

# Learning lessons bulletin

## Complaints investigations issue 3

### Prisoner dismissal from employment

This learning lessons bulletin looks at the frequent complaints that my office receives about prisoners being dismissed from employment.

Employment in prison makes an important contribution to prisoners' rehabilitation and preparation for their resettlement into the community. Accordingly, Government policy requires prisons to put employment (along with acquiring skills and education) at the heart of a prisoner's offender management<sup>1</sup>. This is most recently seen in the proposals from the Ministry of Justice about 'Transforming Rehabilitation' which place a considerable onus on getting prisoners into worthwhile work that both occupies them and contributes to their rehabilitation<sup>2</sup>.

It is therefore right that prisons should model, within their very particular context, positive employment practices in the community. Prisoners should be encouraged to associate hard work with proper treatment by employers, just as should be the case outside. This bulletin therefore seeks to identify the lessons that can be learned from my investigations about the proper management of prisoners in employment and, specifically, fair and appropriate treatment in relation to dismissal from employment.



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#### Overview

Prison Service Instruction (PSI) 06/2012, which deals with prisoner employment, training and skills, acknowledges that prisons are increasingly places of work and industry and reflects the need for prisoners to have a structured and disciplined working week. It also says that, wherever possible, work activity should be informed by the engagement of employers and industry specialists to ensure that what is taught and the qualifications that are offered are recognised by employers on a prisoner's release.

Employment is also important to prisoners in other ways while they are serving their sentence. For many it provides vital income to pay for telephone calls to family and friends and to buy extras such as toiletries and food to supplement the prison menu. Without this income it is easy for prisoners to get into debt, with all the problems that follow. Work can also give prisoners a sense of structure and purpose, while prisoners without employment are likely to spend long hours locked in their cells during the day, becoming bored and isolated. As a result, most prisoners value their jobs and dismissal from employment is a significant penalty that can have serious and lasting consequences.

<sup>1</sup> BIS and MoJ (2011) *Making Prisons Work: Skills for Rehabilitation, Review of Offender Learning*

<sup>2</sup> MoJ (2013) *Transforming Rehabilitation: A revolution in the way we manage offenders*

It is not surprising, therefore, that complaints about employment were one of the highest eligible complaint categories received by this office in 2012-13. Of the 75 eligible complaints, the majority were from prisoners, but three were from immigration detainees for whom work can also be a vital source of income. The eligible complaints covered the whole range of employment issues, including the availability of suitable work, pay and conditions, and dismissal.

Of the 75 eligible cases, 38 cases were specifically about dismissal from prison employment. This bulletin looks at the 38 cases which were investigated. We upheld 13 of the complaints and, in the majority of upheld cases, (9 out of 13) recommendations were made to the prison.

While this bulletin deals with prison cases the learning applies equally to immigration removal centres.

### Our investigations found that:

- Not all prisons have a **local employment policy** in place, and, even where such policies exist, they do not always cover the kinds of behaviours that could trigger dismissal or the procedures for dismissal.
- Not all prisoners are given an **employment compact** when they start a job, and, even when they are, the compact does not always set out the terms and conditions of the job, the level of attendance and behaviour expected, or the kinds of behaviours that could lead to dismissal.
- Concerns about prisoners' attendance and behaviour at work may not be **documented** at all, despite the requirements of PSI 06/2012<sup>3</sup>, and **warnings** are not always given when they should be.
- In some cases it appears that workshop instructors and education staff (who are not prison officers) do not have **the necessary knowledge of procedures or the confidence to challenge or warn** when they should do. As a result, prisoners may be summarily dismissed for behaviour that has never been documented or that has apparently been allowed to go unchallenged for some time.
- **Summary dismissal** is sometimes used in situations where it is not justified and where a warning would be more appropriate.
- Prisoners may be given inaccurate, contradictory or misleading **explanations for dismissal** contravening PSI 03/2012<sup>4</sup>. 'Security concerns' may be cited inappropriately. This makes it difficult for prisoners to appeal against dismissal.
- In some cases prisoners are not **formally told they have been dismissed** and only find out when they try to go to work as normal.
- The **procedures for appealing** against dismissal are not always made clear to prisoners.
- Once a prisoner has been dismissed there may be reluctance on the prison's part to accept that local employment procedures were not followed or that there was insufficient evidence to justify dismissal. As a result, **some complaints should have been resolved locally and ought not to have come to the Ombudsman at all.**

### Case study 1

Mr A complained that he was removed from his job without any good reason or explanation. He was not told he had been dismissed but was not allowed to leave the wing for work one morning. When he complained, he was initially told that he had been dismissed for 'security reasons', but the Security Department subsequently told him this was not the case and that the decision had been taken by workshop staff.

The Ombudsman found that Mr A was dismissed because of a single intelligence report that he was suspected of stealing and of having become 'over familiar' with a member of staff in the workshop. There was no evidence that either of these concerns was investigated by the prison, or that Mr A had been warned about his behaviour prior to his dismissal. No concerns had been recorded in Mr A's notes or the workshop log.

<sup>3</sup> PSI 06/2012 Prisoner employment, training and skills

<sup>4</sup> PSI 03/2012 Activity allocation

The Ombudsman was concerned at the misleading and contradictory explanations Mr A was given by the prison for his dismissal and that there was insufficient evidence to justify it. The Ombudsman was also concerned that the prison did not have an employment policy which clearly set out the procedures for dismissal and the kinds of behaviours that would justify instant dismissal. The Ombudsman upheld Mr A's complaint and recommended that the Governor should:

- apologise to Mr A for the manner in which he was dismissed;
- reimburse Mr A for any earnings lost as a result; and
- issue a written employment policy setting out the behaviours that might trigger warnings or immediate dismissal, including dismissal on security grounds, and the procedures to be followed prior to dismissal.

### Case study 2

Mr B complained that he was sacked from his job in the workshop for something that happened on a morning when he was not at work. The prison dismissed this and said that they had CCTV footage of him taking part in the incident in the workshop. The prison was not able to provide the CCTV footage to the Ombudsman. The prison and Mr B gave conflicting accounts about what time of the day the incident took place. Unhelpfully, the time of day was not recorded on any of the prison paperwork, such as the workshop security report, the dismissal note or the prison's responses to Mr B's complaint. The attendance record in the workshop confirmed that Mr B was not present for the morning workshop session. The Ombudsman established that the incident had taken place in the morning and, without the CCTV, there was no evidence that Mr B was in the workshop when the incident took place.

The Ombudsman upheld Mr B's complaint and recommended that the Governor should:

- reinstate Mr B in his job;
- reimburse Mr B for any loss of earnings;
- amend Mr B's record to reflect the findings of the PPO investigation; and
- retain CCTV in future when it has been referred to in a complaint.

### Case study 3

Mr C complained about being sacked from his job in the kitchen. Mr C said that he was sacked for stealing food, which he denied, and asked the Ombudsman to investigate. The prison told the Ombudsman that there had been 'several pieces' of security intelligence that suggested that Mr C had been stealing food and that he had, therefore, been sacked on the basis of 'reasonable suspicion'.

Our investigation did not find any evidence of security intelligence or other reports which suggested that Mr C was suspected of stealing from the kitchen. No further explanation was given by the prison as to which members of staff supplied the information on which Mr C was sacked. The Ombudsman was satisfied, following the investigation, that Mr C was able to reapply for his job in the kitchen. The Ombudsman upheld Mr C's complaint and recommended that the Governor should:

- apologise to Mr C for there being no written record of the concerns which led to his dismissal;
- reimburse Mr C for any loss of pay resulting from his dismissal;
- issue a notice to staff reminding them that they should record any concerns they have about a prisoner's behaviour in a Security Intelligence Report (SIR); and
- amend the local employment policy to reflect the use of SIRs.

## Lessons to be learned

**Lesson 1 – Prisons should have a clear and consistent employment policy which sets out the grounds on which a prisoner can be dismissed, the procedures for doing so, and the appeal process.**

This should distinguish between the grounds for summary dismissal (for example, theft, violence or significant security concerns) and behaviour that will trigger a warning (for example, lateness, poor attendance, poor performance, rudeness to staff). In the case of warnings, the policy should specify how many warnings will result in dismissal and whether warnings will be written or oral.

The policy should describe any high-level requirements that apply to different areas of employment. For example, regular attendance or attendance at a specified number of work sessions a week may be more important in some areas of work than others, while offending history or security concerns may act as a barrier to employment in other areas.

**Lesson 2 – Each prisoner should be issued with an employment compact which sets out what is expected in a specific job or workshop (for example, the hours of work and the required level of attendance) and the grounds for dismissal (for example, poor time keeping, inability to attend the required number of sessions a week, theft).**

They should be required to sign and date this on taking up employment to confirm that they have understood the terms and conditions, and a copy should be placed in the individual's file.

**Lesson 3 – Establishments should ensure that all staff understand the dismissal procedures and the importance of recording any concerns about behaviour in employment and giving warnings when appropriate. Reasons for dismissal should also be recorded.**

Non-operational staff may need additional training or support if there is any evidence that individuals lack the confidence to challenge poor behaviour or give warnings. Records of concerns might take the form of a SIR, a note in the workshop log or in the individual's case notes, or, an Incentives and Earned Privileges (IEP) warning. This will ensure there is an audit trail and evidence if the dismissal is due to a culmination of events, as opposed to a single incident.

**Lesson 4 – Prisoners should be given a clear and accurate written explanation of the reasons for dismissal and told how they can appeal against the decision.**

The appeal should consider whether the dismissal was carried out in accordance with the policy. If not, the appeal should be upheld and the prisoner reinstated to their job.

The Prisons and Probation Ombudsman investigates complaints from prisoners, those on probation and those held in immigration detentions. The Ombudsman also investigates all deaths that occur among prisoners, immigration detainees and the residents of probation approved premises. These bulletins aim to encourage a greater focus on learning lessons from collective analysis of our investigations, in order to contribute to improvements in the services we investigate, potentially helping to prevent avoidable deaths and encouraging the resolution of issues that might otherwise lead to future complaints.

### *The Prisons and Probation Ombudsman's vision is:*

*To be a leading, independent, investigatory body, a model to others, that makes a significant contribution to safer, fairer custody and offender management.*

### Contact us

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