

Learning lessons bulletin

Complaints investigations issue 2

Religion

Learning from PPO complaints relating to the challenges that custodial settings place on an individual's ability to practise their religion.

I am delighted to introduce a further Learning Lessons Bulletin. These bulletins reflect my commitment to ensuring that my office supports improvement in the services I investigate by encouraging them to learn the lessons of those investigations.

In this bulletin we focus on religion. Freedom of religion is a basic human right and, as far as practicable, those in custody should be able to practise their religion¹. Inevitably, the custodial context can impose practical constraints on this entitlement and, occasionally, raise broader public policy issues. This bulletin illustrates some of these dilemmas and how my investigators have sought to adjudicate upon complaints relating to them. As with any other category of complaint, learning lessons from these investigations can help to avoid such complaints in future by dealing with the problem at source.



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The PPO Annual Report 2011-2012 noted a rise in complaints about religious issues (17 compared to 8 the previous year). Moreover, many more cases that the PPO investigates may have a religious aspect to them even though not specifically categorised as complaints about religion. The majority of complaints with a religious aspect come from prisoners. A few come from immigration detainees. No complaints about religion have been received from those under probation supervision in the past two years. This bulletin explores the challenges facing prisoners or immigration detainees as they seek to practise their faith in the way that they would wish, and the challenges facing staff as they seek to accommodate these needs.

¹ See for example Article 9 of the European Convention on Human Rights and rules 29.1-29.2 of the European Prison Rules, 2006

Many of the complaints received were about the provisions made to enable the prisoner or detainee to practise their faith.

Case study 1

Mr A's complaint was of the most fundamental kind. He complained that he had been told that the Prison Service did not recognise Rastafarianism as a religion. When we investigated, it became clear that the Prison Service was relying on outdated policy that had been superseded by the Equality Act 2010. This sets out nine protected characteristics, one of which is "religion or belief". Home Office guidance on the Act cited Rastafarianism as a religion. We were satisfied that the relevant NOMS policy group was aware that it needed to bring out new instructions and that this was in hand but we were concerned that in the interim, prisons might be leaving themselves open to action to enforce compliance, including judicial review. We recommended that NOMS headquarters issued guidance to all Governors reminding them of the need to comply with the provisions of the Equality Act. Since issuing this report, NOMS has included Rastafarian festival dates in its annual Religious Festival Dates instruction (PSI 35/2012) for the first time.

The PPO periodically receives complaints about the provision of faith ministers. Two recent examples have been about difficulties in obtaining a Spiritualist minister and a Sikh chaplain. In both cases, we were satisfied that every effort was being made to facilitate visits and that contact had been made with the relevant faith group and chaplaincy headquarters. Consequently, while we were sympathetic to the predicament of the individuals concerned, we did not uphold these complaints.

The PPO also received complaints about the accommodation of religious diets. It appeared from the complaints received by the PPO that prisons made real efforts to provide for a range of diets and to ensure that food was correctly labelled.

Case study 2

For example, when a prisoner complained about the lack of non-Halal chicken available to purchase from the canteen, it was added to the list. Mr B's complaint about the incorrect labelling of non-Halal chicken as Halal was also properly investigated by the prison. This resulted in the Muslim minister providing training to staff so that they could recognise the symbols notifying if food was Halal, even though it appeared the error originated with the prison's supplier rather than the canteen.

Many complaints arise when security considerations affect the ability of the individual to practise his or her religion in the way that they would wish. We received several complaints from prisoners held in segregation units that they were unable to attend corporate worship. Corporate worship by its nature often involves the gathering of large numbers of prisoners, it is therefore right that particular care is taken to ensure the safety of prisoners and staff during acts of worship. In each of the cases we investigated, the key factor was that the decision to exclude the prisoner had been based on an individual risk assessment, rather than simply because they were being held in the segregation unit. In many cases, arrangements were in place to allow the relevant faith minister to visit the prisoner in the segregation unit. None of these complaints were upheld.

Searches are an integral part of prisons' security strategies and are necessary to maintain safe and secure prisons. Religious items and clothing are not exempt from security requirements. However, it is

important that such searches are conducted sensitively and with respect.

Case study 3

Mr C complained that his statue of the Buddha had been lifted by the head during a cell search. On this occasion, we considered that a thorough investigation had been carried out by the prison, which had upheld Mr C's complaint and taken a number of actions to ensure that staff conducting cell searches were better trained in the future. We were satisfied that no further action was necessary.

Case study 4

Mr D complained that he was asked to remove his religious headwear when being searched. Mr D was held in a high security prison whose local security strategy required all prisoners' religious headwear to be searched when leaving an area. Mr D's concern was that he wore a turban which was time consuming to put on, only to have it searched a short while later. He felt the prison was not complying with PSO 4550 which had said that religious headwear should not be searched as a matter of course unless there had been a positive indication from a hand-held detector. The investigation established that the guidance on searching of the person was contained in PSI 67/2011 issued on 1 November 2011. It referred the reader to PSO 4550 for further guidance on the searching of religious headwear. However, on 3 November 2011, PSO 4550 had been replaced by PSI 51/2011 which allowed headwear to be searched at any time, 'taking into account security concerns'. We did not uphold Mr D's complaint because it was clear that the local security strategy did not contravene any national policies, and we did not consider the policy to be unreasonable.

Nevertheless, we were concerned by the inconsistencies between the new PSIs and PSO 4550. We considered that this was a sensitive area with the potential to cause problems in prison and recommended that clear instructions about the searching of religious headwear were issued.

One of the noticeable effects of the replacement of PSO 4550 with PSI 51/2011 is that it is not as easy to find the relevant guidance on individual religions as was previously the case. In particular, whereas previously all the information about a particular faith was contained in an annex to PSO 4550, now there are annexes for each religion. However, the list of religious artefacts allowed in possession and exempt from volumetric control is contained in a summary document at the end of the PSI with no separate annex number. Although it suggests that these items will have been listed under each faith annex, this is not the case. Consequently, important guidance for staff is no longer signposted and can be easily overlooked. The effects of this have been clear in the number of cases that the PPO has investigated about items necessary to a prisoner's religion, notably ablution jugs for Muslim prisoners. It is difficult not to think that some of these complaints could have been resolved earlier, without recourse to the PPO, had relevant guidance been easier to locate within the PSI.

The PPO investigated a number of other cases concerning religious property that prisoners complained they were not allowed in possession. In some cases, these items had been sent in from outside, in contravention of the prison's Incentives and Earned Privileges (IEP) scheme. We supported the prisons' wish to maintain the integrity the IEP scheme. In one case, a prisoner had been sent two books by his religious adviser outside the prison to help him gain a greater

understanding of his faith. On this occasion, the books themselves raised no concerns and a compromise was reached whereby the books were donated to the prison library. The prisoner was then able to access them without any compromise to the IEP scheme. This is a resolution that the PPO has successfully negotiated on other similar occasions and one that prison governors might wish to consider as a resolution in such circumstances.

In general, prisons try hard to accommodate the religious needs of prisoners.

PPO investigators have seen evidence that staff treat complaints about religious issues with seriousness and sensitivity and this is to be commended. There is no need for the PPO to carry out in depth investigations or make recommendations if all the learning from an incident has already been identified and implemented.

Lessons to be learned

Lesson 1 – Prison Service Instructions regarding religion should be clear and interpretable

The most significant lesson to be drawn from these collective complaints is that the transition from PSO 4550 to PSI 51/2011 has not been smooth. The introduction of the Equality Act 2010 left NOMS in need of updating its instructions with regard to religion. At the same time, other Instructions were being introduced, seemingly without any reference to the fact that PSO 4550 was being replaced. Consequently, there has been the absurd situation of an Instruction on searching of the person referencing a PSO that was replaced two days later. PSI 51/2011 was not a like for like replacement of PSO 4550 and some of the clarity of the original has been lost to no good purpose. Some of the complaints discussed in this bulletin would not have required recommendations if there had been a more unified approach to the issuing of Instructions, or if that guidance had been set out in a more user friendly manner.

Lesson 2 – A fair balance should be sought between security considerations and religious observance

The tension between religious observance and the security needs of the prison is one that will always be present. However, maintaining the balance between clear policy at local and national level, and individual risk assessments helps ensure that decisions are made in a fair and transparent manner.

The Prisons and Probation Ombudsman investigates complaints from prisoners, those on probation and those held in immigration removal centres. 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.

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