

SPSO decision report

Case: 201701060, Scottish Prison Service
Sector: Scottish Government and devolved administration
Subject: complaints handling
Decision: upheld, recommendations

Summary

Mr C was found guilty of a breach of discipline for refusing an order to return to his cell. He submitted a disciplinary appeal, claiming that he had refused to return to his cell as he was being bullied and victimised by other prisoners in the residential hall. He also submitted a complaint that his bullying allegation had not been adequately investigated. His appeal was barred by the Scottish Prison Service (SPS) as it was not submitted within 14 days of the decision, as per prison rule 118. The SPS responded to Mr C's complaint, noting that their investigation had found no evidence to substantiate his bullying allegation. Mr C was unhappy with this response and brought his complaint to us.

Mr C complained that the SPS failed to appropriately investigate his complaint. The SPS were unable to provide us with evidence that an appropriate investigation had been carried out. They said that the investigating officer had not produced a written report and had since left the organisation. They told us that they had since improved their process and it is now compulsory for investigating officers to provide a written investigation report. We upheld Mr C's complaint and asked the SPS to provide evidence of their new process.

Mr C also complained about the decision to time limit his disciplinary appeal. The SPS confirmed that they have no discretion to consider an appeal submitted later than 14 days from the date of the decision. They acknowledged that existing guidance and forms do not make this clear and confirmed plans were in place to revise these. As an interim measure, they proposed to issue a Governors & Managers Action Notice (GMA) and amend prisoner notices to highlight the 14 day time limit. While the SPS had made it clear to Mr C that they had time limited his appeal as it was outwith the 14 days, they subsequently entered into discussion with him regarding the circumstances he put forward for the late submission. This gave the impression that his late appeal could potentially have been considered had the SPS deemed his circumstances exceptional, when that was not the case. Therefore, we upheld Mr C's complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Mr C for the lack of evidence of an appropriate investigation of his complaint having been carried out. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/leaflets-and-guidance.
- Re-investigate Mr C's complaint, ensuring that the findings are appropriately documented.

What we said should change to put things right in future:

- Until the SPS are able to complete their review of the disciplinary appeal guidance and planned review of the relevant forms, the SPS should raise a GMA highlighting to staff the time limit set out in rule 118, and reminding them of the importance of making prisoners aware of this; and update the prisoner notices on disciplinary appeals to highlight the time limit set out in rule 118. In both instances, it should be made clear

that appeals will not be considered outwith this time limit, irrespective of circumstances.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.