and it is high time that these issues were fully addressed.'

Sharing the learning

In October 2013, we highlighted the same issues appearing in a different health board – this features as one of our case studies elsewhere in this report (case 201203374). In written evidence to the Health Committee before a second appearance there in February 2014, we said that while we appreciated there would be a time lag while problems are ironed out, we would be very disappointed if we were continuing to report on access issues into 2014.

We receive dozens of contacts from prisoners across the Scottish prison estate. Like everyone who is concerned about their health, some of the prisoners phoning our office are, as well as needing medical attention, very anxious and upset. Those feelings are compounded by frustration at being unable to access the NHS complaints procedure. We have been advised by Scottish Prison Service staff that this can lead to potentially difficult situations arising. We have shared this warning with Scottish Government officials and were pleased to see some progress in the form of reminders to relevant health boards about the correct process and the need for complaints forms to be made available.

It is clear from discussions with some health boards that access by prisoners to the NHS complaints process remains problematic. It is worth noting that the numbers of complaints we receive, although increasing significantly in 2013/14, remains well below the levels escalated to Scottish Ministers under the previous complaints system. It is also clear to us that the quality of health boards' responses to complaints from prisoners is variable. We are continuing to raise this with the boards concerned.

For more information see
www.spsa.org.uk/consultations-and-inquiries

The CSA website is at
www.valuingcomplaints.org.uk



Statistics

Prison complaints determined 2013/14

| Stage | Outcome | Admission/ transfer/discharge | Communication and records | Discipline | Health/welfare/religion | Leave from prison (including home detention leave) | Physical and personal environment | Privileges and prisoners' property | Security, control and progression | Supervision | Work/education/ earnings/recreation | Subject unknown or out of jurisdiction | Total |
|-------------------------|---|----------------------------------|------------------------------|------------|-------------------------|--|--------------------------------------|---------------------------------------|--------------------------------------|-------------|--|---|------------|
| Advice | Not duly made or withdrawn | 2 | 11 | 5 | 5 | 5 | 5 | 4 | 11 | 0 | 0 | 7 | 55 |
| | Out of jurisdiction (discretionary) | 1 | 1 | 1 | 1 | 0 | 0 | 1 | 3 | 0 | 0 | 0 | 8 |
| | Out of jurisdiction (non-discretionary) | 0 | 1 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 8 |
| | Outcome not achievable | 1 | 3 | 0 | 1 | 2 | 4 | 5 | 1 | 0 | 1 | 0 | 18 |
| | Premature | 3 | 19 | 6 | 6 | 2 | 6 | 7 | 6 | 0 | 2 | 2 | 59 |
| | Resolved | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 1 | 0 | 4 |
| | Total | | 7 | 35 | 18 | 13 | 9 | 16 | 18 | 22 | 0 | 5 | 9 |
| Early Resolution 1 | Not duly made or withdrawn | 2 | 0 | 0 | 2 | 1 | 1 | 1 | 2 | 0 | 1 | 0 | 10 |
| | Out of jurisdiction (discretionary) | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 3 |
| | Out of jurisdiction (non-discretionary) | 2 | 2 | 1 | 2 | 0 | 0 | 5 | 2 | 0 | 2 | 0 | 16 |
| | Outcome not achievable | 1 | 1 | 0 | 0 | 1 | 1 | 1 | 2 | 0 | 1 | 0 | 8 |
| | Premature | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 6 |
| | Resolved | 1 | 1 | 0 | 0 | 0 | 1 | 5 | 0 | 0 | 0 | 0 | 8 |
| | Total | | 7 | 6 | 2 | 5 | 2 | 3 | 14 | 7 | 0 | 5 | 0 |
| Early Resolution 2 | Fully upheld | 0 | 8 | 1 | 2 | 0 | 0 | 2 | 4 | 2 | 2 | 0 | 21 |
| | Some upheld | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 1 | 0 | 4 |
| | Not upheld | 0 | 10 | 4 | 6 | 1 | 4 | 9 | 14 | 2 | 10 | 0 | 60 |
| | Not duly made or withdrawn | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| | Resolved | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Total | | 0 | 20 | 5 | 9 | 1 | 4 | 11 | 20 | 4 | 13 | 0 |
| Investigation 1 | Fully upheld | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 4 |
| | Some upheld | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 2 |
| | Not upheld | 0 | 2 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 1 | 0 | 6 |
| | Not duly made or withdrawn | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| | Resolved | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| | Total | | 2 | 2 | 0 | 1 | 0 | 1 | 5 | 1 | 0 | 2 | 0 |
| Investigation 2 | Fully upheld | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| | Some upheld | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| | Not upheld | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Total | | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 2 |
| Total complaints | | 16 | 64 | 25 | 28 | 12 | 24 | 48 | 51 | 4 | 25 | 9 | 306 |

Note: These totals do not include complaints about prison healthcare, which are included in our health report.

Further information is available at www.spso.org.uk/statistics

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