

**STAFF GUIDANCE ON PRISONER
COMPLAINTS AND
DISCIPLINARY APPEALS UNDER
THE 2011 RULES**

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PRISONER COMPLAINTS

The principles of the formal prisoner complaint process under the 2011 Rules are based on the good practice complaint handling model recommended by the Scottish Public Services Ombudsman (SPSO). The Public Services Reform (Scotland) Act 2010 gave the SPSO *the authority to lead in the development of simplified and standardised complaint handling procedures across the public sector.*

An effective, fair and transparent prisoner complaints procedure ensures that the Scottish Prison Service (SPS) provides assurances that its values as an organisation assist in creating a healthy environment for prisoners and prison staff.

It is not in any way designed to take away responsibilities from the frontline staff that deal everyday with prisoners' service requests and complaints. Prison staff and prisoners should continue to resolve complaints informally as it is important that complaints are dealt with at the lowest level.

It must be made clear to prisoners that a complaint should only reach the formal level under the 2011 Rules when informal discussions with prison staff have failed to resolve the problem or if the subject is of a sensitive confidential nature.

It is important that prison staff are able to distinguish between a service level request (example a repair to cell toilet) and a complaint in their interactions with a prisoner. If there is a level of service not being met then prison staff should respond appropriately to this request.

It is only when this request for a service is repeated by the prisoner, either orally to a Residential First Line Manager (RFLM) or by completing a PCF1 or PCF2 form that it becomes to formal complaint under the 2011 Rules.

It is important that any Equality aspects of a complaint are acknowledged, recorded and investigated.

It is important that complaints relating to discrimination harassment and victimisation on the grounds of age, disability, gender reassignment, sex (gender), pregnancy and maternity, race(colour, ethnic origin, nationality or national origins), marriage and civil partnership, sexual orientation and religion or belief are acknowledged, investigated and recorded. This is relevant for disability, transgender identity, race (colour, ethnic origin, nationality or national origins), religion or belief and sexual orientation as well.

As an interim measure there is a Complaint recording data base on Sharepoint. It is important that this information is not lost and can be transferred to the improved prisoner record system (PRS) the process can be used to assist in developing the new recording process on PRS. The information gained from accurately recording

the details of the complaints, action taken, outcomes and the timescales is used to monitor trends and improve the efficiency of services and performance.

All line managers should take an active interest in monitoring and reviewing complaints, as it is important that learning from complaints is part of a complaints valuing culture. It is important that:

- All prisoners know how to make a complaint under the 2011 Rules;
- Prisoner Complaint Forms are available and accessible in all residential areas;
- All staff understand the Prisoner complaint procedures and how important it is that a complaint is dealt with at the lowest level;
- `Getting it right first time` and seeking resolution within the timescales is essential for the integrity of the Prisoner complaints process;
- SPSO information leaflets and complaint forms are accessible and available in all residential areas.

BACKGROUND TO THE NEW COMPLAINTS PROCEDURE

- Over the last 2 years a working group, in conjunction with the SPSO, officers within prisons and those at HQ have worked to update the complaints procedure;
- This was to streamline procedures, and to be in line with SPSO best practice.

MAIN CHANGES:

OLD	NEW
<p>Forms CP1 and CP2</p> <p><u>CP1</u></p> <p>Complaints stages: 4 stages – complaint to the residential officer, then to the residential unit manager, then to the ICC, finally to the Governor.</p> <p><u>CP2</u></p> <p>There are no significant changes to the confidential complaints procedure.</p>	<p>PCF1 and PCF2</p> <p>New forms PCF1 (Complaints to the RFLM) and PCF2 (Confidential complaints to the Governor).</p> <p>New complaints stage: 2 stages-prisoner makes a complaint to the Residential First Line Manager (RFLM), RFLM gives the prisoner the opportunity to discuss and resolve the complaint within 48 hours, if it is not resolved the RFLM has total of 5 days to answer the complaint, the prisoner can then refer the complaint to the ICC for a hearing which must respond in full within 20 days.</p> <p><u>PCF2:</u></p> <p>Governor has 7 days to respond to the prisoner.</p>

THE COMPLAINTS PROCEDURE

The only complaints to which the “formal” procedure under the 2011 Rules apply are those made formally to the RFLM; any complaint made orally to any other officer should be dealt with verbally in the usual way, dealt with at the lowest level and does not need a written response.

A prisoner can make a complaint under the procedure either orally or in writing, but:

- A complaint raising any allegation against an officer or employee must be made in writing.
- A confidential complaint must be made on Form PCF2 (see below).
- A medical complaint goes through the Health Centre rather than through SPS.
- An appeal against a Disciplinary Hearing must be made on either form PAF1 or PAF2 (see below).

TIMESCALES

Once an oral or written complaint under the Rules has been made to the RFLM, the RFLM has a total of 5 days in which to respond in writing to the prisoner. The RFLM should note:

- The 5 day timescale starts to run from the date of receipt of the form (note the date of receipt on the top of page 2 of the form);
- Any discussion held within 48 hours is to be included in the total 5 day timescale, not in addition to it;
- An oral complaint resolved orally within 48 hours does not need to be responded to in writing;
- Any other complaint - an oral complaint NOT resolved within 48 hours, and all written complaints must be responded to in writing;
- It is SPS policy that all complaints are responded to within the minimum timescale;
- Do not wait for the 5 day timescale if you are able to respond more quickly than that.

PCF1

Verbal Complaint (PCF1 parts 1 and 2)

If making a verbal complaint under Rule 122(2), the prisoner must inform a RFLM that the matter being discussed is to be treated as a complaint under the prison complaints procedure.

48 hour meeting:

On receiving a verbal complaint, the RFLM must ask the prisoner whether he or she wishes to discuss the complaint under Rule 122(3). The RFLM then arranges a meeting within 48hrs to discuss the complaint.

Resolution at 48 hour meeting:

If the RFLM discusses the complaint with the prisoner and they agree that the matter being complained about is resolved *then it goes no further*. The RFLM does NOT need to complete a PCF1 form, nor enter any information on a database.

No resolution at 48 hour meeting:

If the complaint is unresolved at the verbal stage then the RFLM must reply to the prisoner in writing within 5 days of receiving the oral complaint by:

- Investigating the matter;
- Completing part 2 of PCF1 (see below); and
- Completing the personal details of the prisoner in page 1 of the PCF1.

The RFLM must also input the information on the Complaints Sharepoint data base.

Written Complaint (PCF1 parts 1 and 2)

If making a written complaint under Rule 122(2), the prisoner must;

- Complete part 1 of form PCF1 stating the nature of the complaint; and
- Give the form PCF1, with part 1 completed, to the RFLM.

48 hour meeting:

On receiving a written complaint, the RFLM must ask the prisoner whether he or she wishes to discuss the complaint under Rule 122(3). The RFLM then arranges a meeting within 48hrs to discuss the complaint.

Resolution at 48 hour meeting:

If the RFLM discusses the complaint with the prisoner and they agree that the matter being complained about is resolved then the RFLM must complete part 2 of the PCF1 form, return the completed form to the prisoner, keep a copy of the form on the prisoner's file and enter information on a database.

No resolution at 48 hour meeting:

If the complaint is unresolved at the verbal stage then the RFLM must reply to the prisoner in writing within 5 days receiving the written complaint by:

- Investigating the matter ; and
- Completing part 2 of PCF1 (see below).

The RFLM must *a/so* input the information on the Complaints Sharepoint data base.

The Investigation:

When carrying out an investigation the RFLM or nominated member of staff, appointed by the RFLM, should try to establish;

- What did happen?
- What should have happened?
- What was the cause of any failings?
- What needs to be done to rectify any failings?
- Any other information pertinent to the matter.

Completing Part 2 of the PCF1

The response should try to meet the prisoner's expectations or if inappropriate provide a full explanation, including reasons. If relevant, also contain in the written response what will be done and when. It is important that at the investigation stage, that the aim is to 'get it right first time'. The response should reflect the SPS definitive position and reflect the views of senior management.

When a RFLM completes part 2 of the PCF1 form, it should include the following details:

- Has the complaint been considered before? If so, by whom? What if any action was taken?
- Establish what the prisoner is trying to achieve by complaining.
- Are the prisoner's expectations realistic and achievable?
- A summary of the investigation conducted under Rule 122(4)(a).
- The decision.
- Evidence supporting the decision.

Returning the PCF1 to the prisoner

At the end of the investigation the written response should be given back to the prisoner within 5 days:

- A copy of the PCF1 and any relevant paperwork is held in the prisoner's file.
- Once the RFLM has completed part 2 it must be returned to the prisoner along with a copy of any relevant paperwork that has a bearing on the decision.
- Inform the prisoner, in accordance with Rule 123(6), of the process by which the prisoner may refer the complaint to the ICC. This information is contained by way of a notice on the PCF1.
- All required information must be entered on the Complaints data base.

Exceptional Circumstances

If under exceptional circumstances the RFLM is unable to conclude the investigation within the 5 day timescale, then they must:

- Inform the prisoner in writing.
- Provide a written response no later than 5 days from the date that the prisoner was informed.

The prisoner on receiving the written response must be informed that they can take their complaint to the ICC if they feel that the complaint has not been resolved.

Taking the complaint to the Internal Complaints Committee (ICC):

If dissatisfied with the response from the RFLM in part 2 a prisoner can refer a complaint to the ICC under Rule 123(2). The prisoner has 14 days from the date they were issued the response from the RFLM to lodge their complaint with the ICC. In the spirit of good complaint handling late submissions to the ICC should be considered.

PCF1 Part 3:

The prisoner must complete part 3 of the PCF1 providing:

- A note of why the prisoner is not satisfied with the response of the RFLM;
- Confirmation as to whether or not the prisoner wishes to attend the hearing to be arranged under Rule 123(4);
- Confirmation as to whether or not the prisoner wishes to be assisted at the hearing together with a note of who is to assist the prisoner and what assistance that person can provide; and
- Confirmation as to whether or not the prisoner wishes to call witnesses at the hearing together with a note of who the prisoner wishes to call and how that witness will support the complaint.

Once the prisoner has completed part 3 of the form PCF1, they pass it to an officer who must then convey the form to the Chair of the ICC without delay.

Timescales:

From the date that the prisoner submits the PCF1, there is a total of 20 days in which to respond in writing to the prisoner. The ICC should note that within the 20 days, the following must occur:

- ICC must hold the hearing and make recommendations in writing;
- The Governor must review the findings and make a decision;
- The completed PCF1 must be returned to the prisoner.

The ICC should note:

- It is SPS policy that all complaints are responded to within the minimum timescale;
- If you do not give the Governor your recommendation until day 20, the Governor will have to respond that day to the prisoner. You should provide the Governor with your recommendation as quickly as you are able to.

The ICC

The ICC must consist of at least three people and two must be officers or employees and the Chair of the ICC must be one of the officer or employee members Rule 123 (2)(a)(b).

Once the ICC receives the form, the Chair must check to see if there is a request to attend, be assisted or bring witnesses to the hearing.

If the prisoner requests to:

- Attend the hearing;
- or to be assisted by:
- An officer;
- An employee;
- A member of the visiting committee;
- A person who ordinarily works at the prison

then the Chair must arrange for their attendance at the hearing.

If the prisoner requests to:

- Be assisted by another prisoner; or
- Bring witnesses

the Chair must assess the requests and make a decision.

The Chair must be satisfied that there are exceptional circumstances for another prisoner to assist them. When making the decision regarding assistance they must take into consideration the needs of each prisoner with translation, interpretation and communication needs.

If the Chair is minded to refuse the request for witnesses, the Chair must meet the prisoner to discuss this. If, having discussed the matter, the Chair is reasonably satisfied that the evidence will be of no relevance or value, the ICC Chair must inform the prisoner of his/her decision prior to the hearing. This must be done within a reasonable timescale before the Disciplinary Hearing.

If the requests are granted, then, the Chair must arrange for their attendance at the hearing.

The ICC will hold the hearing into the complaint.

PCF1 Part 4:

After the ICC has heard the complaint it must make recommendations to the Governor under Rule 123(8). The Chair of the ICC must complete part 4 of PCF1 providing:

- A summary of the hearing;
- A note of the reasons for any decision taken by the ICC under sub-paragraph (3); and
- A note of the ICC's decision in relation to the complaint, the reasons for that decision and any recommendations to be made to the Governor.

Once the Chair of the ICC has completed part 4 of the form PCF1, he or she must:

- Ensure the form is signed by all members of the ICC; and
- Convey the form PCF1 to the Governor.

PCF1 Part 5:

In making a decision under Rule 123(9), the Governor must complete part 5 of the PCF1 providing:

- Confirmation as to whether the Governor endorses or rejects the ICC's decision;
- If the Governor rejects the recommendations, the reasons for the Governor's decision; and
- A note of any further action proposed by the Governor.

Once the Governor has completed parts 4 and 5 of the form PCF1, the Governor must:

- Return the form PCF1 to the prisoner;
- File a copy of the form PCF1 in the prisoner's file; and
- Inform the prisoner, in accordance with Rule 123(10), of the process by which the prisoner may refer the complaint to the Scottish Public Services Ombudsman. This information is contained by way of a notice on the PCF1.

This information must be recorded on the complaint Sharepoint site and the PCF1 returned to the prisoner within the 20 days timescale.

Points for Governors

- "Governor-in-Charge" means the officer who is appointed as the Governor in overall charge of the prison.

- Rule 122(3) is a new Rule which provides that the Governor must appoint an ICC with at least 3 members, at least 2 of whom must be officers or employees. The change means persons other than officers and employees can sit on the ICC.
- After the Chair of the ICC has completed Part 4, the Governor can accept or reject the decision.
- Where the decision is rejected, the GIC must complete Part 5 plus give reasons for rejection and note any action proposed.

PCF2 Confidential Complaints

Confidential complaints must be made in writing and there is no requirement to have a meeting to discuss the confidential complaint unless it is deemed necessary to the investigation. The PCF2 confidential complaint is not a way of circumventing the ordinary complaint process (PCF1).

PCF2 Part 1

For the purposes of making a complaint under Rule 124(2), the prisoner must complete part 1 of form PCF2 providing:

- A statement of the nature of the complaint; and
- The reasons why the complaint is considered to be about a confidential matter.
- Provide a view of what could be done to resolve the problem.
- Once the prisoner has completed part 1 of the form PCF2, the prisoner must give the PCF2 to the residential officer in a sealed envelope and the residential officer must then convey the sealed envelope to the Governor without delay.

It is important that the date the PCF2 is received is recorded and that the details are recorded on the Sharepoint data base.

PCF2 Part 2

On receiving a PCF2, the Governor must respond to the complaint by completing part 2 of the form PCF2 within 7 days and provide:

- A statement as to whether the complaint is considered to be about a confidential matter;
- Where the complaint is *not* considered to be about a confidential matter:
 - The reasons for the Governor's decision on that matter.
 - Inform the prisoner, in accordance with Rule 124(3)(a), of the process by which the prisoner may follow the non confidential complaints procedure. This information is contained on the PCF2.
- Where the complaint *is* considered to be about a confidential matter:
 - A summary of any investigation conducted into the complaint;
 - A note of the Governor's decision; and
 - The reasons for the Governor's decision.

Once the Governor has completed part 2 of the form PCF2, the Governor must;

- Return the form PCF2 to the prisoner in a sealed envelope;

- File a copy of the form PCF2; and
- Inform the prisoner, in accordance with Rule 124(6), of the process by which the prisoner may refer the complaint to the Scottish Public Services Ombudsman. This information is contained by way of a notice on the PCF2.

Exceptional circumstances:

If under exceptional circumstances the Governor is unable to conclude the investigation within the 7 day timescale they must;

- Inform the prisoner in writing of the reasons for the delay
- Advise the prisoner of the timescale the decision will be given
- Provide a written response in a sealed envelope of the decision and the reasons for the decision as soon as practicable.

Points for Governors:

- “Governor-in-Charge” means the officer who is appointed as the Governor in overall charge of the prison;
- It is SPS policy that all complaints are responded to within the minimum timescale;
- Do not wait for the 7 day timescale if you are able to respond more quickly than that.

Disciplinary Hearings (PAF1 and PAF2)

MAIN CHANGES:	
<p>Old forms CP4</p> <p>There is a change of terminology from the 2006 Rules from “disciplinary charges” to “disciplinary hearings” and to “Disciplinary Appeals”.</p>	<p>PCF1 and PCF2</p> <p>New Forms PAF1 and PAF2</p> <p>There are 2 basic types of Appeal, dependent on who heard the original matter. There is a form for each of the two types of Appeals, PAF1 and PAF2.</p> <p>PAF1 – Where the appeal relates to a disciplinary hearing which was not heard by the Governor in Charge in a public prison, the appeal will be heard by the ICC.</p>
	<p>PAF2 – Where the appeal relates to a disciplinary hearing which was heard either:</p> <ul style="list-style-type: none"> • By the Governor in Charge in a public prison, or • By the SPS controller in a private prison, the appeal will be heard by the Scottish Ministers Rule 118(1) and 118(6)(a).

Prisoner Appeal Form (PAF1)

A prisoner may appeal about their punishment only, or about their finding of guilt and their punishment.

- The Appeal Hearing follows the same Rules as the ICC hearing under complaints;
- The ICC may make any decision as sees fit, including upholding the appeal.
- The ICC does not have greater powers than that of the Scottish Ministers and cannot increase a disciplinary award.

PAF1 part 1:

For the purposes of bringing a disciplinary appeal under Rule 118(1), in circumstances where the disciplinary hearing was Chaired by any officer other than the Governor in Charge, the prisoner must complete part 1 of PAF1 providing;

- A note of the prisoner's personal details;
- A note of the grounds of appeal and the prisoner's preferred outcome from the disciplinary appeal;
- Confirmation as to whether or not the prisoner wishes to attend the appeal hearing to be arranged by the Internal Complaints Committee (ICC) and;
- Confirmation as to whether or not the prisoner wishes to be assisted at the appeal hearing together with a note of who is to assist the prisoner and what assistance that person can provide; and
- Confirmation as to whether or not the prisoner wishes to call witnesses at the appeal hearing together with a note of who the prisoner wishes to call and how that witness will support the complaint.

Once the prisoner has completed part 1 of PAF1 must be given to an officer who must then convey the form to the ICC.

Timescales:

From the date that the prisoner submits the PAF1, there is a total of 20 days in which to respond in writing to the prisoner. The ICC should note that within the 20 days, the following must occur:

- ICC must hold the hearing and make recommendations in writing;
- The Governor must review the findings and make a decision;
- The completed PCF1 must be returned to the prisoner.

The ICC should note:

- It is SPS policy that all complaints are responded to within the minimum timescale;
- If you do not give the Governor your recommendation until day 20, the Governor will have to respond that day to the prisoner. You should provide the Governor with your recommendation as quickly as you are able to.

The ICC

The ICC must consist of at least three people and two must be officers or employees and the Chair of the ICC must be one of the officer or employee members Rule 123 (2)(a)(b).

Once the ICC receives the form, the Chair must check to see if there is a request to attend, be assisted or bring witnesses to the hearing.

If the prisoner request to:

- Attend the hearing;
 - or to be assisted by:
 - An officer;
 - An employee;
 - A member of the visiting committee;
 - A person who ordinarily works at the prison
- then the Chair must arrange for their attendance at the hearing.

If the prisoner requests to:

- Be assisted by another prisoner; or
- Bring witnesses

The Chair must assess the requests and make a decision.

The Chair must be satisfied that there are exceptional circumstances for another prisoner to assist them. When making the decision regarding assistance they must take into consideration the needs of each prisoner with translation, interpretation and communication needs.

If the Chair is minded to refuse the request for witnesses, the Chair must meet the prisoner to discuss this. If, having discussed the matter, the Chair is reasonably satisfied that the evidence will be of no relevance or value, the ICC Chair must inform the prisoner of his/her decision prior to the hearing. This must be done within a reasonable timescale before the Disciplinary Hearing.

If the requests are granted, then, the Chair must arrange for their attendance at the hearing.

The ICC will hold the hearing into the complaint.

PAF1 part 2

For the purposes of making recommendations to the Governor in relation to the disciplinary appeal the Chair of the ICC must complete part 2 of PAF1 providing;

- A summary of the appeal hearing including any evidence led at the appeal hearing;
- A note of the reasons for any decision taken by the ICC not to allow either assistance or witnesses.
- A note of the ICC's decision in relation to the disciplinary appeal, the reasons for that decision and any recommendations to be made to the Governor.

Once the Chair of the ICC has completed part 2 of the form PAF1, he or she must:

- Ensure the form is signed by all members of the ICC; and
- Convey the form PAF1 to the Governor.

PAF1 part 3:

In making a decision in relation to the disciplinary appeal, the Governor must complete part 3 of the PAF1 providing;

- Confirmation as to whether the Governor endorses or rejects the ICC's decision (see below);
- Where the Governor decides to reject the ICC's decision, the reasons - and
- A note of any further action proposed by the Governor.

Once the Governor has completed part 3 of PAF1, the Governor must:

- Return the form PAF1 to the prisoner within 20 days; and
- File a copy of the form PAF1 in the prisoner's file (see below).

This information must be stored on the Complaints Sharepoint site.

Points of note for Governors

- "Governor-in-Charge" means the officer who is appointed as the Governor in overall charge of the prison.
- After the Chair of the ICC has completed Part 2, the Governor must accept certain decisions, but can reject others.
- In accordance with Rule 118(5), the Governor must endorse a recommendation of the ICC to quash any finding of guilt, or to remit or mitigate any punishment, but may reject any other decision of the ICC.

- Where the decision is rejected, the GIC must complete Part 3, give reasons for rejection and note any action proposed;
- If the Governor quashes any finding of guilt under Rule118(5)(a) the Governor must destroy any record in the prisoners file which relates to the alleged breach of discipline except where the record, or part of it , relates to any other finding of breach of discipline which will continue to form part of the prisoners record.
- It is SPS policy that all complaints are responded to within the minimum timescale;
- Do not wait for the 20 day timescale if you are able to respond more quickly than that.

Prisoner Appeal Form 2 (PAF 2)

Disciplinary appeals to the Scottish Ministers

For the purposes of bringing a disciplinary appeal under Rule 118(1), in circumstances where the disciplinary hearing was Chaired by the Governor in Charge or took place in a contracted-out prison the prisoner must complete part 1 of PAF2 providing;

- A note of the prisoner's personal details;
- A note of the grounds of appeal and the prisoner's preferred outcome from the disciplinary appeal.

Once the prisoner has completed part 1 of PAF2 the prisoner must give the form to an officer and the officer must then convey the form to the Scottish Ministers.

For the purposes of providing a decision in relation to the disciplinary appeal in terms of Rule 118(6)(b) the Scottish Ministers must complete part 2 of the PAF2 providing;

- A summary of the investigation conducted under Rule118(6)(a) including a note of any evidence considered or rejected by the Scottish Ministers;
- A note of the Scottish Minister's decision; and
- The reasons for that decision.

Once the representative of the Scottish Ministers have completed part 2 of PAF2, they must:

- Return the PAF2 to the prisoner; and
- File a copy of the PAF2 in the prisoner's file.

Notwithstanding the maximum time limit specified in Rule 118(6)(b), the Scottish Ministers must aim to provide a decision on the disciplinary hearing within the 20 day timescale.

If the representative of the Scottish Ministers quashes any finding of guilt under Rule 118(6)(b) the representative of the Scottish Ministers must destroy any record in the prisoners file which relates to the alleged breach of discipline except where the record, or part of it, relates to any other finding of breach of discipline which will continue to form part of the prisoners record.

This information must be recorded on the Complaints Sharepoint site.

For any further guidance please contact:
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Prisoner Complaints Manager

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