

Scottish Parliament Region: Mid Scotland and Fife

Case 201104614: Scottish Prison Service

Summary of Investigation

Category

Prisons: Security; control and progression; policy/administration

Overview

The complainant, Ms C, who is a prisoner, complained that HMP Cornton Vale were restricting her progression to less secure conditions. Ms C said that when her appeal against her conviction finalised early in 2011, she was told she would begin preparations for progression to less secure conditions but Ms C felt those preparations were not happening appropriately.

Specific complaint and conclusion

The complaint which has been investigated is that HMP Cornton Vale are unreasonably preventing Ms C from progressing to less secure conditions (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Scottish Prison Service:

Completion date

- (i) review Ms C's case as a matter of urgency to ensure that appropriate and reasonable steps are being taken to progress Ms C to the National Top End in line with relevant policy; and
- (ii) undertake a review of practice being applied at HMP Cornton Vale in relation to the progression of those prisoners who do not admit guilt to ensure that staff are managing those cases appropriately and in line with relevant policy.

19 December 2012

16 January 2013

Main Investigation Report

Introduction

1. Ms C was sentenced to life in prison. She lodged an appeal against her conviction and because of this, Ms C was given appellant status by the Scottish Prison Service (SPS) from the date of appeal until that process concluded some twelve years later.

2. In December 2011, Ms C complained to HMP Cornton Vale (the Prison) about her progression being restricted. Ms C said that when her appeal concluded early in 2011, she was informed by prison management that she would begin progression to the national top end (NTE) along with preparation for the Special Escorted Leave (SEL) scheme. Ms C said she was not progressing.

3. The complaint from Ms C which I have investigated is that the Prison are unreasonably preventing Ms C from progressing to less secure conditions.

Investigation

4. In writing this report, my complaints reviewer has had access to Ms C's complaint correspondence, various integrated case management documents and risk management team minutes in which Ms C's progression management was considered and discussed by prison staff. In addition, my complaints reviewer and my executive casework officer visited the Prison to conduct interviews with Ms C and key members of staff.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the SPS were given an opportunity to comment on a draft of this report.

Complaint: The Prison are unreasonably preventing Ms C from progressing to less secure conditions

6. In her complaint to the Prison, Ms C said her appeal against her conviction concluded early in 2011 and she was told she would begin progression to the NTE along with preparation for the SEL scheme. Ms C said she was assessed for the Female Offending Behaviour Programme (FOBP) and during the assessment she said she informed the assessor that she was not guilty of her index offence. Ms C said she was enrolled on the programme and she was considered for progression to NTE but this was refused because she had not

been on the FOBP long enough. Ms C said that whilst she was participating in the FOBP, she was given an assignment titled 'my offence'. Ms C said she completed this work by outlining that she was not guilty of her index offence despite being convicted. Ms C said discussions took place in her absence and she was informed that she was being deselected from the programme because of her denial of the index offence. Ms C said that following this, she was persistently informed by prison management that she would never be released from prison if she did not accept responsibility for her offence. Ms C said a case conference was held in August 2011 and she was informed that she should engage in course work designed for those prisoners who denied their offence. In December 2011, Ms C said she was discussed at a risk management team (RMT) meeting and the outcome of that meeting was that Ms C required an up-to-date risk and needs assessment and a psychological assessment. Ms C said she was told those assessments could not begin until 2012 because the prison psychologist was off until April 2012 and there was no one else available to carry out her duties. Ms C said she felt she was being discriminated against because she maintained her innocence and that she was being withheld from progressing due to lack of resources.

7. In responding to Ms C's complaint, the Prison advised that her progression had been hindered due to a period of appellant status which had only recently concluded. It was explained that this was because her custodial circumstances may have changed as a result of her appeal which could have impacted upon her participation in intervention work. Ms C was informed that she would be referred to the Programmes Case Management Board (PCMB) on 15 December 2011 and dates for her risk assessment would be decided. It was also noted that Ms C was enrolled on the FOBP as the first stage of her progression but due to her denial of the index offence, the decision was taken to remove her from the programme. The Prison also explained to Ms C that the establishment had a limited amount of resources available to deliver a range of intervention programmes to a number of prisoners. The Prison advised that delivering programmes to different groups of prisoners further impacted on limited resources. The Prison confirmed that they had two psychologists available but one of them was unavailable until spring 2012 and that had reduced available resources further.

8. The SPS Risk Management and Progression Guidance (the Guidance) outlines what policy and procedures the prison establishments should be following when considering individual prisoners' risk management and

progression. The Guidance confirms that a prisoner can be referred to the RMT through the Integrated Case Management (ICM) process when the prisoner's identified action plan cannot be met from existing resources or needs a higher level of decision/ratification. Ms C's referrals to the RMT were for that reason. In relation to life sentence prisoners, the Guidance states 'SPS policy on the management of life prisoners describes a 4 year preparation for release phase, which can commence no earlier than 4 years before the expiry of their punishment part. The preparation for release phase involves prisoners progressing to a top end facility, spending 12 months participating on Special Escorted Leaves, 12 months on a community based work placement and 24 months in an open prison'. However, the Guidance states that this preparation for release phase describes a best case scenario and other factors may affect the timing of an individual prisoner's release phase. In addition to this, the RMT must approve progression to less secure conditions.

9. The Prison was asked to provide my office with copies of Ms C's ICM paperwork and her RMT referral forms. Ms C was discussed by the RMT in May 2011 and they were content for her to start the FOBP. Ms C was discussed at PCMB in August 2011 and it was confirmed that she was deselected from the FOBP in July 2011 due to difficulties relating to Ms C taking responsibility for her offending behaviour. It was decided that Ms C may find motivation to discuss her offence through one to one work with her Social Worker. Ms C was referred to the RMT in December 2011. The RMT concluded that a psychological risk assessment needed to be carried out to identify the specific risks to be addressed in Ms C's case. After this, it was agreed that a management plan would be put in place for Ms C. At her ICM in February 2012, it was agreed that Ms C would work with her Social Worker and a Programmes Officer and following completion of that work, a report would be submitted along with her psychology report and the minutes of her ICM case conference to the RMT for a decision on how to progress her sentence. In April 2012, Ms C was again referred to the RMT. The minute of that discussion confirmed Ms C was still to complete offence focused programmes but she was engaging in minimisation and denial work on a one to one basis with her Social Worker. The RMT again noted that Ms C should undertake a psychological risk assessment and personality assessment which would commence in May 2012. It was agreed that once this work was completed by psychology, a risk management plan would be devised for Ms C and it was confirmed that she would be eligible to progress to the NTE once she was actively involved in reducing her risk.

10. Following my complaints reviewer's consideration of this information, she concluded that the Prison had been taking steps, since the conclusion of Ms C's appeal, to work with her in an effort to prepare her for progression to less secure conditions. My complaints reviewer was satisfied that Ms C's progression was being managed appropriately by the Prison in line with the Guidance and the evidence available suggested Ms C had not been progressed to less secure conditions as the Prison was not yet satisfied that Ms C's risk was being managed appropriately.

11. Ms C asked for the decision to be reviewed in line with our process. In her request for a review, Ms C said the opportunity to progress to less secure conditions in the Prison was seen by staff as dependant on her successful completion of the FOBP. Ms C said she had suffered because the Prison did not have a policy in place to deal with those prisoners whose own account does not match their index offence. Ms C said she had to endure the pressure from staff in trying to persuade her to change her account. Ms C said the decision taken that she should undergo a personality assessment and psychological risk assessment was first taken by the Prison in August 2011 and despite assurances that those would be delivered in May 2012, it had not taken place. Ms C pointed out that her management plan would not be devised until those assessments had been completed.

12. Ms C concluded that the Prison's management of her progression so far would impact negatively upon her parole tribunal. Ms C noted that when her appeal concluded early in 2011, her tribunal date was more than three years away. However, Ms C stated that her tribunal date was brought forward and was now scheduled for December 2013. Ms C noted that whilst her behaviour throughout her time in custody had been positive, due to her account differing from her index offence, the likelihood was that her parole tribunal would require evidence to show that she had been tested in less secure conditions.

13. As a result of the information submitted by Ms C in her request for a review, I asked my complaints reviewer to undertake further enquiries on her complaint.

14. Scottish Prison Service Headquarters (SPS HQ) were asked about the management of prisoners who deny their index offence. SPS HQ explained that if a prisoner denies their index offence, there would be very little for

programmes staff to work with because denial would make it difficult to manage an individual prisoner's risk. However, SPS HQ advised that participation in programmes was to reduce risk and to give the prisoner the opportunity to take responsibility for their behaviour, not as a mechanism to make them admit guilt. SPS HQ confirmed that the SPS' role was to reduce risk and reoffending.

15. In interviewing Ms C and key staff members at the Prison, my staff sought to explore the Prison's position in terms of Ms C's progression management further. Ms C made it very clear to my staff that she believed she was not being progressed to less secure conditions because she would not admit guilt of her index offence. My staff also discussed Ms C's management with her personal officer (Officer 1). Officer 1 said she did not know what was expected of Ms C in terms of her progression. Officer 1 said she was not invited to attend RMT meetings where Ms C's progression was discussed. Officer 1 said, from the little information she did have, nothing appeared to be discussed about how Ms C could progress, instead discussions would focus on what would happen when she does progress. Officer 1 also stated that her understanding was that Ms C would only be allowed to progress to less secure conditions once she admitted guilt of her index offence.

16. My staff also interviewed the line manager (Officer 2) who is responsible for the progression of prisoners from the house block that Ms C is located in. In questioning Officer 2 about Ms C's progression, he was unable to explain to my staff what was expected of Ms C in order for her to progress. As a result of this, we were unable to gain any relevant or significant information in relation to Ms C's progression from Officer 2 to allow my office to better understand the Prison's position on her case.

17. My complaints reviewer also accessed the minutes from Ms C's RMT meetings that had taken place since May 2012. At an RMT meeting in June 2012, it was noted that the work in relation to Ms C's personality assessment and psychological risk assessment was yet to commence and that a risk manage plan would be devised once this work had taken place. Ms C was discussed again by the RMT in August 2012 who noted that she was engaging with the psychologist. It was agreed that the RMT would meet again in September 2012 for an update on Ms C's work with the psychologist.

Conclusion

18. Having reviewed Ms C's case, I have been unable to determine with certainty that the management of her progression is being handled appropriately and in line with SPS policy by the Prison.

19. In line with the Guidance, Ms C became eligible for consideration for progression in September 2010 because she had served the appropriate period of her sentence. Another criterion is that the prisoner must be assigned low supervision for at least three months. Ms C was assigned low supervision in September 2010 and because of that, she would have been unable to be considered for progression until December 2010. However, because of her appellant status, Ms C was excluded from the progression process until her appeal had concluded. Ms C's appeal concluded early in 2011 and despite various discussions taking place in which action points had been agreed, there appears to be little progress over twenty months later, in terms of preparing Ms C for less secure conditions. In addition, despite this office's enquiries and our review of the relevant documentation, I am still unclear as to what is actually expected of Ms C in terms of her progression and working towards less secure conditions in preparation for her tribunal date.

20. Having reviewed various documentation relating to Ms C's progression and having considered the information gained through interviews, my view is that her case has presented as a complex and difficult one for the Prison to manage. Whilst I recognise that Ms C has been convicted and the SPS must manage her on that basis, there is a strong sense gained through my office's enquiries that Ms C will not be progressed to less secure conditions until she admits guilt for her index offence. This was evidenced through my staffs' discussions with relevant staff at the Prison. The position of staff at Prison appears to contradict the information provided to my office by SPS HQ.

21. It is the role of the courts to determine whether an individual is guilty of their offence. The SPS' role is to manage and help rehabilitate convicted prisoners and it is the Parole Board for Scotland who are responsible for determining whether the risk an individual presents to the community is acceptable. Whilst the SPS must manage those prisoners who have been convicted, it is not for prison staff to influence the position of an individual prisoner who may maintain their innocence. The SPS are responsible for managing the rehabilitation process of prisoners and through this office's enquiries, there appears to be sufficient evidence to suggest that the approach

taken by some staff at the Prison in relation to Ms C's progression, and in particular to her maintaining her innocence, has lacked clarity.

22. Failure to complete Ms C's psychological risk assessment within a reasonable timescale due to lack of appropriate resources, the absence of a clear and structured progression plan and poor communication have all contributed to the position Ms C is in. Furthermore, there are clear differences in the views of staff and management as to what is required of Ms C in order for her to progress. I find the lack of clarity about these issues to be unreasonable and for those reasons, I uphold Ms C's complaint.

Recommendations

- | | <i>Completion date</i> |
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| 23. I recommend that the SPS: | |
| (i) review Ms C's case as a matter of urgency to ensure that appropriate and reasonable steps are being taken to progress Ms C to NTE in line with relevant policy; and | 19 December 2012 |
| (ii) undertake a review of practice being applied at HMP Cornton Vale in relation to the progression of those prisoners who do not admit guilt to ensure that staff are managing those cases appropriately and in line with relevant policy. | 16 January 2013 |

Explanation of abbreviations used

Ms C	The complainant
SPS	Scottish Prison Service
Prison	HMP Cornton Vale
NTE	National Top End
SEL	Special Escorted Leave
FOBP	Female Offending Behaviour Programme
RMT	Risk Management Team
PCMB	Programmes Case Management Board
The Guidance	SPS Risk Management and Progression Guidance
ICM	Integrated Case Management
SPS HQ	Scottish Prison Service Headquarters
Officer 1	Personal Officer
Officer 2	Progression First Line Manager

List of legislation and policies considered

SPS Risk Management and Progression Guidance