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Dear Amy Finlay

**Scottish Public Services Ombudsman response to the Call for evidence on the Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014**

I am writing in response to your call for evidence on the Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014 which proposes changes to the system of prison monitoring.

In responding to the consultation, I have focused my response on the proposal to provide the lay monitors with a role in complaints handling, building on the existing role of the Prison Visiting Committees, given that this is the area that directly relates to my role as Ombudsman and my responsibility for complaints about prisons and prisons healthcare.

In general I do believe that the proposal for the monitors to become part of the existing Chief Inspector's functions is to be welcomed, particularly given that it provides a greater degree of independence from the Scottish Prison Service (SPS) and enables an efficient, co-ordinated and joined-up approach to the oversight of prisons. My view, which is outlined in detail below, is that further clarity may be required to ensure that roles in complaints handling are defined well and work together, rather than separately, and that the existing process for handling complaints, particularly that of the SPS, remains the principal avenue through which prisoners can raise complaints. Central to this view are the guiding principles of the Crerar and Sinclair reports and the significant progress that has been achieved to embed these principles into the handling of prisoner complaints.

I provide below some background to the SPSO's role in prisons complaints, which helps explain the position from which I offer the following comments. I also refer to the SPSO prison complaints report for 2012/13, published on 8 November 2013. This is useful in understanding the issues arising from the complaints that are escalated to us and how we handle them. This is available at [www.spsso.org.uk/news-and-media/ombudsman-publishes-annual-complaints-report-prison-sector](http://www.spsso.org.uk/news-and-media/ombudsman-publishes-annual-complaints-report-prison-sector).

**The Scottish Public Services Ombudsman (SPSO)**

The SPSO is the independent body that handles complaints from members of the public about devolved public services in Scotland. We are the final stage of complaints handling for

complaints about councils, the National Health Service, housing associations, colleges and universities, prisons, most water and sewerage providers, the Scottish Government and its agencies and departments and most Scottish public authorities.

Under the Public Services Reform (Scotland) Act 2010, the SPSO was also given a role in leading the simplification and standardisation of the handling of complaints by public sector bodies in Scotland in line with the recommendations of the Crerar and Sinclair reviews. Through the work of our Complaints Standards Authority (CSA) we have undertaken a significant programme of improvement across the public sector in Scotland through the development and implementation of simplified and standardised model complaints handling procedures (CHPs) and the roll out of guidance, best practice and training in complaints handling. Underpinning this work is the ethos of 'getting it right first time' with the emphasis firmly on handling complaints more simply, more effectively and more consistently and resolving these at the first point of contact, wherever possible.

### **Prisons complaints and the SPSO**

As part of the agenda of public service reform - and the Crerar and Sinclair recommendations for simplification and efficiency in complaints handling - the SPSO has also taken on a number of additional areas of jurisdiction over recent years, including the role of the Scottish Prisons Complaints Commission (following its abolition in 2010) and the role of Scottish Ministers as the stage of last resort for prison health complaints (following the transfer of healthcare responsibilities to the NHS in November 2011). We are, therefore, now the body with responsibility for reviewing all complaints relating to prisons, looking at complaints once they have completed the internal complaints processes.

In our first full year of taking prisons complaints, 2011/12, we received 385 complaints. In 2012/13 we received 318 complaints, representing just under 8% of our total caseload. In addition to our complaints handling work, we engage with the SPS and, occasionally, individual prisons, to ensure that we are sharing information from complaints learning effectively. I and my staff have visited several prisons to familiarise ourselves with the environment in which prisoners live and staff work, and to help inform how we ensure a good level of awareness of our service, despite the low levels of literacy in prisons. Through our training unit, we have also delivered tailored training to support prison staff in handling complaints.

All prisoners can complain to the SPSO and we can also take complaints from visitors and relatives. Our office is readily accessible, within the constraints of the prison system, with prisoners frequently writing and calling my office, using our freephone number. We have developed leaflets and posters to help prisoners understand how to complain and what we can do with complaints, ensuring that these are particularly clear, understandable and accessible given the limited reading and writing ability of many in the prison population. We also publicise our Freephone helpline very clearly in the information provided for prisoners, to make sure they know that they can easily speak to us about their complaint.

Our prison complaints report details the issues that prisoners bring to us, the top subject of complaint being about progression. It also highlights where we think the complaints process is working well and where, in our experience, prisoners are encountering problems. The two areas of concern we identify are the low level of complaints from women in prison (p10) and barriers to accessing the NHS complaints process (p15). Where we see something wrong we make recommendations to ensure that all prisons can learn from this, and some of our recommendations are illustrated in the prison complaints report.

### **The Scottish Prison Service internal complaints process**

We worked closely with the Scottish Prison Service (SPS) in the early stages of our CSA work and fed directly into the development of the revised Prison Rules relating to complaints

handling (Part 12). From an early stage the SPS were receptive to our aims of developing a simple, streamlined process and have worked hard to ensure our core principles are incorporated into their handling of complaints. The revised complaints handling arrangements for prisoners set out in the prison rules reflect the requirements we have placed on all other public bodies, particularly in terms of stages and timescales. The current process involves a number of elements:

- Consideration of the complaint by a Residential First Line Manager;
- Referral to an Internal Complaints Committee where the prisoner remains unhappy;
- Complaints to the Governor in relation to certain confidential matters

We also worked with the SPS to develop their complaints handling procedure for handling prison complaints from non-prisoners (for example families, friends and other visitors). Together, I am confident that these arrangements provide clear, simple and effective access to the complaints handling process for prisoners and others. They allow the SPS to focus on resolving issues as quickly as possible, where possible, and ensure that prisoners who remain dissatisfied can seek independent review from the SPSO in as short a timeframe as possible.

As I highlight in the prisons report, in our experience the SPS are very good at sharing the learning from complaints across the prison estate. They do so in a coordinated manner by quickly issuing governor and manager action notices, and we also often find that at a local level staff have already taken action to address the issues complained about (p14).

One of the key ways in which my office assesses whether local complaints arrangements are simple and clear for complainants is the rate of premature complaints (those that come to us too early, before completing the organisation's own process). The rate of premature complaints varies significantly between sectors, ranging from 19% to 55%, with an overall average of 40%. In 2012/13 the rate of premature complaints from prisons was comparatively low, at only 19%. In our experience, this is likely to be because there is a clear and simple way of complaining through the SPS process followed by clear signposting to the SPSO.

### **The role of Prison Visiting Committees in prison complaints**

The operation in practice of the existing Prison Visiting Committee role in relation to complaints is set out well in Professor Andrew Coyle's report on his *Review of Proposals to Improve Arrangements for Independent Monitoring of Prisons (January 2013)*. There were a number of issues which I took from this report in relation to the role of the Visiting Committees in complaints which I think are worth highlighting:

- There is a variation in how committees receive, handle, record and respond to complaints. It appears that there is no consistent process, or timescales, applied;
- There is no clear or consistent definition of what constitutes a complaint with the possibility of narrow and wide definitions being applied. In practice there are differing approaches to defining a complaint and defining an enquiry or a general request for assistance or information. Many issues raised are complaints about conditions or treatment but it can transpire that prisoners do not have a complaint in the strict meaning of the word but wish to seek the assistance of the Visiting Committee to resolve a personal problem or merely seek information;
- Committee members deal with many matters on behalf of prisoners outwith the 'formal' process, with some prisoners approaching committee members for the opportunity for a conversation with a person who is independent of the prison management. Many complaints are addressed orally;
- The lack of a clear definition and inconsistent process leads to inconsistent recording and a lack of comparable data. Professor Coyle highlights the issue stating that

*'There is a wide variation in the volume of complaints recorded by different committees, with some prisons recording numbers in low double figures for a whole year in contrast to others which are well into the hundreds'*. Professor Coyle states that *'It is impossible to draw firm and rigorous conclusions from the raw figures for a number of reasons'*. Definition of what constitutes a complaint appears to be the central reason. The opportunities to learn from these interactions would, therefore, be limited;

- There was some evidence of problems in the way that requests for access to Visiting Committees were handled by prison staff, including reports of fear of victimisation by staff, requests not being passed on as they should have been and the removal of publicity material from notice boards;
- Highlighted reported issues with the handling of NHS prison health complaints and the fact that the SPSO had recommended that the Visiting Committees should pay attention to this issue.

Professor Coyle also reflected on the existing complaints arrangements, commending the *'considerable efforts'* of the SPS in developing its internal prisoner complaint system and reflecting the important role of the SPSO as the independent complaints mechanism. He did, however, highlight one unique feature of the Visiting Committee system which is that this is one of the few external avenues which includes the ability to speak face to face with an independent person.

In terms of SPSO's experience, it is also, perhaps, worth recording that only two complaints have been brought to SPSO by a visiting committee and that both came from the same prison. This indicates either that the Visiting Committees are achieving resolution of almost all issues (which for any complaints handling mechanism seems unlikely) or that they are not routinely signposting to SPSO, which in itself indicates that they operate as a separate, not integral, part of the complaints system.

These are all important factors that need to be taken into account in considering revisions to the complaints handling arrangements and in creating any new role in relation to complaints for lay monitors.

### **The proposed role of Lay Monitors in prison complaints**

It is important that prisoners have full access to a simple and clear complaints process, particularly given the closed nature of the prison environment and the significant impact that many issues raised can have on the prison population. Equally, given the significant issues amongst the prison population in terms of reading and writing ability, it is important that prisoners are supported through this process where this is necessary, particularly in terms of access.

The proposed role of lay monitors could have a valuable part to play in both of these respects, if properly defined. In particular, as with the existing Prison Visiting Committees, the proposed lay monitor role would provide an avenue for prisoners to speak face-to-face with an independent person in relation to their complaints (or wider needs), highlighted by Professor Andrew Coyle in his report as a unique defining feature. Such a regular presence in prisons is something which my office cannot achieve because of resource constraints. Through their presence in prisons and their ability to speak directly to prisoners on a regular basis, lay monitors (like Prison Visiting Committees) could provide something different in the handling of complaints, complementing existing processes. We are aware, for example, that, although the complaint rate is low, face-to-face contact between women in prison and Visiting Committee members is very high compared to that of male prisoners, and it may be that many issues are resolved through this avenue. There would be benefit in looking at the reason why this particular group of prisoners (and possibly others) feel more comfortable approaching Prison Visiting Committee members than accessing the complaints process and

finding a way to use that to complement the overall complaints system. I think the most valuable contributions for the lay monitors could be in identifying and encouraging prisoners to come forward with their complaint where they are reluctant to do so.

The lay monitors could also have an important role to play in identifying and helping to address specific issues, such as systemic issues in prison conditions or blockages in the complaints process. For example, the issues raised in Professor Coyle's report about problems prisoners have reported in trying to access Visiting Committee members, including reports of fear of victimisation by staff, particularly where complaints referred to treatment by staff, are of considerable concern. My office has also, in the past, heard concerning anecdotal evidence from our visits to Cornton Vale that women prisoners may not complain because they fear that complaining may have a detrimental impact on their relationship with prison officers. The lay monitors could provide a valuable role in helping to ensure any such issues are identified and addressed. Similarly, the difficulties experienced by prisoners in accessing the NHS complaints process (outlined in detail in my 2012/13 annual report for prisons and in Professor Coyle's report) is another such issue which lay monitors could help address.

There are also sections of the existing complaints process, set out in the prisons rules, which could be relevant for the role of lay monitor. A prisoner who is not satisfied with the initial response from the SPS may refer the complaint to the Internal Complaints Committee (ICC). The lay monitors could either assist the prisoner at the ICC hearing in line with rule 123(5)(b) which specifically lists visiting committee members as persons able to assist the prisoner. Alternatively, the lay monitor could act as an 'independent' member of the ICC. The prison rules state that the ICC must be made up of at least three members, two of which must be members of staff or employees of the prison. This means the third member could be an independent lay person, such as the lay monitor.

More widely I could also see lay monitors having a valuable role in providing support and advocacy to prisoners, if appropriately trained and resourced, to help prisoners access and go through the complaints process. My office has previously identified one good example of this in practice in one of our reported cases. This could include pursuing complaints or ensuring that their complaints have been addressed appropriately and that any issues do not re-occur. There is, in my view, a significant gap in this regard for prisoners and I believe that there may be significant value in further investigating the potential of this role for lay monitors.

Overall I see value in a role for lay monitors in the complaints system given the unique capacity they have to provide a regular presence in prisons. I would support such a role, if it is properly defined and aligned to wider complaints handling and scrutiny. As the Order is currently drafted, however, I do have some concerns about whether this would be the case. My concerns relate to two broad aspects:

- the alignment and integration of the lay monitor complaints role with the existing complaints process, including the roles of both SPS and SPSO and the potential to add complexity to the process for prisoners. Crucially it is important that we do not duplicate existing roles; and
- the lack of a clear definition of (or detail on) the lay monitor role, particularly in light of the issues highlighted by Professor Coyle in his report (outlined above).

These are considered further below.

### **Alignment and integration with the existing complaints process**

As highlighted above, since the publication of the Crerar and Sinclair reviews, significant work has been undertaken both by the CSA and others to achieve the aims of developing a simple, accessible complaints process across the public sector. Also as highlighted above there have been a number of developments in relation to the prisons complaints arrangements over the last few years in line with this work. It is important that the lay monitor role supports these developments.

I have concerns that, unless defined clearly, the proposed lay monitor role could duplicate existing roles in the prisons complaints process and, crucially, could undermine the existing SPS process for handling complaints and create parallel systems for raising and responding to complaints. This would cause confusion for complainants (which, in our experience, often discourages many from complaining at all) and for prisons and the SPS in maintain their process and learning from complaints. It is not clear, for example, what happens if the complainant wants to access both the lay monitor and the SPS internal complaints process. As drafted, both SPS and the lay monitor would be required to investigate, respond and report separately which could lead to significant confusion and potentially conflicting responses.

It is important that the internal SPS process is recognised very clearly as the primary route for addressing prisoner complaints. Allowing SPS staff to address and respond to the issues raised through complaints is the most effective way to achieve resolution and to affect change in conditions, processes and ways of working which will prevent further complaints. The role of the lay monitors should be designed to support a '*get it right first time*' culture where complaints are handled by empowered, frontline staff as close to the point of service delivery is possible.

It is also important that there is no confusion between the roles of the monitors and the SPSO. The SPSO is the ultimate independent body for reviewing complainants for service failure or maladministration as the stage of last resort.

In summary, the roles in complaints handling need to be defined well and work together, rather than separately, and it is important that the existing process for handling complaints, particularly that of the SPS, remains the central avenue through which prisoners can raise complaints.

### **Definition of the lay monitor role**

In addition to my concerns above, I believe there is a lack of clarity in relation to the lay monitor complaints role as currently drafted. The draft order (7B(3)) proposes to provide the lay monitors with the following role in complaints handling:

- (b) investigate any complaint which a prisoner makes to them, and
- (c) report the outcome of such an investigation to the Governor and a prison monitor assigned to the prison

It appears that this proposed role is not significantly different from the role of the Prison Visiting Committees on complaints. It does not appear that the draft order would address any of the key concerns around lack of consistency and variation in approach highlighted by Professor Coyle's report that I believe need to be addressed. If lay monitors are to undertake a complaints handling role as proposed, further detail is required on this role, what it covers and how this is to be achieved. In particular:

- a clear and consistent definition of what constitutes a complaint which is eligible for consideration by the lay monitor. This should include definition of issues not regarded

as complaints (such as general requests for assistance or information) and appropriate clarity on how to deal with these;

- a clear and consistent process for what the lay monitors should seek to do with complaints – is this a complaints investigation role or a role in ensuring complaints are addressed through the existing complaints processes? The process should include clarity on receiving, recording and handling complaints, timescales and the relationships between SPS staff and the SPS complaints process and the roles and responsibilities of monitors. For example there needs to be clarity on how the role relates to the role of the Residential First Line Managers as the first point of contact and reference to the statutory Prisoner Complaints Form. There should also be requirements for appropriate signposting to the SPSO;
- Clarity on the status of reports and any recommendations including post-report follow-up and requirements to publish (see below).
- Clear requirements for the recording and reporting of complaints statistics and performance information, to help ensure a consistent format and level of information is provided. This should be co-ordinated with reports from the SPSO to allow a holistic overview of complaints made about prisons.

### *Reporting*

The proposed requirement on lay monitors to report the outcome of each investigation creates a potential for overlap and confusion with the SPS and SPSO statutory processes by creating a formal, parallel process for reporting complaints. This also potentially provides a more stringent requirement from the existing requirement on Prison Visiting Committees with the committee currently required to record '*particulars of its findings*' '*in its minute book*' and send a copy to Scottish Ministers and to the Governor. This could provide a significant burden on lay monitors and could increase expectations of what the lay monitors will be able to do for individuals. There may be benefit in allowing some discretion with regard to reporting with flexibility and clear guidance..

The status of reports and recommendations - and how these should be followed up - is also not clear. We believe that transparency of decisions is important as is consistency in what is reported. Publishing the outcomes of complaints provides great benefit in terms of analysing trends and identifying improvements and this should be given further consideration.

### **Complaints about lay monitors**

The Order would create new defined roles under the remit of the Chief Inspector. Any new duties placed on bodies raise the question of what people do if they are unhappy with the way they are carried out. There would need to be clarity on whether the SPSO has jurisdiction to review complaints about the Prison and Lay Monitors.

### **Conclusion**

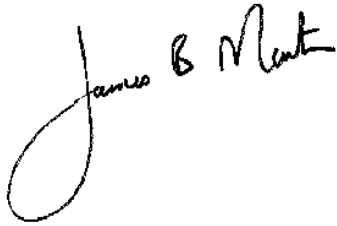
I welcome the opportunity to provide comments on the consultation on the Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014. I believe there is a potentially valuable role for lay monitors in complaints handling but that further consideration is needed of what that role should be and how it relates to the existing statutory roles of the SPS and the SPSO. I am not certain that the role, as drafted, provides clarity and I believe it could confuse matters by providing a parallel process for investigating and reporting complaints. The lay monitor role should be shaped around the key assets and unique features of the proposed role which are face-to-face contact and a regular presence in prisons. This could include a role in providing advocacy and support, identifying and addressing areas where the

system doesn't work and monitoring and challenging the complaints system where required. They could also have a potentially greater involvement in the Internal Complaints Committee process as defined by the prisons rules.

Whatever role is defined, its aim should be to support and complement the existing process, not to create a competing route for complaints.

I would be happy to provide further detail or clarification on this response if required.

Yours sincerely

A handwritten signature in black ink that reads "James B Martin". The signature is written in a cursive style with a large, looping initial 'J'.

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Ombudsman

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