

Scottish Parliament Region: North East Scotland

Case 200802827: Scottish Prisons Complaints Commission

Summary of Investigation

Category

Scottish Government and Devolved Administration: Justice; delay; failure to provide information; complaints handling

Overview

The complainant (Mr C) was aggrieved that the Scottish Prisons Complaints Commission (SPCC) failed to deal with his complaint in a reasonable time, failed to communicate adequately with him or with the Scottish Prison Service (SPS), and did not deal with the substance of his complaint against the SPS or pursue it appropriately.

Specific complaints and conclusions

The complaints which have been investigated are that the SPCC failed to:

- (a) respond to Mr C's complaint within an agreed timescale or otherwise within a reasonable time (*upheld*);
- (b) intimate the complaint promptly to the SPS (*upheld*);
- (c) provide adequate information as to progress with the complaint (*upheld*);
- (d) respond substantively to the complaint which concerned the failure on the part of the SPS to consider on its merits an IT facility request (*upheld*); and
- (e) ensure receipt of their recommendations by the SPS Chief Executive (*upheld*).

Redress and recommendations

The Ombudsman recommends that the SPCC:

- (i) apologise to Mr C for the time taken to deal with his complaint, for not keeping him updated with progress on his complaint, and for not addressing his complaint;
- (ii) take steps to introduce their internal timescale targets as quickly as possible, include them in their complaints leaflet, and provide regular updates to complainants;
- (iii) formally notify the SPS as soon as they decide to investigate a complaint;
- (iv) re-state the recommendations made to the SPS in June 2008;

- (v) provide Mr C with redress for failing to deal with his complaint by asking the SPS to: a) clarify whether policy on prisoner access to computers is a blanket national policy or at the discretion of local Governors, b) consider Mr C's request for a laptop on its merits; and c) consider the effectiveness of the system for tracking the shared laptop in Mr C's prison;
- (vi) include a response deadline in their recommendation letters to the SPS Chief Executive. If no response is received by that date, the SPCC should contact the SPS seeking an immediate response; and
- (vii) ensure that copies of all emails that relate to complaints are retained, or duplicated in paper form or otherwise saved in another place.

Main Investigation Report

Introduction

1. A member of the public (Mr C), who is a prisoner, complained to my office on 6 February 2009 about the Scottish Prisons Complaints Commission (SPCC)'s handling of his complaint about the Scottish Prison Service (SPS). Mr C's complaint about the SPS was that management at his prison failed to consider on its merits, and in terms of relevant policy, his request for access to IT facilities, specifically that he have possession of a laptop computer. In making his complaint to my office about the SPCC, Mr C said that 'The principal issue arising in this complaint of maladministration is that of delay'. Mr C went on to complain that the SPCC's communications with him and with the SPS had been poor. He was also unhappy that recommendations made by the SPCC to the SPS did not directly address his complaint and were not followed up appropriately.

2. The complaints from Mr C which my office investigated are that the SPCC failed to:

- (a) respond to Mr C's complaint within an agreed timescale or otherwise within a reasonable time;
- (b) intimate the complaint promptly to the SPS;
- (c) provide adequate information as to progress with the complaint;
- (d) respond substantively to the complaint which concerned the failure on the part of the SPS to consider on its merits an IT facility request; and
- (e) ensure receipt of their recommendations by the SPS Chief Executive.

Investigation

3. As part of the investigation of this complaint, my office received and examined information from Mr C. My office requested information from the SPCC on two occasions, and staff from my office had a meeting with current SPCC staff.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, the SPCC and the current Interim Commissioner (Commissioner 3) were given an opportunity to comment on my proposed report. The SPCC were also asked by my office to ensure that former staff who had an interest in the complaint and my proposed report were given an opportunity to comment on it and I received and

considered detailed written comments from previous Commissioners (Commissioners 1 and 2).

Background

5. Mr C wrote to the SPCC on 23 October 2007 to make a formal complaint, having exhausted the internal SPS complaints procedure. He said that SPS responses to his complaint were not clear on whether local prison management had discretion in granting access to IT facilities. Mr C's letter was acknowledged by the SPCC on 26 October 2007 and he was told that:

'The [SPCC] will look at your complaint and will contact you in due course. However, as you are aware, [Commissioner 1] ... is out of the office until 12 November 2007 and will not be available to give consideration to your correspondence until his return.'

6. Mr C wrote to the SPCC again on 4 January 2008 as he had not received a substantive response to his complaint. To assist the SPCC, Mr C narrowed the scope of his complaint to focus on the prison Governor's failure to give proper consideration to his request for access to IT facilities. He said he did so in the hope that a local resolution could be reached by SPCC intervention.

7. Mr C had a telephone conversation with Commissioner 1 on 13 February 2008 and wrote to him on 15 February 2008 to confirm the substance of their discussion about the difficulties of gaining access to IT facilities in Mr C's prison. Mr C wrote to Commissioner 1 again on 3 March 2008 asking if there had been any progress on his complaint. He said that a shared laptop had not been available to him for the previous six months, and that 'It is plain that the existing laptop arrangements are not working and I require an effective remedy'. Mr C told the SPCC that he needed to access a laptop to prepare paperwork for court matters and to produce work for a university degree course. Commissioner 1 wrote to Mr C on 7 March 2008 advising that he had asked his staff:

'... to carry out extensive research on this issue and provide me with a report on how other jurisdictions are addressing the matter. I expect to have that research completed by late March. I will provide you with a copy of the final report should you request. I will make my decision on any formal recommendation after considering the report and further discussions I have with you on this issue.'

8. Mr C made a request under the Freedom of Information (Scotland) Act 2002 for a copy of the completed SPCC report. A copy was sent to Mr C, who confirmed receipt in a letter to Commissioner 1 on 15 May 2008. Mr C noted the contents of the report, but also commented that Commissioner 1 had not yet made a substantive response to his complaint and he hoped that Commissioner 1 would be able to do so by the end of May 2008.

9. In responding to my office's enquiries on this complaint, the SPCC sent a copy of a letter dated 10 June 2008 headed 'Recommendation on Prisoners' access to personal and prison owned computers'. When and how this communication was sent to the SPS cannot be confirmed (see paragraphs 11, 12, 14 and 16). In this communication, Commissioner 1 said to the SPS Chief Executive:

'You will find enclosed recommendations ... on the above noted matters. As per the [SPCC]'s and SPS's informal agreement on response timeframes we hope you may provide us with a response within four weeks of receipt of this letter.'

In commenting on my proposed report, Commissioner 1 said that he did forward the letter to the SPS Chief Executive and telephoned him on the same date to discuss the issues. He said that he would not have provided Mr C with a copy of the recommendations had he not filed it and discussed it with the SPS Chief Executive. Commissioner 1 also said that he accepted that uncertainty over the 10 June 2008 letter could have been avoided had he included something in writing in the case file about the email he says maintained that he forwarded to the SPS Chief Executive.

The recommendations document was two pages long. It covered the situation in Mr C's prison, the SPS's policy on computers (and apparent confusion over it), and computer policies in other UK jurisdictions and other countries. At the end of the document there were three specific recommendations, as follows:

'1. That the SPS carry out a thorough review of its policy regarding prisoners' access to personal computers with a mind towards facilitating that access by adopting measures necessary to address security concerns. The resulting policy should clearly state what criteria must be met for a prisoner to be eligible for such use and for what limited purpose the computer may be used. The existing protocol for in-cell use of prison owned computers would prove extremely useful for these purposes.

2. That the SPS carry out a thorough review of its policies regarding prisoners' access to prison owned computers with a mind towards improving and expanding the access currently available. A second laptop computer should be made available in those prisons where the demand is high.
3. That the reviews recommended be commenced immediately and completed within a specified short timeframe.'

As noted above, Commissioner 1 sent a hard copy of the recommendations document to Mr C in the mail on the same day. He said:

'You will note that we are requesting that SPS give a full review of its policies regarding personal and prison owned computers with an eye towards providing greater access. As you are aware, by the time we receive a response I will no longer be in post. We suggest you contact our office in a month's time for an update.'

The SPCC advised me that Commissioner 1 closed the case on 10 June 2008.

10. Commissioner 1 left the post in June 2008, and was replaced by Commissioner 2 in July 2008.

11. Mr C did not contact the SPCC in a month's time, as suggested by Commissioner 1. Instead, he wrote to the SPS Chief Executive on 13 August 2008 making a Freedom of Information request for a copy of Commissioner 1's recommendations and the SPS's response to those recommendations. An SPS official responded to Mr C on 5 September 2008 advising that they had not received recommendations from the SPCC dated 10 June 2008, but had subsequently obtained them on 20 August 2008 following receipt of Mr C's Freedom of Information request.

12. Mr C wrote to Commissioner 2 on 8 September 2008 to say that, as a result of a Freedom of Information request, he had learned from the SPS that Commissioner 1's recommendations had not been intimated to the SPS Chief Executive and that the SPS only became aware of the recommendations when Mr C made his request to the SPS. Mr C asked Commissioner 2 to deal with the matter by 26 September 2008 or he would make a complaint to the Ombudsman. The SPCC have advised me that Commissioner 2 re-opened the case in September 2008.

13. An SPS official wrote to Commissioner 2 on 3 October 2008 (at that point, Mr C had not complained to my office). The letter said:

'From summer 2007 to 2008 an IT Strategy Group was established to consider the appropriate direction for future use of technology across SPS. It made its recommendations to the SPS Board in April 2008 and the strategy was agreed and adopted by [the] SPS Board. It has now been published on the SPS website.

The Strategy considers the issues raised by [Mr C] and sets out future plans.'

The SPS also sent a copy of the IT Strategy document to Mr C on the same date. The covering letter from the SPS official said:

'As you will see the strategy sets out the remit for considering the future direction of IT within SPS and the conclusions reached about an appropriate form of prisoner access to IT for development. You will see it sets out the full plans for all IT development within the Service. The Strategy also sets out the next steps which are that the prioritised projects should proceed to the feasibility stage and that detailed business cases should now be developed with the benefits and costs set out.'

14. Commissioner 2 wrote to Mr C on 7 October 2008 to say that he was satisfied with the SPS's response and would take no further action. Commissioner 2 went on to say:

'With regard to the time taken by the SPS to respond to [Commissioner 1]'s recommendations, I cannot prove that the recommendations were actually sent to [the SPS Chief Executive] at the beginning of June. [Commissioner 1]'s email account was closed and cleared upon his departure from office and I simply have no evidence to contradict the information provided to you by [the SPS in their] latest letter dated 5 September. I therefore made the decision that it was in your interest to focus on the SPS response to the central issue of access to computers, rather than the time taken by the SPS to respond to [Commissioner 1]'s recommendations.'

The SPCC advised me that Commissioner 2 closed Mr C's case on the same day.

15. Mr C responded to Commissioner 2 on 9 October 2008. He said that he could not accept the SPS Corporate IT Strategy document, agreed in

April 2008, as a formal response to recommendations on his complaint that were made in June 2008. He also said that he did:

'... not accept that your agency dealt with my complaint within a reasonable timescale and I believe that it is inappropriate for emails directly related to the work of your agency to be deleted upon the termination of the employment of any member of staff within the [SPCC].'

Mr C complained to my office on 6 February 2009.

16. Responding to an initial enquiry from my office, a member of SPCC staff said:

'As far as I am aware, a Formal Recommendation was issued in this case by [Commissioner 1] to the Chief Executive of the SPS by email on 10 June 2008 and accordingly our case file was closed.

[Mr C] wrote to the SPS under the Freedom of Information (Scotland) Act 2002 requesting a response to the above Recommendation. SPS HQ subsequently contacted our office as they had no recollection of receiving the Formal Recommendation. As [Commissioner 1] was no longer in post we were unable to verify that the email had been sent.'

17. In response to my office's first investigation enquiry, the SPCC sent a copy of the Scottish Government's guidance for a change of IT account. The guidance stated that if a member of staff left the Scottish Government, their account needed to be deleted. In making the enquiry, my office asked the SPCC for information on their complaint handling procedures at the time of Mr C making his complaint to them, from October 2007. In response, the SPCC sent:

'... a copy of our information booklet detailing the new procedures for handling complaints from July 2008. Unfortunately as the office procedures have changed there is no written record on the office's procedures prior to that date.'

The information booklet mentioned the role of the SPCC and gave an overview of the basic steps in their process including: screening a newly received complaint, defining matters under investigation, the investigation process itself, reaching adjudications, reporting on investigations and adjudications, and appealing against an SPCC judgement. The information booklet did not include any indicative timescales for the basic steps in the SPCC process. In commenting on my proposed report, Commissioner 2 confirmed that he found

no detailed procedures when he took office, and that he did not include timescales in the information booklet because he wished to focus on establishing a new process and standards.

18. At a meeting in September 2009 the SPCC told my staff that there was little paperwork on Mr C's case file. The SPCC also said that there had been no formal time targets for dealing with complaints, but that they were now developing internal time targets for themselves. The SPCC also showed my staff their record-keeping system, which was primarily paper-based, apart from using basic computer database, spreadsheet and calendar functions for tracking case progress.

19. In response to my office's second investigation enquiry, the SPCC sent a copy of a letter of 19 January 2004 from the SPCC to Mr C in connection with a previous complaint made by him. Mr C had referred to this letter when making his complaint to my office. The letter included the SPCC's 'timeframe goals':

- '1. Receipt of complaints should be acknowledged within 3 working days.
2. Questions involving jurisdiction should be settled within 10 working days.
3. There should be contact with the complainant on progress every 3 to 4 weeks.
4. The [SPCC] will attempt to reach a final decision on the issue within 3 months.

The SPCC makes every effort to adhere to these timeframes. However, the timeframes are guidelines and, occasionally, factors such as our caseload volume and the priority that we have given to particular complaints will impact on our ability to meet deadlines.'

20. My office asked the SPCC for a copy of the IT Strategy that the SPS sent to Mr C. The SPCC did not have a copy on file and, therefore, they tried to obtain one from the SPS. The SPCC sent my office a copy of an email, dated 1 October 2009, from an SPS official which said:

'... I have attached it to this email. The document, whilst old and has been superseded, is also available on our website ... Whilst I am unable to categorically confirm that this is the same document that [Mr C] received, on the balance of probability, I think it reasonable to assume that it is the same.'

The document was the SPS Information Systems Strategy, dated 3 July 2006, which made no reference to prisoner access to IT facilities.

21. The SPCC also sent my office a copy of the report they commissioned into prisoner access to IT facilities, which was sent to Mr C in May 2008. The foreword to the report said:

'The questions of whether prisoners in Scotland should be allowed access to personal computers and, if so, under what circumstances have been the source of infrequent but nonetheless re-occurring complaints filed with the [SPCC] over the last few years. SPS policy is not entirely clear on this issue but generally prisoners will only be allowed access to prison owned computers for their personal use in closed establishments. This access will be very restricted and will only be allowed if a prisoner can provide compelling reasons why it should be granted such as evidence that he needs computer facilities to prepare documents for court proceedings. The [SPCC] has always accepted as legitimate the security concerns that the SPS has in considering this issue. However, current policies have remained unchanged for a number of years and were introduced before miniaturised hand held computers, mobile phones and Game Consoles had the potential for wireless internet access. The [SPCC] considered whether IT innovations have made current policies in Scotland outdated and in need of review and revision. In order to help us reach an informed conclusion we examined the policies followed in nine jurisdictions outside of Scotland and this Report offers summaries of those policies together with copies of National Directives issued from the English speaking jurisdictions. The Report is for informational purposes only and does not offer analysis, conclusions or recommendations.'

22. The SPS website, on the Information Systems Services page, has a copy of the SPS's new IT Strategy for the period 2008 to 2011, as agreed by the SPS in April 2008. The document itself is dated 28 April 2009, and it would appear that this is a revised version of the SPS IT Strategy that was sent to Mr C by the SPS with their letter of 3 October 2008. The document does refer to prisoners, in terms of 'improving offender management and outcomes'. The SPS group that developed the IT Strategy found that:

'Prisoner technological services are currently limited. Education services utilise stand-alone workstations centrally located within each establishment. Some prisoners have been given greater access to IS in very controlled circumstances to pursue specific educational opportunities.

Use of mobile telephones by prisoners is not permitted. Some prisoners are able to pay for in cell television. Many prisoners have access to PlayStations or DVD players.'

The document went on to prioritise development in three key areas, including:

'Secure offender services: the pace of progress on this important project will depend on the availability of resources. It is envisaged that the service will comprise a national, integrated offender services and custody management network. It will be secure and self-contained. The design will support the development of additional modules to support new services. Such modules might include education, access to community re-integration information, internal prisoner management of messaging, calendar and visits management, prisoner personal cash, canteen, and meal and appointment ordering. The principle of equivalence of charging with external services should apply.'

(a) The SPCC failed to respond to Mr C's complaint within an agreed timescale or otherwise within a reasonable time

(a) Conclusion

23. A summary of Mr C's correspondence with the SPCC is set out in paragraphs 5 to 15 of this report. He made his formal complaint to the SPCC on 23 October 2007. The SPCC told me that the case was closed on 10 June 2008, re-opened in September 2008, and closed again on 7 October 2008 when Mr C received a letter from Commissioner 2. From start to finish, the SPCC took around nine months, the time the case was open in the SPCC office, to deal with Mr C's complaint.

24. Mr C's view of the SPCC's handling of his complaint was informed by the SPCC letter to him of 19 January 2004. This letter set out guideline timescales, including that the SPCC would attempt to reach a final decision within three months. Clearly, nine months is longer to wait than three months, even allowing for the fact that the letter of 19 January 2004 contained non-mandatory guidance and mentioned several caveats, as well as Commissioner 1's absence from the office in late October and early November 2007. This has to be considered against what I was told by the SPCC (see paragraph 18) that there were no formal time targets for dealing with complaints, and that the SPCC's latest information booklet did not include any indicative timescales.

25. Mr C was not told what the likely timescale would be for dealing with his complaint, and he had no published indicative timescale to rely on, hence his reliance on the guidance timescales in the 19 January 2004 SPCC letter. In reaching my conclusion, I have considered whether it was reasonable for Mr C to rely on the 19 January 2004 letter, written some three years and nine months before he made this complaint to the SPCC. In the absence of any further timescale information from the SPCC to Mr C, or in public guidance, I am of the view that it was reasonable for Mr C to have done so. Given all of this, and in the light of my findings in sections (c) and (d) below, I do not consider that the time taken to deal with Mr C's complaint was reasonable and, therefore, I uphold this complaint.

(a) Recommendations

26. I recommend that the SPCC:

- (i) apologise to Mr C for the time taken to deal with his complaint; and
- (ii) take steps to introduce their internal timescale targets as quickly as possible and include them in their complaints leaflet.

(b) The SPCC failed to intimate the complaint promptly to the SPS

(b) Conclusion

27. Mr C made his complaint to the SPCC on 23 October 2007. From the evidence it appears that the first formal notification from the SPCC to the SPS about Mr C's complaint was on 9 and 10 January 2008. This was approximately two and a half months after Mr C made his complaint. As with section (a) above, in the absence of any available time targets, I must base my judgement on whether the time taken was reasonable. I consider that the time taken to formally notify the SPS of Mr C's complaint was not reasonable and, therefore, I uphold this complaint.

(b) Recommendation

28. I recommend that the SPCC formally notify the SPS as soon as they decide to investigate a complaint.

(c) The SPCC failed to provide adequate information as to progress with the complaint

(c) Conclusion

29. The evidence shows that, with the exception of the prompt acknowledgement of his complaint in October 2007, Mr C was not contacted by the SPCC with progress updates on his complaint and, therefore, I uphold this complaint.

(c) Recommendations

30. I recommend that the SPCC:

- (i) apologise to Mr C for not keeping him updated with progress on his complaint; and
- (ii) provide regular updates to complainants.

(d) The SPCC failed to respond substantively to the complaint which concerned the failure on the part of the SPS to consider on its merits an IT facility request

(d) Conclusion

31. The SPCC commissioned a report into prisoner access to IT facilities, which looked at how this issue was dealt with in nine jurisdictions outside Scotland. The foreword to this report made it clear that it was for information only. Commissioner 1 also made it clear, in his letter of 7 March 2008 to Mr C, that he would make his decision after considering the report. Thereafter, Commissioner 1 made three recommendations that, in my view, dealt with the issues underlying the substance of Mr C's complaint, as the recommendations asked the SPS to review their policy and made reference to the availability of laptops in prisons where demand was high. However, Commissioner 1 did not recommend that the SPS reviews should make clear whether the policy was a blanket national policy or one based on the discretion of local Governors, an issue which Mr C had raised. Neither did Commissioner 1 recommend that the SPS consider Mr C's specific IT facility request on its merits, which was the main concern of the complaint Mr C had made to the SPCC. Nor did Commissioner 1 deal with the logistical issues Mr C had mentioned in relation to the shared laptop in his prison, namely the lack of an adequate system in his prison for tracking the laptop, so that he would know when it was likely to be available and, therefore, he could make an informed request for access to it.

32. The SPS's response to Commissioner 1's recommendations was to send Mr C and the SPCC a copy of their new IT Strategy. While the IT Strategy

referred to prisoners, it did not deal specifically with prisoner access to IT facilities for the purpose that Mr C required it. I do not believe that it can be construed from the IT Strategy document that the SPS had carried out thorough reviews as envisaged by Commissioner 1, and no response had been made to Commissioner 1's specific point about providing a second shared laptop. In commenting on my proposed report, Commissioner 2 said that he was under no obligation to accept the judgement of Commissioner 1 or to actively pursue the investigation of Mr C's complaint based on Commissioner 1's opinion. He said that he felt no obligation to continue considering a case that was in his opinion closed, except for communicating the response of the SPS to Mr C. However, I consider it was not reasonable for Commissioner 2 to accept the SPS IT Strategy document as a satisfactory response to, or as a remedy for, Mr C's complaints. Regardless of whether Commissioner 2 did or did not wish to follow Commissioner 1's approach, in my view it was not reasonable to simply forward the document to Mr C because it did not address his complaint about the failure on the part of the SPS to consider on its merits an IT facility request.

33. While it is clear to me that the SPCC did engage with the issue of prisoner access to computing facilities, I consider that the SPCC did not address Mr C's specific complaint about the failure of the SPS to consider on its merits his IT facility request. Therefore, on balance, I uphold this complaint.

(d) Recommendations

34. I recommend that the SPCC:

- (i) apologise to Mr C for not addressing his complaint;
- (ii) re-state the recommendations made to the SPS in June 2008; and
- (iii) provide Mr C with redress for failing to deal with his complaint by asking the SPS to: a) clarify whether policy on prisoner access to computers is a blanket national policy or at the discretion of local Governors, b) consider Mr C's request for a laptop on its merits; and c) consider the effectiveness of the system for tracking the shared laptop in Mr C's prison.

(e) The SPCC failed to ensure receipt of their recommendations by the SPS Chief Executive

(e) Conclusion

35. The SPCC had no definitive record that Commissioner 1 emailed his recommendations to the SPS Chief Executive on 10 June 2008. It is important to remember that the SPCC have advised me that the recommendations letter was apparently emailed to the SPS Chief Executive, not sent as a hard copy in

the mail. This is different from sending a hard copy in the mail to Mr C, as proof of sending an email can be stored for later retrieval, either in electronic or hard copy form. Such proof was not retained in this case. The SPCC did not pursue a response after the four-week deadline mentioned in Commissioner 1's letter. Mr C's view was that it was inappropriate for Commissioner 1's emails to be deleted when he left. Clearing Commissioner 1's email account was in line with Scottish Government IT guidance. Nevertheless, I consider that copies of all Commissioner 1's case-related emails should have been retained, ideally in electronic form or, at least, as a paper copy in relevant case files including the file relating to Mr C's complaint. This would have enabled the SPCC to demonstrate that they had a record of the email being sent. Given all of this, I uphold the complaint.

(e) *Recommendations*

36. I recommend that the SPCC:

- (i) include a response deadline in their recommendation letters to the SPS Chief Executive. If no response is received by that date, the SPCC should contact the SPS seeking an immediate response; and
- (ii) ensure that copies of all emails that relate to complaints are retained, or duplicated in paper form or otherwise saved in another place.

Explanation of abbreviations used

Mr C	The complainant
SPCC	Scottish Prisons Complaints Commission
SPS	Scottish Prison Service
Commissioner 1	SPCC Commissioner to June 2008
Commissioner 2	SPCC Interim Commissioner from July 2008 to March 2009
Commissioner 3	SPCC Interim Commissioner from April 2009 onward