

**Review, Evaluation and Analysis of the Operation**

**of the present**

**Irish Prison Service**

**Prisoner Complaints Procedure**

**By**

**Judge Michael Reilly**

**Inspector of Prisons**

**April 2016**

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Presented to the Minister for Justice and Equality pursuant to Part 5 of the Prisons Act 2007.

Judge Michael Reilly  
Inspector of Prisons

6 April 2016

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# Chapter 1

## **Introduction**

- 1.1 This is the first review, evaluation and analysis of the operation of the present Irish Prison Service (IPS) Prisoner Complaints Procedure since its formal introduction in June 2014. Between January 2013 and June 2014 the Complaints Procedure operated on an *ad hoc* basis while the relevant policy documents, protocols and operating manuals were being finalised.
- 1.2 **Significant deficiencies relating to the operation of the prisoner complaints procedure are identified in this report.**
- 1.3 In Chapter 2, I explore the history of the complaints system in our prisons.
- 1.4 In Chapter 3, I set out the structure of the present IPS Complaints Procedure.
- 1.5 In Chapter 4, I give my rationale for carrying out this review, evaluation and analysis of the operation of the present IPS Prisoner Complaints Procedure.
- 1.6 In Chapter 5, I set out the methodology employed by me in carrying out this review, evaluation and analysis.
- 1.7 In Chapter 6, I review the operation of the present IPS Prisoner Complaints Procedure.
- 1.8 In Chapter 7, I give my evaluation and analysis of the operation of the present IPS Prisoner Complaints Procedure.
- 1.9 In Chapter 8, I set out my recommendations. I also sound a warning addressed to the management of all prisons that they must be ever vigilant to ensure that, even with a robust complaints structure, some vulnerable prisoners may still require added protection which can only be provided by Governors and others in authority.

## Chapter 2

### **History of Complaints System**

- 2.1 On 10 September 2010 in a Report – *Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline* (hereinafter referred to as my ‘2010 Report’) – I outlined the deficiencies that I encountered in the Prisoner Complaints Procedure as then operated.
- 2.2 In Chapter 3 of my ‘2010 Report’ I summarised the requirements necessary for a robust prisoners’ complaints model by reference to, *inter alia*, this country’s international obligations as laid down in various Treaties and Instruments that we as a Country are party to, the jurisprudence of the European Court of Human Rights, the Reports of the CPT,<sup>1</sup> the European Prison Rules, our domestic laws, regulations and Standards 119 to 126 of the Inspector of Prisons Standards for the Inspection of Prisons in Ireland.
- 2.3 In Chapter 4 of my ‘2010 Report’ I stated that following my review of best practice and having regard to our domestic and international obligations as set out in Chapter 3 of said Report it was clear that the procedures for prisoners’ complaints then in operation did not accord with best practice.
- 2.4 In paragraph 4.5 of my ‘2010 Report’ I stated:

*“It is therefore essential that the procedure for investigating prisoners’ complaints is fair, transparent and accepted as such by prisoners. **It is not sufficient that regulatory authorities such as my office or the CPT have subsequent oversight of the systems.** It is the systems, the procedures and the personnel involved in both that must be independent in order that a prisoners’ complaints procedure can be seen to be fair and transparent”.*

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<sup>1</sup> CPT – European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment

2.5 In paragraph 4.10 of my ‘2010 Report’ I stated:

*“All prisoners’ complaints must be dealt with expeditiously. The gathering of evidence must be immediate. The reason is that evidence may be lost, relevant witnesses may be moved, transferred or released. All evidence including CCTV, forensic and medical evidence must be harvested. Possible witnesses must be identified”.*

2.6 Subsequent to the publication of my ‘2010 Report’ the then Minister for Justice and Equality asked me to advise on a prisoner complaints model that could be introduced in Ireland that would meet the criteria of best international practice, would be viewed as fair and transparent and would attract public confidence.

2.7 On 22 March 2012, I presented my proposals to the then Minister in a Report - *Suggested Prisoner Complaints Model for Irish Prisons* (hereinafter referred to as my ‘2012 Report’).

2.8 In paragraph 1.2(c) of my ‘2012 Report’ I stated:

*“It is of the utmost importance that a prisoner complaints system should have within it the degree of independence necessary to win wide spread confidence, in particular, the confidence of prisoners. This does not mean that the investigation of each and every complaint, many of which have to do with practical day to day matters, must immediately be referred for investigation to an independent agency. The great bulk of complaints can and should be investigated and resolved at local level by prison managers. There is no case, in my view, for establishing what would be an expensive mechanism to deal with matters that can be addressed just as effectively by ensuring that prison managers do the job for which they are remunerated”.*

2.9 In Chapter 2 of my ‘2012 Report’ I stressed the importance of a good complaints system. I concluded Chapter 2 with the following:

*“It is, therefore, fundamental that prisoners are given an opportunity to make complaints/requests to the authorities and to independent bodies. Accordingly it is not only in the interest of justice and fairness but also in the interest of good order and discipline that the Irish Prison Service has a working and effective complaints system”.*

2.10 In Chapter 5 of my ‘2012 Report’ I pointed out that, at that time, there was no independent element in the investigative process relating to prisoners’ complaints.

2.11 In Chapter 8 of my ‘2012 Report’ I set out the broad parameters of a complaints model that might be introduced in this country. In paragraph 8.48 of that Report I stated that it was for the Minister to decide on the appropriateness or otherwise of the complaints model as outlined in my Report.

2.12 I envisaged four different categories of complaints that should be investigated. I set out, briefly hereunder, the broad parameters of each complaint procedure as envisaged by me:

#### Category A complaints

2.13 These would be complaints of the most serious nature. Examples could include allegations of assault, racial discrimination, serious intimidation and serious threats. The main features of the procedure for the investigation of such complaints would be as follows:

- The Governor would secure all evidence, ascertain names of witnesses, and take immediate steps to protect the complainant;
- Brief an Investigation Team. I had suggested that this should be a specialist unit set up within the IPS but independent of all prisons, that its members be trained and that the investigation teams should have full powers of investigation;

- Investigations should be on behalf of and under the direction of the Governor;
- Due process and fair procedures should prevail;
- Governors should make findings;
- Findings should be communicated to relevant parties;
- An appeal should be to the Inspector of Prisons within certain defined limits;
- Powers of the Inspector of Prisons should be set out;
- Time limits for taking various steps in the process would apply.

#### Category B complaints

2.14 These would be classed as mid category complaints falling between serious and minor complaints. Examples could include allegations of discrimination, verbal abuse by officers, inappropriate searches etc. The main features of the procedure for the investigation of such complaints would be as follows:

- Complaints would be investigated by an officer not below the rank of Chief Officer;
- Chief Officers would make findings;
- An appeal process to the Governor would apply within certain defined limits;
- Inspector of Prisons would have overview of the procedure;
- Time limits for taking various steps in the process would apply.

#### Category C complaints

2.15 These complaints would be classed as minor and at the low end of the spectrum. Examples could include allegations of missing clothes, not getting post on time, not getting appropriate exercise etc. These complaints would be more in the line of 'service complaints'. The main features of the procedure for the investigation of such complaints would be as follows:

- Complaints could be made informally;
- Complaints would be investigated by a Class Officer;

- Most complaints would be resolved within 24 hours with an absolute time limit of seven days;
- An appeal should be to a Chief Officer;
- Inspector of Prisons would have general oversight of the procedure.

#### Category D complaints

2.16 These complaints would be those alleging professional misconduct by, such as, doctors, dentists, lawyers etc. I made clear that complaints alleging inability to access medical services or the failure to implement directions from the medical personnel should not fall to be investigated under this category. I also stated that these complaints alleging professional misconduct should not fall to be resolved as part of a prisoner complaints procedure.

#### Response of Minister and Irish Prison Service

2.17 The Minister accepted my proposals in principle. The IPS introduced a Prisoner Complaints Procedure which came into operation on an *ad hoc* basis on 14 January 2013 and then on a formal basis on 16 June 2014. I refer to this procedure in Chapter 3.

2.18 The *Prison Rules, 2007*<sup>2</sup> were amended by the *Prison Rules (Amendment) 2013*<sup>3</sup> to give effect to a new procedure for the investigation of serious complaints and other matters. However, the necessary element of independence in the system that I had advocated in paragraph 4.5 of my ‘2010 Report’, referred to at paragraph 2.4 above, was not included. Rather, the Inspector of Prisons was given general oversight of the complaints procedure by *Rule 2(12) of the Prison Rules (Amendment) 2013* which states:

*“The Inspector of Prisons shall have oversight of all investigations carried out under this Rule, shall have access to any material relevant to any such investigation and may investigate any aspect that he or she considers relevant”.*

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<sup>2</sup> S.I No.252 of 2007

<sup>3</sup> S.I No.11 of 2013

**The oversight powers given in this section were precisely those that I had warned against giving in my ‘2010 Report’ as referred to earlier in this paragraph and particularly in paragraph 4.5 of my ‘2010 Report’ referred to in paragraph 2.4 of this Report.** It is true that, on paper, the Inspector of Prisons could investigate any aspect that he or she might consider relevant. However, in view of advice from the Attorney General, given in December 2013 to and accepted by the IPS, that persons complained of could not be placed in jeopardy for a second time, where there was no appeal’s procedure; this power to investigate was a hollow power. This advice arose in the context of an investigation into an alleged assault by prison officers on a prisoner. I suggested that the investigation, which had concluded, was not thorough. The IPS initiated a further investigation but this was terminated prior to conclusion when lawyers for the Respondents queried the power to initiate a further investigation, in the absence of an appeals procedure when the first investigation had concluded, on the basis of ‘double jeopardy’. **Despite this hiatus I am not aware of any attempt being made to amend the Prison Rules.**

2.19 Rule 2(11) of the Prison Rules (Amendment) 2013 states:

*“A complainant shall be advised that if he or she is not satisfied with the outcome of the investigation, he or she may write to the Inspector of Prisons and the Director General of the Irish Prison Service stating why he or she is not satisfied”.*

The entitlement to write to the Inspector of Prisons was, in fact, an empty formula as it did not empower the Inspector of Prisons to take any action.

## Chapter 3

### **Present Irish Prison Service Prisoner Complaints Procedure**

- 3.1 Between January 2013 and June 2014 the IPS developed a prisoner complaints procedure (referred to in paragraph 2.17) to cover six categories of prisoner complaints.
- 3.2 This procedure became operative on 16 June 2014. The legislation underpinning this procedure is the *Prison Rules 2007* as amended by the *Prison Rules (Amendment) 2013*.
- 3.3 The IPS published its *Policy Document on Prisoner Complaints* (hereinafter referred to as the ‘Policy Document’). It also published a *Manual for the Management of Prisoner Complaints* (hereinafter referred to as the ‘Manual’).

#### Complaints generally

- 3.4 The aim of the ‘Policy Document’ referred to in paragraph 3.3 was to ensure that:

*“All investigations of prisoner complaints in the Irish Prison Service are compliant with legislation, the Prison Rules and the procedure laid out in this policy.*

*All complaints are dealt with in confidence.*

*All complaints are investigated in a timely, robust and transparent manner.*

*Any prisoner who wishes to make a complaint may do so with the assurance that there will be procedural fairness”.*

- 3.5 The purpose of the ‘Policy Document’ referred to in paragraph 3.3 was:

*“To provide prisoners with an accessible and effective means to make a complaint.*

*To present prisoners, IPS staff and others with a basis for confidence in the prisons’ complaints system”.*

3.6 Paragraph 4 of the ‘Policy Document’ sets out the procedures for the implementation of the policy for the investigation of complaints generally. Paragraph 4.1.4 of the ‘Policy Document’ clearly states:

*“The Governor of the prison shall be responsible for ensuring that:*

- (a) All complaint boxes are emptied on each working day;*
- (b) All complaint forms are brought to a central location;*
- (c) All complaint forms are assigned a reference number, date stamped and entered into the relevant complaints journal and on the PIMS system;*
- (d) All complaint forms are photocopied and a copy returned to the complainant in a sealed envelope by a prison officer not below the rank of Chief Officer;*
- (e) Complaints shall be categorised by the Governor and entered into the relevant journal for such complaints and on the PIMS system”.*

3.7 Paragraph 4.1.7 of the ‘Policy Document’ provides that:

*“In cases where a Governor has a suspicion that a situation has arisen which would, if reported, give rise to Category A Complaint, the Governor shall instigate the procedure for the investigation of such an incident as a Category A Complaint even where the prisoner has declined or refused to make a complaint”.*

3.8 Paragraph 4.1.8 of the ‘Policy Document’ provides that:

*“Where a prisoner withdraws a Category A or Category B Complaint, the circumstances of such withdrawal shall be investigated in accordance with the procedures laid down for such category”.*

3.9 Paragraph 4.1.9 of the ‘Policy Document’ provides that:

*“The Governor may delegate any functions performable by him/her under this policy. Every function delegated under this policy shall continue to be vested in the Governor. The Governor will ensure investigation of all Categories of Complaints”.*

3.10 The purpose of the ‘Manual’ referred to in paragraph 3.3 was/is:

*“To ensure that the management of all prisoner complaints are conducted according to the IPS Prisoner Complaints Policy”.*

The ‘Manual’ sets out, in detail, how all complaints are to be dealt with. It defines the specific responsibilities of personnel in the IPS from Director General to Officer in the investigative process. It anticipates that documentary evidence of all steps taken in the investigative process will be maintained in each relevant prison.

3.11 There are six categories of complaints – categories A to F. I set out hereunder the definitions of, and, very briefly, in layman’s terms, the relevant features and the investigative processes for each category.

#### Category A complaints

3.12 Category A complaints are defined as:

*“Assault or use of excessive force against a prisoner or ill treatment, racial abuse, discrimination, intimidation, threats or other conduct against a prisoner of a nature and gravity likely to bring discredit on the Irish Prison Service”.*

3.13 Where an allegation suggests that a criminal offence may have been committed the Governor is obliged to inform An Garda Síochána.

3.14 The following are the salient points with timelines for the investigation of Category A complaints as set out in legislation, the ‘Policy Document’ and the ‘Manual’:

- (a) The Governor shall comply with Rules 57A and 57B of the Prison Rules 2007 as amended. In brief he/she shall preserve all relevant material including CCTV, arrange for the prisoner to be examined and any injuries or marks recorded and photographed, arrange for the names of potential witnesses to be recorded and advise the complainant that the complaint is being investigated.

- (b) Within seven days of being notified refer the complaint and the evidence gathered to the Director General of the IPS and notify the Inspector of Prisons.
- (c) The Director General shall appoint an Investigation Team.
- (d) The Investigation Team shall complete the investigation within three months unless exceptional circumstances arise.
- (e) The report of the investigation shall be forwarded to the Director General or his Designated Officer in IPS Headquarters, to the Governor of the relevant prison and a copy to the Inspector of Prisons.
- (f) Governors shall make findings and decisions which must be communicated to the complainant and the person against whom the complaint has been made. While it is not specifically provided for in the ‘policy document’ or the ‘manual’ I understand that Governors were directed that they should make such findings within 14 days.
- (g) The Governor shall inform the Director General of the IPS and the Inspector of Prisons of his/her decision and findings.
- (h) The complainant shall be advised by the Governor that if he/she is not satisfied with the outcome of the investigation he/she may write to the Inspector of Prisons and the Director General of the IPS stating why he/she is not satisfied.

For the purpose of clarification the Director General had appointed a senior Governor in IPS Headquarters as his ‘Designated Officer’ to manage the Prisoner Complaints Procedure hereinafter referred to as the ‘Designated Officer’.

3.15 The ‘external investigators’, referred to at paragraph 3.14(c) above, were recruited by the IPS subsequent to expressions of interest being sought for inclusion on a panel of ‘external investigators’ who would investigate Category A complaints.

3.16 **There is no appeal process against a decision of the Governor and therefore no external, independent element.** The procedure whereby a complainant who is not satisfied with the result of the Governor’s adjudication may write to the Inspector of Prisons does not trigger an appeal despite a widespread view that such is the situation. I have already referred to this anomaly in paragraphs 2.18 and 2.19.

### Category B complaints

3.17 Category B complaints are defined as:

*“Complaints of a serious nature, but not falling within any other category of complaint. Examples could include verbal abuse of prisoners by staff, inappropriate searches or any other conduct against a prisoner of a nature likely to bring discredit on the Irish Prison Service”.*

3.18 Category B complaints are investigated by a Chief Officer.

3.19 The procedure for the investigation of Category B complaints is laid out in the ‘Policy Document’ and ‘Manual’. The following are the salient points with timelines for the investigation of Category B complaints:

- (a) The Governor shall, within 48 hours, appoint a Chief Officer in the prison to investigate the complaint. The Chief Officer, so appointed, shall not be the officer in charge of the area where the incident allegedly occurred or the area where the complainant is accommodated. The Chief Officer shall not have been present at any time during the alleged incident;
- (b) The complaint shall, except in exceptional circumstances, be investigated by the Chief Officer within 28 days;
- (c) The Chief Officer shall make findings;
- (d) Within seven days of the completion of his/her investigation the Chief Officer shall communicate in writing the outcome of his/her investigation, his/her findings and the reasons for same to the complainant, the officer against whom the complaint was made and the Governor;
- (e) The complainant shall be notified in writing of his/her right to appeal the outcome of the Chief Officer’s findings to the Governor;
- (f) The Complainant shall have 14 days to lodge Notice of Appeal referred to at (e) above;
- (g) The Governor shall within seven days from the lodgement of the appeal inform the parties that the appeal process has commenced, that the appeal will take place on the basis of the documentation received and that the

Governor may carry out further investigations that he/she considers relevant where submissions to this effect have been made by either party;

- (h) Within 28 days of receiving the appeal the Governor shall carry out a review of the investigation conducted by the Chief Officer, consider any documentation or submissions made and carry out any further investigations having regard to any observations or submissions made by the appellant;
- (i) The Governor shall make findings which must be communicated to the parties in writing;
- (j) The parties to the appeal process shall be notified in writing of their right to seek a review of the decision of the Governor by the Director General of the IPS. The time limit for lodging such application for review is 14 days;
- (k) The Director General shall within 14 days carry out such review. The review shall be confined to a review of the procedures followed by the Governor to determine that fair procedures have been followed and that the decision and findings of the Governor were consistent with the supporting evidence;
- (l) The Director General shall within 14 days inform all parties, in writing, of his/her decision.

3.20 The Inspector of Prisons has general oversight of the complaints procedure but this does not give any party any right to ask the Inspector to carry out any investigation or to act as an appeals mechanism.

Therefore, there is no external independent element in the present investigative procedure for Category B complaints.

#### Category C complaints

3.21 Category C complaints are defined as:

*“Basic level complaints and may include complaints about visits, phone calls, reception issues, missing clothes, not getting post on time, not getting appropriate exercise etc”.*

3.22 Category C complaints shall be investigated by an officer not below the rank of a Class Officer.

3.23 The procedure for the investigation of Category C complaints is laid out in the ‘Policy Document’ and ‘Manual’. The following are the salient points with timelines for the investigation of Category C complaints:

- (a) Complaints may be made informally or formally on a complaint form;
- (b) Complaints shall be resolved as soon as possible – usually within 24 hours;
- (c) Complainants shall be kept aware of ongoing developments in relation to their complaints where the 24 hour period has been exceeded;
- (d) The Class Officer shall maintain a record of the steps taken to resolve the complaint, the explanation given to the complainant with the date, time and place where the complainant was informed;
- (e) A Senior Chief Officer in the prison shall maintain constant oversight of the Category C complaints procedure and shall take immediate action to resolve any matters outstanding in excess of 48 hours;
- (f) While the ‘Policy Document’ on Prisoner Complaints, referred to in paragraph 3.3, is silent as to an appeals mechanism the ‘Manual’ at Section 3.3.14 allows an appeal to a Chief Officer and Section 3.3.17 sets the time limit for such an appeal at seven days.

There is no external independent element in the present investigative procedure for Category C complaints.

#### Category D complaints

3.24 Category D complaints are defined as:

*“Complaints against professionals which, for example, may include medical personnel, legal/financial representatives”.*

3.25 The procedure for the investigation of Category D complaints is laid out in the ‘Policy Document’ and ‘Manual’. The following are the salient points for the investigation of Category D complaints:

- (a) Where possible such complaints shall be resolved through local resolution;
- (b) Category D complaints may fall into categories A, B or C to be investigated;
- (c) Where Category D complaints cannot be resolved locally the complainant shall be informed of the relevant professional body that he/she should contact.

#### Category E complaints

3.26 Category E complaints are those made by visitors to a prison. When made these must be re-categorised as Category A, B or C complaints and investigated accordingly.<sup>4</sup>

#### Category F complaints

3.27 Category F complaints relate to complaints against decisions made by IPS Headquarters in relation, for example, to such matters as the granting of temporary release, prison transfers etc.<sup>5</sup>

3.28 Apart from exceptional circumstances where the giving of such information could jeopardise the security or good order of the prison, all prisoners shall have an entitlement to answers to reasonable queries raised by them.<sup>6</sup>

3.29 Replies to requests for information shall be made in writing to the prisoner within seven days of such request. Replies to complaints against decisions made by IPS Headquarters shall be made in writing to the prisoner within four weeks of receipt of such a complaint.<sup>7</sup>

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<sup>4</sup> Paragraph 3.5.3, page 17 of the 'Manual'

<sup>5</sup> Paragraph 3.6.1, page 18 of the 'Manual' and paragraph 4.7.1, page 15 of the 'Policy Document'

<sup>6</sup> Paragraph 4.7.2, page 15 of the 'Policy Document'

<sup>7</sup> Paragraph 4.7.3, page 15 of the 'Policy Document'

## Chapter 4

### **Rationale for the review, evaluation and analysis of the operation of the present Irish Prison Service Prisoner Complaints Procedure**

- 4.1 In paragraph 1.14 of my ‘2012 Report’, in the context of suggesting a new system for the investigation of complaints, I stated:

*“There will always be an element of trial and error when any new system is being introduced. This is particularly so in this case when one is moving from a system that does not meet the minimum criteria for a prisoner complaints system to one that hopefully will. Any new system may have to be amended in the light of experience and in the light of wider developments regarding the treatment of prisoners and the ways in which their concerns are to be addressed.....A logical follow on from all of this is that the model, as suggested in paragraph 1.12 and elaborated on in Chapter 8 should initially be in the form of a non statutory scheme. An evaluation of the non statutory scheme should be concluded not more than 12 months after the introduction of such scheme. If found to be an appropriate model it could then be incorporated into law”.*

It is now in excess of 12 months since the introduction of the scheme.

- 4.2 The rationale set out in paragraph 4.1 for a review, evaluation and analysis of the operation of the present IPS Prisoner Complaints Procedure would be adequate authority to carry out such a review. However, additional concerns outlined hereunder made such a review an imperative.
- (a) Exercising my general oversight of the prisoner complaints system it appeared to me that there might be deficiencies in the investigation of certain complaints, a different interpretation as to what was expected in others, a failure to adhere to protocols and inadequate and at times no appropriate records. Information contained in monthly returns from all prisons of complaints logged, of ongoing investigations and of investigations ‘closed off’ caused me concern.

- (b) I received and still receive correspondence from prisoners complaining that their complaints were not and are not being adequately investigated and in certain cases not at all.
- (d) I received many representations from agencies and individuals outside the prison system informing me of their concerns relating to the complaints process.
- (d) I spoke to many prisoners, prison staff and other stakeholders working in our prisons and was satisfied that there was little confidence in the system on the part of officers or prisoners.

4.3 The Minister, the Irish Prison Service, those working in prisons, prisoners and the general public are entitled to have confidence in the Complaints Process.

4.4 The Minister is entitled to independent advice which can be taken into account when policy relating to prisons is being formulated.

4.5 For the reasons set out above I decided that I should carry out a comprehensive review, evaluation and analysis of the operation of the present IPS Prisoner Complaints Procedure and present my findings to the Minister.

4.6 **I would like to make clear at this juncture that while, of necessity, this review, evaluation and analysis entailed, *inter alia*, an examination of complaints logged over a specific period it is not an audit of such complaints. For reasons that will become clear any such audit, carried out for the purpose of gathering statistical information would, at best, be misleading and at worst be of no value.**

## Chapter 5

### **Methodology**

5.1 My review (Chapter 6), evaluation and analysis (Chapter 7) of the present IPS complaints procedure was informed by:

- (a) An examination of all complaint files and other documentation made available to me relating to complaints logged in six prisons in respect of the period 1 July 2014 to 31 January 2015 for Category A, B, C and D Complaints;
- (b) An examination of the monthly returns from the six prisons referred to at (a) above of complaints logged, of ongoing investigations and of investigations ‘closed off’ in the period 1 February 2015 to 1 August 2015;
- (c) The deficiencies in the complaints system as identified by the Irish Prison Service;
- (d) The views of those officers of all grades from Governor to Class Officer working in the system and in particular those charged with liaising with the investigative process and those carrying out investigations such as Chief Officers and Class Officers paying particular attention to the adequacy of their training, their understanding of their roles and any other observations relevant to their investigative processes;
- (e) The views of the ‘external investigators’ appointed by the IPS to investigate Category A complaints on such matters as the adequacy of their training as investigators, their understanding of their roles and any other observations relevant to their investigative processes;

- (f) The views of the Representative Bodies;
- (g) The views of prisoners; and
- (h) My observations of the complaints procedure.

## Chapter 6

### **Review of the operation of the present Irish Prison Service Prisoner Complaints Procedure**

- 6.1 I stated in Chapter 5 that my review, evaluation and analysis of the present complaints procedure were informed by five broad areas. In this Chapter I deal with each in turn.
- (A) **Examination of all complaint files and other documentation made available to me in six prisons relating to complaints logged in the period 1 July 2014 to 31 January 2015 for Category A, B, C and D Complaints**
- 6.2 The following prisons were chosen for the purpose of these examinations, namely, Castlerea, Cloverhill, Cork, Dóchas Centre, Midlands and Mountjoy. These were chosen for the following reasons - their geographic location, one being a women's prison, one a dedicated remand prison and the others committal/remand prisons. The prisons chosen account for approximately 60% of the prison population.
- 6.3 Only category A, B, C and D complaints were examined as these are the complaints which fall to be investigated on behalf of prisoners by the prison system within individual prisons. I did not examine Category E or F complaints for the following reasons – Category E complaints, in reality, must fall to be investigated as Category A, B or C complaints depending on their categorisation and Category F complaints are complaints relating to decisions made by IPS Headquarters where the procedure (referred to in paragraphs 3.27 to 3.29), if availed of by prisoners, should, subject to an independent element in the procedure, be robust.
- 6.4 In the period 1 July 2014 to 31 January 2015 a total of 556 complaints were logged in the relevant prisons. The following table provides a breakdown of such complaints in each relevant prison. It also shows the bed capacity of each prison and whether it is a remand and/or a committal prison.<sup>8</sup>

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<sup>8</sup> It should be noted that the bed capacity figure for Cloverhill, Cork, Midlands and Mountjoy Prisons is a provisional figure and is subject to change.

<u>Prison</u>	<u>Bed Capacity</u>	<u>Cat A</u>	<u>Cat B</u>	<u>Cat C</u>	<u>Cat D</u>	<u>Total</u>
Castlerea (Remand & committal)	300	7	14	99	1	121
Cloverhill (Remand)	414	34	23	71	13	141
Cork (Remand & committal)	168 <sup>9</sup>	3	4	4	2	13
Dóchas (female prison) (Remand & committal)	105	4	16	22	8	50
Midlands (Committal)	870	17	9	115	7	148
Mountjoy (including D West) (Committal)	554	8	12	60	3	83
		—	—	—	—	—
<b>TOTAL</b>		<b>73</b>	<b>78</b>	<b>371</b>	<b>34</b>	<b>556</b>

6.5 The Governors of all prisons referred to in paragraph 6.2 were advised, a number of days in advance, that my team would be visiting their prisons for the purpose of the examination. I asked that the following be available to enable the examination take place:

- (a) All prisoner complaint forms logged in the period 1 July 2014 to 31 January 2015, complaint files, books, journals, correspondence, e-mails and all further documentation relevant to all Category A, B, C and D complaints logged during that period.
- (b) All working notes relevant to the investigation of such complaints.
- (c) Correspondence relating to the complaints referred to at (a) above between the prison and IPS Headquarters, prisoners and/or other organisations or persons.

6.6 For the purpose of this examination I relied on the documentation made available to me subsequent to my requests referred to in paragraph 6.5. During the course of my

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<sup>9</sup> IOP bed capacity at time of review

examination of this documentation I was informed on a number of occasions that “*there may be*” further documentation on other files in the prison or in computer files. However, no such documentation was made available to me then or since.

6.7 My examination of the complaint files and documentation in each of the selected prisons was for the purpose of ascertaining if the process for the conduct of complaint investigations complied with the process referred to in Chapter 3 in so far as same related to Categories A, B, C and D Complaints. In simple terms this was to seek to ensure that complaints were appropriately categorised, that timelines were adhered to, that complaints were investigated, that the findings of those charged with making findings – Governors, Chief Officers and others – reflected the investigative process and that such findings were communicated as set out in the process as promulgated by the IPS.

6.8 In virtually all cases reviewed complaints of all categories were appropriately logged in the relevant prisons. Therefore, it was possible to ascertain the nature of the complaint from the brief description noted in the Complaints’ Journals maintained in all the relevant prisons.

6.9 In paragraphs 6.10 to 6.46, I set out, in broad terms, the results of my examination of the complaint files and the documentation relating to Categories A, B, C and D Complaints in the relevant prisons for the period set out above. I will deal with each category individually.

#### *Category A Complaints*

6.10 In my examination of the records in the six prisons, subject to this review, I found a total of 73 Category A complaints had been logged. Of the 73 complaints logged I found that the majority were categorised within time but of those categorised outside the IPS policy timeframe there were delays ranging in time up to nine weeks.

6.11 There was no documentation or incomplete files in respect of 23% of cases made available to me in the relevant prisons.

- 6.12 Timelines for completed investigations exceeded the IPS policy timelines in 38% of cases ranging in time from one month to 17 months.
- 6.13 In certain cases there was a delay in appointing ‘external investigators’ for up to three months.
- 6.14 In the majority of investigations the findings of Governors were not made or communicated to the relevant parties within the IPS policy timelines and in some instances not at all.
- 6.15 Other instances of concern included, *inter alia*, the following:
- (a) No evidence in the prison records made available to me that a complaint of alleged rape was referred to An Garda Síochána for investigation. No copy of the original complaint on the file. No investigation file available in the prison. Documentation available to my office indicated a premature closure of the investigation.
  - (b) An investigation file contained a letter to the Minister for Justice and Equality alleging an assault by a Prison Officer in which it was alleged that same was observed by an Assistant Chief Officer (ACO). Copies of letters in the prison file suggested that notification of this complaint was issued to IPS Headquarters and to the Inspector of Prisons. Both of these copy letters were undated and unsigned. On checking my records I am satisfied that no letter, notification of the complaint or a file relating to this serious allegation was received in my office.
  - (c) A complaint alleging verbal abuse, turning on lights at night and slamming doors was not investigated nor did my office receive notification of same.
  - (d) One complaint of alleged intimidation by a Prison Officer was never investigated.
  - (e) There was no evidence made available to me that a complaint of alleged assault by three officers was investigated yet there is a record in the

Complaint's Journal in the particular prison that the complaint was not upheld.

- 6.16 Of serious concern was/is that while in IPS Headquarters in June 2015 I discovered an original complaint form categorised as a Category A complaint alleging a serious incident which originated in one of the relevant prisons. This complaint had not been logged on the monthly returns from the prison. No explanation was offered as to the reasons for this or for the fact that the complaint had no file and did not appear to have been investigated.
- 6.17 Paragraph 13.1 of the 'Manual'<sup>10</sup> states that on completion of an investigation of a Category A complaint the relevant 'external investigator':

*"Must ensure that the final report, any interim reports and all evidence is sent to the Designated Officer on completion of the investigation. This must include the original copies of any statements or interview notes, any physical evidence, photographs, video or sound recording tapes and other records copied as part of the investigation".*

- 6.18 While in IPS Headquarters in June 2015, referred to in paragraph 6.16, I examined a sample number of files selected randomly from the Category A complaint files held by the 'Designated Officer'.
- 6.19 Following my perusal of such files I was satisfied that the files contained the reports of the relevant 'external investigators' together with supporting documentation as set out in paragraph 6.17 with the exception of CCTV evidence which I was informed was saved in electronic form.

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<sup>10</sup> Page 59

6.20 In the period under review the duties of the ‘Designated Officer’ included, *inter alia*, the following:

- “set the terms of reference;
- appoint the Investigator/s;
- ensure that the investigation is properly conducted, thorough and completed;
- be responsible for assessing/ensuring completion of items as relevant and listed on the quality assurance checklist in Appendix A, and,
- take receipt of the report on completion.

*The Designated Officer is therefore accountable for ensuring the competence of the investigator/s and for the quality of the report”.*

6.21 The ‘Manual’ explains, under the heading – *Aim of this Framework*:

*“The purpose of an investigation under the complaints policy shall be to advise whether there are grounds for the complaint and to make recommendations on the future management of such complaints or their subject matter”.*<sup>11</sup>

6.22 Rule 57B(10)(b) of the *Prison Rules (Amendment) 2013* provides:

*“The Governor.....shall make his or her findings on the basis of the report that:*

- (i) there are reasonable grounds for sustaining the complaint,*
- (ii) there are no reasonable grounds for sustaining the complaint, or*
- (iii) it has not been possible to make a determination as set out at (i) or (ii) above*

*and may state the reasons for his or her findings”.*

6.23 Rule 57B(10)(b) of the *Prison Rules (Amendment) 2013* anticipated that the Governor might take matters other than those in the ‘external investigators’ reports into consideration when making his/her decisions and findings as it went on to state:

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<sup>11</sup> Section 10 – page 39 of the ‘Manual’

*“The finding and decision of the Governor.....shall be documented and if any matters not in the report are taken into consideration for the purpose of deciding what action shall be taken those matters shall be referred to in the documentation”.*

6.24 In the vast majority of cases examined Governors were presented with the ‘external investigators’ reports which included an executive summary. However, it appears that the supporting documentation referred to in paragraph 6.17, while retained by the ‘Designated Officer’, was not automatically made available to Governors.

6.25 Therefore, in virtually all cases Governors made their decisions and findings, where such were made, on the basis of the ‘external investigators’ reports without the supporting documentation and CCTV evidence (where relevant).

6.26 Therefore, without complete investigation files Governors, in the main, were not in a position to:

- ensure that the investigations were properly conducted, thorough and complete;
- test the basis of the ‘external investigators’ conclusions against the evidence;
- bring to the process any other evidence or knowledge that might be in their possession.

6.27 In reality the decisions and findings of Governors were really those of the ‘external investigators’.

6.28 I identified this deficiency in the proposed adjudication process to be embarked on by Governors prior to the rolling out of the Complaints Procedure in June 2014 and informed the IPS of my concerns in this regard. I pointed out that the procedure whereby Governors were making decisions, during the *ad hoc* period, on complaints by prisoners based solely on the narrative reports of ‘external investigators’ could not be considered as being objective and would not bear scrutiny. I stated:

*“Reports should contain all statements taken in the course of the investigation, all reports relied on in the course of the investigation, all forensic evidence examined by the investigators and all CCTV looked at.... From the above you can see that the Governor, in coming to his/her decision, must be able to satisfy himself/herself that the report reflects the evidence gathered. In certain cases the supporting evidence may not support the conclusions of the investigators”.*

- 6.29 Of serious concern is the practice whereby Governors in all prisons, when making findings which are addressed to complainants, use formulas of words such as:

*“The investigation was comprehensive and thorough and the investigation report reflects the in-depth nature of this independent examination”, or*

*“The investigation conducted was comprehensive and thorough”.*

**Such formulas of words are misleading in that they suggest that the Governors have satisfied themselves as to the comprehensiveness and thoroughness of the investigations when in fact, in the majority of cases, this is not the position as they have not had access to the material referred to in paragraph 6.17.**

#### *Category B complaints*

- 6.30 In our examination of records in the six prisons, subject to this review, I found a total of 78 Category B complaints had been logged. The substance of the complaints ranged from allegations concerning xenophobic abuse, intimidation, discrimination, unfair treatment, victimisation, abusive behaviour to verbal abuse of a prisoner. **Many of these complaints could not be said to fall within the IPS definition of Category B complaints referred to in paragraph 3.17,** rather, they should have been categorised as Category A complaints to comply with the IPS definition of Category A complaints referred to in paragraph 3.12 and investigated accordingly.
- 6.31 Of the 78 complaints logged there were no or incomplete files in 100% of cases in one prison and in 66% in another prison.

- 6.32 In a significant number of cases, where files were available, the investigative process was unsatisfactory in that, *inter alia*, relevant statements were not on file; prisoners were transferred to other prisons prior to investigation with the result that investigations did not take place; in certain cases the record states ‘left open’; the timelines supported by documentation referred to in paragraph 3.19 were not adhered to; some complaints were shown as ‘upheld’ with these files marked as ‘completed’ when in fact the issue(s) which prompted the complaint had not been remedied.
- 6.33 In numerous cases the investigative procedure appeared deficient in that proper procedures do not appear to have been followed. Prepared statements appear to have been accepted at face value; potential witnesses not interviewed; all relevant CCTV appears not to have been viewed in numbers of cases.
- 6.34 In the majority of investigations findings were not made or communicated within the IPS policy timelines and in some instances not at all.
- 6.35 Other instances of concern included, *inter alia*, the following:
- (a) A complaint form presumably completed by a prisoner but not dated came to light in a particular prison three months after the release of the prisoner. There was no explanation for this occurrence;
  - (b) No evidence available to me to indicate that an investigation had taken place subsequent to a Solicitor writing to a Governor alleging xenophobic abuse by a prison officer of the girlfriend of a prisoner during the course of a visit and asking that the matter be investigated;
  - (c) In another case no evidence was made available to me to suggest that an assignment of a complaint had been made or that an investigation had taken place although there was a statement from a prison officer on the file.

*Category C complaints*

6.36 I have already stated at paragraph 3.23(a) that Category C complaints may be made informally or formally on a complaint form. The only Category C complaints that I was provided with documentation for appear to be those where complaint forms were submitted by prisoners. Such complaints would fall into the category of formal complaints. I was not provided with records to show that informal complaints were made. Therefore, I am not in a position to say if the numbers of Category C complaints, as examined by me in each prison, represent the total number of complaints as I could only examine the formal complaints where complaint forms had been filled out by complainants.

6.37 I should again, at this juncture, like to draw attention to paragraph 3.23(e) where I stated:

*“A senior Chief Officer in the prison shall maintain constant oversight of the Category C complaints procedure and shall take immediate action to resolve any matters outstanding in excess of 48 hours”.*

6.38 The Category C complaints examined were basic service level complaints which covered a wide range of issues including delays in receipt of mail, faults such as broken cell lights to missing property and legal correspondence being opened.

6.39 In our examination of records in the six prisons, subject to this review, I found that a total of 371 Category C complaints had been logged. However, of the 371 complaints logged there was no documentation and/or incomplete files in respect of 39% of complaints. One prison had logged 115 Category C complaints for the period under review but files were incomplete in respect of 82% of these complaints with no evidence to show that the complaints made had been assigned to a Class Officer for investigation and/or indeed investigated.

6.40 Prison records referred to in paragraph 3.23(c) and (d) were not readily available.

6.41 Because of the deficiencies identified in paragraphs 6.36 and 6.39 it appears that a Chief Officer in the prisons under review did not maintain constant oversight of the Category C complaints procedure referred to in paragraph 3.23.

*Category D complaints*

6.42 In paragraph 6.4, I stated that 34 Category D complaints had been logged in the prisons during the relevant period.

6.43 I made clear in my '2012 Report' (referred to in paragraph 2.16 of this Report) that complaints alleging inability to access medical services or the failure to implement directions from the medical services should not fall to be investigated under this category. I also stated that complaints alleging professional misconduct should not fall to be resolved as part of a prisoner complaints procedure.

6.44 I examined the Category D complaints logged as referred to in paragraph 6.4 and concluded that the investigation of Category D complaints appeared to be misdirected in the majority of cases. The majority of cases were categorised 'medical' when in truth they had little to do with unprofessional medical treatment. In the main, they referred to complaints that prisoners were not on the list to see the doctor, did not get their medication in time, were not brought to hospital on time, to name but a few. These cases had nothing to do with unprofessional medical treatment. The vast majority of such complaints should have been categorised as Category A, B or C complaints and investigated as such.

6.45 At this juncture I would like to point out that even where there may be *prima facie* evidence of professional misconduct at a low level the step of referring such complaints directly to the relevant professional body elevates the resolution of such complaints to a level higher than in ordinary society. Similar processes should be in place in prisons as are in the community as a whole.

6.46 For the reasons set out in paragraph 6.44, I have not examined these Category D complaints in detail and they do not form part of my evaluation and analysis of the operation of the present Prisoner Complaints Procedure save that I give the number of such complaints.

(B) **Examination of the monthly returns from six prisons of complaints logged, of ongoing investigations and of investigations ‘closed off’ in the period 1 February 2015 to 1 August 2015**

- 6.47 My rationale for engaging in this examination was to ascertain if, following my examination of the documentation in the relevant prisons referred to in paragraphs 6.2 to 6.46, an improvement in adherence to IPS policy timelines was evident in the investigative process in each of the relevant prisons.
- 6.48 This was a desktop exercise. It was, by its nature, inexact which if taken in isolation could not be used to draw conclusions from its findings. However, taken together with my examination of the documentation referred to in paragraphs 6.2 to 6.46 it is useful as corroboration when evaluating and analysing the operation of the present complaints process as detailed in Chapter 7.
- 6.49 It was agreed in consultation between the ‘Designated Officer’ and my office that each prison would submit to my office monthly returns of complaints logged. Such monthly returns were not being submitted by a number of prisons. The matter was discussed at a meeting in Irish Prison Service College (IPSC) on 9 October 2014 attended by senior management of IPS Headquarters, an official from my office and me when it was agreed that henceforth monthly returns would be submitted in an agreed format the template for which was drafted by my office and agreed at the meeting. The information to be included in these returns comprised, *inter alia*, the name of the complainant (prisoner), the date of the complaint, the nature of the complaint, the category of the complaint, the status of the investigation of the complaint and the progress/outcome of the investigation.
- 6.50 On examination of these monthly returns for each of the six prisons subject to this review I found the information provided unreliable. There were months when I received no monthly returns from some prisons. I found returns partially completed with some complaints having a resolution date which preceded the date the complaint was made. Consequently where a resolution date was not entered in these returns or where it preceded the complaint date it was obviously not possible to determine if the

complaints in question were completed within the IPS policy time limits or indeed ever investigated.

6.51 In returns where the resolution dates were provided it was clear that those charged with the investigation of complaints failed, in a very high percentage of cases, to complete the investigations within the time lines set out in the 'Manual' and/or 'Policy Document'.

6.52 Some Category B and C complaints, which should have been completed within 28 days and 24 hours respectively, did not appear to have been categorised and/or assigned to an Investigating Officer in a timely fashion or indeed investigated at all.

(C) **Deficiencies in the complaints system as identified by the Irish Prison Service**

6.53 Following my examination of the relevant documentation in all prisons as referred to in paragraphs 6.2 to 6.46; I wished to ascertain the views of the IPS in relation to the operation of the complaints process. In June 2015, I and one of my External Experts met the 'Designated Officer' in IPS Headquarters in Longford. He was generous with his time and answered all our questions. He, as the senior official of the IPS Headquarters management team with responsibility for the complaints procedure, identified what he saw as deficiencies in the system as follows:

- (a) In Category A complaints the Governor of the Prison is effectively in charge of the investigation up to the time that the 'external investigator' appears in that he/she has a statutory obligation to harvest evidence such as CCTV, have the prisoner medically examined, photographed etc. The CCTV harvested is that which is considered relevant by the prison. By the time the 'external investigator' gets to the prison the CCTV, in certain cases, may be over written and witnesses may not be readily available.
- (b) In Category A complaints if Governors do not categorise complaints within the time allowed, do not harvest evidence as required by the Prison Rules or do not make findings within the IPS policy time limits there is little that IPS Headquarters can do except e-mail the relevant Governors to advise them

that they are in default. There are no effective sanctions available to ensure compliance by Governors with legislation, agreed protocols or policy determined by the IPS.

- (c) As it is the individual Governor's responsibility to issue his/her findings in Category A investigations the input into such investigations by IPS Headquarters is limited to checking the 'external investigator's' report for any obvious omissions and highlighting any issues that need to be addressed. IPS Headquarters does not interfere with the findings in the 'external investigators'' reports or advise specific avenues for investigation. On occasions where 'external investigators' reported that they had not interviewed some specific staff but were of opinion that, as they had interviewed a number of staff and viewed CCTV and that in their opinion there was no added benefit in delaying the report until the specific member could be interviewed IPS concurred with this opinion.
- (d) IPS Headquarters was/is available to assist and advise all Governors and Complaint Liaison Officers<sup>12</sup> (CLO) on managing the complaints procedures for all categories. This entailed training for CLOs, Chief Officers and Administrative Support Officers highlighting issues which could have common application across all prisons and highlighting and advising on what could be considered best practice. As the actual complaints procedures for these categories are managed at prison level IPS 'oversight' is limited and does not extend to actually managing the process in each individual prison.
- (e) When reports on Prisoner complaints are compiled for meetings of the Directors of the IPS all that is included is the number of complaints logged in any particular period and the number of complaints closed off. For the reasons set out at (a) to (d) above details of the complaints, of the

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<sup>12</sup> The role of the Complaints Liaison Officer is set out in Appendix G of the Management of Prison Complaints Manual. His/her duties include, *inter alia*, having overall responsibility for the efficient and effective operation of the complaints procedures in prisons, being familiar with and ensuring compliance with all procedures laid out in Prison Rules 2007 (As Amended), IPS Complaints Policy and any other policies and manuals relating to Complaints procedures.

investigations or the adequacies or inadequacies of the investigative process are not given.

- (f) For the reasons set out at (e) above the IPS is unable to identify emerging problems in a particular prison.
- (g) There is an urgent need for quality control in the complaints system and a need for compliance checks in all of the prisons. However, under the present system, even if compliance checks were carried out and deficiencies found there is no procedure to hold Governors to account. The only avenue presently open is to advise such Governors that they are not in compliance with their statutory obligations and/or their duties under agreed protocols.

6.54 The 'Designated Officer' informed me, following our meeting in June 2015, that –

*“As the actual policy was only issued in June 2014, I have allowed time for the system to become embedded, we had just commenced a review of all complaints in all prisons just before you commenced yours, I have felt it prudent to defer further reviews until yours was completed”.*

**(D) Views of those officers of all grades from Governor to Class Officer working in the system and in particular those charged with liaising with the investigative process and those carrying out investigations**

6.55 During the course of my review in the six prisons referred to in paragraph 6.2 it became apparent to me that numbers of officers of all ranks seemed confused as to what was required in the investigative process of prisoner complaints.

6.56 Therefore, I decided that I should seek the views of officers of all grades from Governor to Class Officer paying particular attention to the adequacy of their training, their understanding of their roles and any other observations relevant to their investigative processes.

- 6.57 I consulted widely to establish what training was provided to ensure the smooth introduction and effective implementation of the Prisoner Complaints Procedure.
- 6.58 I am advised by the IPSC that training was delivered by the Operations Directorate of the IPS to Prison grade staff including management. However, the Governors and Assistant Governors I spoke with stated that they had received no formal training of any consequence.
- 6.59 I understand that the new complaints procedure was placed on the agenda of an IPS meeting in the autumn of 2012 (while the procedure was being developed), attended by, *inter alia* senior management from IPS Headquarters and Governors where a presentation was delivered by a member of staff from the Operations Directorate giving an overview of the new complaints system. I am advised that concerns were raised at this forum by some Governors regarding the ability of local management to effectively implement the new complaints procedure as presented to them.
- 6.60 In most prisons, the Assistant Governor Grade has been assigned the role of CLO and those CLOs with whom I consulted have not received formal training for this role. However, following the roll-out of the Complaints Procedure some CLOs attended a one day overview course delivered by Officials from IPS Headquarters.
- 6.61 I consulted with a number of Chief Officers, from various prisons, who informed me that they received no familiarisation course or formal training in the implementation of the Prisoner Complaints Procedure. In fact they told me that they have to refer to the 'Policy Document' or the 'Manual' to familiarise themselves with the procedures when a prisoner makes a complaint and/or when they are asked to conduct an investigation into a prisoner's complaint. Furthermore, some stated that they were not clear as to what level of access should be afforded an 'external investigator' when seeking to view or copy a prisoner's file, operational or medical reports or view or take footage of CCTV etc.
- 6.62 I was told by some of these middle managers that the first they became aware of the new Complaints Procedure was when A3 posters, received from IPS Headquarters, were displayed for prisoners' information.

- 6.63 As there is a requirement on Class Officers to investigate Category C Complaints I also spoke to numbers of such officers many of whom perform supervisory duties. These officers informed me that they received no familiarisation or formal training in the Prisoner Complaints Procedure and were not familiar with what was/is required of them when/if a prisoner makes a complaint. They stated that they would either have to seek advice from their Chief Officer(s) or refer to the 'Manual' and/or the 'Policy Document' if asked to deal with a prisoner's complaint. Similar to the middle management they stated that they also only became aware of the new Complaints Procedure when posters were displayed for the prisoners' information.
- 6.64 A number of prison officers consulted had formed the view that the Prisoner Complaints Procedure is unfair. When probed they stated that they were aware of situations where relevant information/evidence such as CCTV footage was withheld from colleagues and they felt this to be unfair as it did not afford those accused the opportunity to offer a full explanation for their action on the day. Most had formed the view that the process was more favourable to the prisoner than to the Officer but all acknowledged that they had formed this view due to the fact that they were '*afraid of the process*' as they never received any form of training or explanation as to how the process was expected to operate.
- 6.65 A Prison Administrative Support Officer (PASO) in most prisons has been designated responsibility for the recording of all complaints and for submitting the completed complaint documentation to IPS Headquarters.
- 6.66 I was informed that the PASO grades received one days training, delivered in May 2015, which gave the background leading to the introduction of the Complaints Procedure and an overview of the procedure. I was informed that the training was delivered by staff from the Operations Directorate of IPS Headquarters. I was further informed that the attendance at this training day was not confined to the PASO grade but was also attended by a small number of other grades including Governors and Assistant Governors. I was further informed that the main topic concentrated on the reasons for the introduction of the system with no opportunities for the sharing of experiences and/or issues being encountered by staff in the operation of the system.

The feedback I received was varied from *'the briefing being informative'* to *'I was more confused coming out than I was going in'*.

(E) **Views of 'external investigators'**

6.67 I sought the views of the 'external investigators' appointed by the IPS to investigate Category A Complaints on such matters as the adequacy of their training as investigators, their understanding of their role and any other observations relevant to their investigative processes.

6.68 A number of 'external investigators' expressed themselves happy with their role. However, the following serious concerns were raised with me:

- (a) The inadequacy of their training. Their understanding was that there would be ongoing training, that guidance would be given and that there would be information sharing. However, apart from initial training they were only afforded one further half day's training.
- (b) Prison Governors seemed to lack commitment to the Complaints Procedure and delegated their responsibilities to more junior staff who had either no or inadequate training and who lacked an appreciation of what was required of them.
- (c) 'External investigators' were not in control of the investigations in that on many occasions when officers were scheduled to be interviewed they were not available for varieties of reasons including that they had swapped shifts or that they could not be released from their duties to be interviewed. In many instances the 'external investigators' were left waiting for considerable periods to interview officers.
- (d) Prisoners (complainants and potential witnesses) were transferred to other prisons or released prior to interview without notice to the 'external investigators'.
- (e) Access to records, photographs, incident manuals and CCTV not always afforded to the 'external investigators'.

- (f) Failure of prison Governors to comply with statutory obligations.
- (g) Obstruction by Association Representatives of the interviewing process by such as insisting that an officer could not be interviewed until briefed by the Association Representative or by interruption when officers were being questioned.
- (h) A failure to inform 'external investigators' of change of senior personnel in IPS Headquarters that 'external investigators' report to.
- (i) An erroneous belief, not corrected by senior officials in IPS Headquarters, that 'external investigators' were responsible to the Inspector of Prisons for the conduct of their investigations.
- (j) A belief by the 'external investigators' that they were in sole charge of all Category A investigations and that in the absence of an appeal their decisions were final and not subject to further findings on the part of Governors. 'External investigators' were unaware of their role whereby they were to collect the evidence but it was for Governors to make findings and decisions.

6.69 In paragraph 6.68(a), I referred to the observation of certain 'external investigators' to the effect that the training afforded to them was inadequate.

6.70 I was informed that in October 2012 the Category A 'external investigators' were provided with a three day training course on the new prisoner complaints system. Training on one of the three days was jointly delivered by personnel from the IPSC and representatives from IPS Headquarters Corporate Services and Operations Directorates. I am advised that this training day covered, *inter alia*, the scope of the Investigators' Responsibilities, Timelines to complete investigations, Culture of the Organisation, Prison Rules, Staff Duties and Responsibilities.

6.71 I was also informed that training on the other two days was delivered by an external Training Provider which concentrated on '*Best Practice in the Investigation of Prisoner Complaints*'. I am advised that modules including: Fair Procedure, Natural Justice, Conducting Interviews, Questioning Skills, Barriers to Interviewing,

Investigation Skills, Note Taking, Writing Statements and Investigation Reports formed part of such training. I am also advised that the External Trainer gave examples of case law in the area.

6.72 A number of the ‘external investigators’ with whom I consulted stated that the training provided was inadequate for a number of reasons:

- The substantive training, referred to in paragraph 6.71, as delivered by the External Training Provider, was delivered prior to the roll out of the *ad hoc* Complaints Procedure which came into operation in January 2013 and apart from one further half day’s training no other training was provided either prior to the roll out of the present procedure on a formal basis on 16 June 2014 or thereafter;
- The composition of the ‘external investigator’ group varied greatly in that some had previous extensive investigative experience while others had absolutely no such experience;
- For a new initiative it was felt that the group was too large (over 20) and should have been split;
- Given the varied skill sets and backgrounds of the ‘external investigators’ the view was that the course could perhaps have been better tailored to cater for the diversity of those attending and that the two days training on ‘*Best Practice in the Investigation of Prisoner Complaints*’ was not sufficient; and
- Refresher training should have been provided periodically.

6.73 The general view of the ‘external investigators’ consulted was that the material provided by way of ‘hand out’ was a helpful guide, particularly the External Providers’ material.

6.74 Having viewed the documentation presented to the ‘external investigators’ by the External Provider I am satisfied, given the diverse backgrounds of the ‘external investigators’ and the fact that the Prisoner Complaints Procedure was a new initiative, that the two days allocated to deliver its contents was totally inadequate

particularly to those who had no prior experience in conducting investigations, taking statements and compiling reports.

6.75 The current ‘Policy Document’ and ‘Manual’, finalised by the Operations Directorate of the IPS after the training referred to in paragraphs 6.70 and 6.71, are cumbersome documents which are not designed for practical application. They are confusing. In certain areas the ‘Manual’ contains duplication in the numbering of sections and in the numbering of pages.

**(F) Views of the Representative Associations**

6.76 The views of the Representative Bodies were sought.

6.77 The Association for Higher Civil and Public Servants (AHCPS) represent the Governor grades (Campus Governor, Governor 1, 2 and 3). This Association provided the following observations on the complaints procedure as is currently operated in the IPS.

6.78 The AHCPS state that as a general principle the Governor Branch of the AHCPS support a prisoner complaints procedure and believe a “*complaints process is necessary for vindicating the rights of people within the prison community*”. However, they highlighted “*a number of recurring issues*”, these include:

- Poor communication and lack of Training;
- Lack of adequate Resources;
- Standardisation required;
- Lack of discretion on the part of the Governor;
- Complete investigation file of Category A complaints not provided to Governors;
- Fair procedure.

6.79 The AHCPS state that “*the process was introduced without explanation to staff of what it is trying to achieve, this lack of communication has undermined the process*”

*from the beginning*". It is their view that *"as staff were not adequately informed of the benefits of the process"* it has resulted in *"rumour and speculation"*.

- 6.80 The AHCPS state that their representatives have *"experienced problems"* with IPS HQ as headquarters staff *"have failed to answer questions or deal with issues"* but the Association went on to state Governors believe that this lack of engagement is due to the absence of training on *"the operation of the complaints process"*.
- 6.81 The opinion of the AHCPS is that *"the system was introduced without any plan for the resources required to operate it"*. They believe that little consideration was given to a standardised process in relation to matters such as - *"Where are the journals kept"? "Who is responsible for what category"? "What time is allotted for the management of the process"?* The lack of consideration on these issues has, in the view of the Association, resulted in the complaints system not being *"uniformly maintained across the prison estate"*. Similarly, it is the view of the AHCPS that the approach taken by the external investigators *"is not a universal"* approach in the management of category A complaints.
- 6.82 The AHCPS also contend that currently *"there is no discretion for Governors in relation to processing category A complaints"*. Governors feel that both themselves and middle management are *"limited in their options"* to deal with staff members if a complaint is upheld. They highlight that the only option is to commence a disciplinary process under Disciplinary (Code for Officers) Rules which they state is *"a large hammer to crack a small nut in many cases and therefore category B complaints may be less likely to be upheld for this reason"*.
- 6.83 The AHCPS went on to point out that *"when a governor is making their determination they have only received an abstract of the investigator's file"*. The Governor does not know *"the questions asked or answers given, who was interviewed and when or whether the issue was fully investigated"*.
- 6.84 It is also the view of the Association that the current process is *"too cumbersome and time consuming"* and is adversely impacting on members on *"tackling the very issues and cultures which the complaints process sets out to address"*. Concern was also

expressed at the length of time some investigations are taking to complete which, they state, is not acceptable stating that “*Justice delayed is justice denied*”.

6.85 It is suggested by the AHCPS that “*an IT based recording system should be explored*”.

6.86 The Prison Officers’ Association (POA) represent the majority of the operational staff from PASO up to Deputy Governor, including Nurse Officers. This Association reverted with views relating to:-

- Vexatious Complaints;
- Disclosure of basis of complaint;
- Preliminary Investigation;
- Investigation following withdrawal; and
- Training Requirements.

6.87 The POA state that they “*always supported the concept of a proper prisoner complaints process*” but are of the view that the “*process in its present format is not robust enough to either eliminate or reduce*” the possibility that some prisoners make “*vexatious or spurious*” complaints. It is the view of the POA that an ‘external investigator’ should have an option to reach a conclusion on whether or not a complaint is ‘*vexatious*’ and on conclusion of an investigation an Officer “*should receive a copy of the Investigator’s Report*”.

6.88 The POA contend that the Prisoner Complaints Procedure is not transparent in its current operation. It is the view of the POA that full details upon which a complaint is based should be made available to those they represent “*at the commencement of an investigation*”. They state the accused officers “*are not being given the basis of the prisoner’ complaint*” as “*officers are only given the section of the complaint that refers directly to them*”.

6.89 It is the view of the Association that the Governor, prior to categorising a complaint as Category A, should arrange for “*a preliminary local investigation*” to satisfy

himself/herself that the complaint is appropriately categorised. They state that *“in a number of cases there are clearly no grounds for proceeding to a Category A investigation”* but the Association has been informed that *“Governors are constrained in exercising discretion in this regard arising from oversight from IPS and the Inspector of Prisons”*.

6.90 The POA contend that where a prisoner voluntarily wishes to withdraw a complaint the investigation should cease.

6.91 Since the formal introduction of the Prisoner Complaints Procedure the POA asserts that *“Prison Officers have not received any training in the practical application of this process”*. The Association holds the view that the ‘Manual’ *“is not fit for purpose”*. It feels that this process was rolled out *“in a haphazard manner without full training and information being given to all stakeholders”* and as a result the implementation of same across the prisons is *“inconsistent”* which has resulted in *“a loss of confidence”* in the process.

6.92 The POA also expressed concerns about the lengthy delays in administering the process which, they state, is unfair to an accused officer who is expected to recall specific events which occurred months earlier and without access to *“CCTV to refresh their memory”*.

6.93 The POA concluded their submission with the following – *“any future model would have to have the principles of fair and fast procedures for our members at its forefront”*.

**(G) Views of prisoners**

6.94 I spoke to a wide range of prisoners in all prisons – not only those in the six prisons referred to in paragraph 6.2.

6.95 I sought the views of prisoners who had availed of the prisoner complaints process.

6.96 The majority of those prisoners referred to in paragraph 6.95 expressed negative comments of which the following are a flavour:

- *“They always back one another up”;*
- *“I told them ‘twas on the camera”;*
- *“Why didn’t they ask me friend – he seen what happened”;*
- *“The officer said ‘they’ll never believe you your only a scumbag”;*
- *“I was told to drop the complaint unless I wanted to be sent to (named prison)”.*
- *“I told them to take photos but none were took – the photos would have proved I was right”.*

6.97 Prisoners throughout the prison estate articulated a wide variety of concerns regarding the Prisoner Complaints Procedure. The main concerns of prisoners can be summarised as follows:

- They have no confidence in the system;
- They are ‘encouraged’ not to make complaints;
- They are ‘encouraged’ to withdraw complaints already made;
- They perceive that they will be at a ‘disadvantage’ in the prison if they make complaints;
- They fear that they will be transferred to another prison if they make complaints;
- In serious cases they fear for their safety;
- They fear that they will not be protected if they make complaints;
- They fear that they will not be given temporary release if they make complaints.

6.98 I am satisfied that some or all of the reasons referred to in paragraph 6.97 are, not alone, genuinely held concerns but are real and substantial concerns of a significant majority of the prison population.

**(H) My observations of the complaints process**

6.99 I was very surprised to hear during this Review that Prison Officers and some middle management thought the Prisoner Complaints Procedure was introduced and managed by my office. Many of these staff also believed that I selected the ‘external investigators’ and that the latter were under the auspices of my office and therefore appointed by me to investigate prisoner complaints.

6.100 There is also a perception amongst a large percentage of staff that I am only interested in engaging with prisoners and not open to hearing from staff – neither of which is correct.

6.101 Some officers were aware that IPS Headquarters are informed when a prisoner makes a complaint but these officers thought that this reporting was for information purposes only. They were not aware that the IPS is responsible for the management of the Prisoner Complaints Procedure.

6.102 In the course of visiting prisons and having oversight of the prisoner complaints process I have been able to corroborate the views of many of the stakeholders of the deficiencies referred to in this Report and in particular the following:

- Inadequate training for all;
- Lack of appreciation of the respective roles of the stakeholders;
- A suspicion that fair procedures are not adhered to;
- Lack of direction from the senior management of IPS Headquarters; and
- Feeling of isolation on the part of officers.

6.103 In addition to my corroboration of the views of the stakeholders referred to in paragraph 6.102 it was also apparent that the complaints process, as a whole, was not afforded the attention that it should have received by the senior management of IPS Headquarters or by the Governors. This apparent lack of attention on the part of senior management has been well ventilated in this report. However, in my view, this does not absolve Prison Governors from complying with legislation, agreed protocols or policy determined by the IPS.

- 6.104 An example of the difficulties being encountered by staff ‘on the ground’, as relayed to me, is illustrated in the following scenario where an Assistant Governor, being the designated Governor in charge of the complaints process in one prison, having asked for guidance from IPS Headquarters in categorising a particular complaint was advised in the following terms – *“is the Governor not supposed to categorise”*.
- 6.105 An example of a Prison Governor failing to comply with agreed protocols or policy determined by the IPS is illustrated in the following scenario where the Governor of one of the prisons referred to in paragraph 6.2 failed, over a considerable period of time, to comply with his obligations under Paragraph 4 of the ‘Policy Document’ referred to in paragraph 3.6(a) and (b) **in that complaint boxes were not emptied on each working day and complaint forms brought to a central location**. In this case the documentation available in the prison is to the effect that in the period 1 August 2015 to 1 January 2016 the complaint boxes, which numbered 21 in the prison, were emptied nine times. I was informed that at times complaints are collected but not recorded due to pressure of work and that – *“trying to get people to collect the complaints”* is an ongoing difficulty.

## Chapter 7

### **Evaluation and analysis of the operation of the present Irish Prison Service Prisoner Complaints Procedure**

- 7.1 The Prisoner Complaints structure, while grossly deficient in many areas, represented a process which, if followed diligently, should have satisfied most of the requirements of a trustworthy Prisoner complaints process with the exception of the external element referred to in paragraph 7.3.
- 7.2 However, Chapter 6 of this Report reveals a litany of failures, at all levels of the IPS (Senior Management in IPS Headquarters, Governors, Chief Officers and others), to adhere to statutory obligations and/or defined duties under agreed protocols for the investigation of Categories A, B and C complaints. Such failures have rendered the present operation of the Prisoner Complaints Procedure ineffectual. The process does not have the confidence of complainants (prisoners), of prison staff or the general public.
- 7.3 This Report highlights a lack of external independent involvement in the complaints process for all categories of complaints whereby complainants (prisoners) whose complaints have been rejected or not dealt with within time could have recourse to an external independent person or body that would have relevant powers in this regard.
- 7.4 Senior management of IPS Headquarters appeared to fail to understand the importance of providing appropriate training, guidance or mentoring for those tasked with implementing, managing, overseeing, supervising and/or auditing the process.
- 7.5 The failures, at all levels in the IPS, referred to in paragraphs 7.2 and 7.4 can only suggest the absence of a functioning line management structure at every level in the IPS.
- 7.6 There is not a common understanding of the rules of fair procedure by many of those involved in the complaints process.

- 7.7 There is a perceived lack of accountability at all levels.
- 7.8 It might be argued that the deficiencies identified in this Report could be addressed by training and changes to legislation.
- 7.9 It is true that deficiencies in processes, in general, might be addressed by training and changes to legislation. **However, having taken all matters into consideration I am satisfied that, as presently operating, the Irish Prison Service does not seem capable of exercising operational control of a complaints system which should be robust, fair and have the confidence of staff, prisoners and the general public.**

## Chapter 8

### Recommendations

#### Recommendation 1

**Prisoners must be entitled, subject to Recommendation 3, to bring complaints before a judicial or other authority.**

#### Rationale

The most recent authority which supports this recommendation is contained in Rule 57(1) of the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>13</sup> which states:

*“Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority”.*

This right to appeal to an external independent authority is not a new concept.

Rule 36(3) of the Standard Minimum Rules for the Treatment of Prisoners<sup>14</sup> states:

*“Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels”.*

Rule 70(3) of the European Prison Rules<sup>15</sup> states:

*“If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority”.*

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<sup>13</sup> Adopted unanimously by the UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015.

<sup>14</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>15</sup> Recommendation Rec (2006) 2 of the Committee of Ministers to the Member States adopted by the Committee of Ministers on 11 January 2006 at the 952<sup>nd</sup> meeting of the Ministers’ Deputies,

In September 2010, I drew attention to those prisoners' rights set out above provided for under Rule 36(3) of the Standard Minimum Rules for the Treatment of Prisoners and Rule 70(3) of the European Prison Rules in paragraphs 3.6 and 3.5 respectively of my '2010 Report'.

## **Recommendation 2**

**The 'judicial or other authority' referred to in Recommendation 1 should be the Ombudsman.**

### Rationale

It is, of course, a matter for the Minister to decide on an appropriate model as the external element in a proper, functioning prisoner complaints process.

I examined the 'external element' in prisoner complaints processes in other jurisdictions.

In the jurisdictions examined the external element in the prisoner complaints procedure was a Prisoner Ombudsman (Northern Ireland), Prisons and Probation Ombudsman (England and Wales) while in Scotland, the role is undertaken by the Scottish Public Services Ombudsman. This latter model is common in most European States. The Ombudsman for Children already deals with complaints about Child Detention Centres in Ireland.

It could be argued that an office of Prisoner Ombudsman might be created in this jurisdiction similar to that in Northern Ireland. In Northern Ireland historical issues around imprisonment meant that new initiatives had to be brought forward.

In Northern Ireland the Prisoner Ombudsman is also tasked with the investigation of deaths of prisoners who die in prison custody. The Inspector of Prisons carries out such investigations in this jurisdiction.

The Office of the Ombudsman was established by the Ombudsman Act 1980. Successive holders of this office have demonstrated their independence and their ability to carry out far reaching and complicated investigations. The independence of the Ombudsman is underpinned by the fact that he/she reports to the Oireachtas. There is a well defined structure in the Office of the Ombudsman and the reports of the Ombudsman are published.

In view of the above I am satisfied that the Ombudsman is well positioned to provide the ‘external element’ in the prisoner complaints investigative process and would meet the definition of ‘other authority’ set out in Rule 57(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

If this recommendation is accepted it can be implemented through a Statutory Instrument laid before the Oireachtas by the relevant Minister (currently the Minister for Public Expenditure and Reform).

### **Recommendation 3**

**Prisoners, except in the event of undue delay in the investigation of their complaints, must exhaust the internal prison complaints’ procedure prior to bringing their complaints before a judicial or other authority (Recommendation 1).**

#### Rationale

It would be simplistic, as has been suggested to me during the course of this review, that responsibility for the investigation of **all** prisoner complaints should be vested in an independent external agency. This would ignore the basic facts of prisons and prison life.

Prisons are responsible for their prisoners. This responsibility cannot be removed.

In other jurisdictions examined such as England and Wales, Scotland and New Zealand prisoners must exhaust the internal prison complaints mechanisms prior to seeking relief from an external agency. In Northern Ireland, where there is a dedicated Prisoner Ombudsman, prisoners must also exhaust the internal prison complaints mechanism prior to seeking relief from the Prisoner Ombudsman. It is clear from an examination of these jurisdictions that comprehensive, clearly understood rules and guidelines are set out in published protocols for the internal (prison) investigation of all prisoner complaints.

Where undue delay is experienced by the complainant (prisoner) in the investigative process such delay becomes the complaint which can be brought before the external agency.

In certain jurisdictions the internal complaints process can be twofold – the initial investigation of the complaint followed by an internal appeals mechanism. While there are arguments to be made for the twofold internal process I consider that, in an Irish context, the prisoner should have recourse to the external element of the process having exhausted one internal process.

Therefore, prisoners must exhaust the internal prison procedure for the investigation of their complaints before having recourse to the external element being the Ombudsman if Recommendation 2 is accepted.

In Recommendations 4, 5 and 6, I seek to give guidance on the broad structure of the internal prison procedure for the investigation of prisoner complaints. My suggestions are based on my experience and on my oversight of the present complaints procedure.

#### **Recommendation 4**

**Complaints might be categorised as either Category A (‘serious’) and Category B (‘minor’) complaints for investigation internally in the prison system.**

##### Rationale

I appreciate that it is for the Minister, the Department and the Irish Prison Service to bring forward an internal prison complaints procedure. This recommendation is offered as one suggestion which should be considered.

An argument could be made that all complaints could be investigated internally in prisons using a similar investigative process. However, this in my view, would be to disregard the fact that there is a vast difference in the spread of complaints from the minor which should, in all cases, be dealt with expeditiously and at the lowest level to those, of a serious nature, which require in-depth investigation.

If my analysis is accepted complaints categorised, at present, as falling within the definition of Category A complaints referred to in paragraph 3.12 should be investigated as Category A complaints. Complaints categorised, at present, as falling within the definition of Category

B, C and E complaints referred to respectively in paragraphs 3.17, 3.21 and 3.26 should be investigated as Category B complaints.

All complaints must be thoroughly investigated within defined time limits which must, except in exceptional circumstances, be strictly adhered to but such time limits must also be reasonable having regard to the peculiarities of 'prison life'.

### **Recommendation 5**

**A robust investigative mechanism must be put in place, in prisons, to ensure the proper investigation of Category A complaints.**

#### Rationale

It is for the IPS to put in place a mechanism to ensure the proper investigation of Category A complaints. However, no matter what mechanism is put in place the **Governor of the Prison**, or preferably a Governor of equal or higher rank from another prison (to ensure greater transparency), must, in making findings ensure that he/she is satisfied that he/she is in possession of all of the evidence. The Governor must also be satisfied that any investigation/s has/have been robust, thorough, and transparent and carried out in accordance with the principles of fair procedure. Finally, the Governor must make findings based on the evidence and in accordance with the principles of fair procedure.

Under the present system the Director General appoints 'external investigators'. These investigators are drawn from the private sector and as such are 'part time'. Their integrity is above reproach.

In a spirit of helpfulness I offer the following based on my evaluation and analysis of the present system.

It is important that investigations into serious Category A complaints should not be dependent on the availability of part time personnel.

Therefore, a panel of investigators, specifically trained, should be set up within the Irish Prison Service who would be on hand to commence an immediate investigation. Investigators assigned to this panel should be independent of operational staff.

Investigations should be under the direction a Governor not below the rank of Assistant Governor. This Governor must adopt a ‘hands on’ approach to all aspects of the investigation. Such Governor should have available to him/her those investigators referred to in the preceding paragraph to carry out such investigations or parts thereof on his/her behalf should he/she consider this necessary.

Training of investigators is a specialist task which should be provided by experts. Ongoing refresher training should also be provided by such experts for the investigators. In Recommendation 11, I refer to the broader issue of training.

‘Fair procedure’ must be observed in all instances. I refer to the concept of ‘fair procedure’ in Recommendation 10.

The ‘Designated Officer’ should maintain constant oversight of the internal prison Category A complaints procedure and should advise the Director General of any failures in the procedure in order that such failures might be addressed in the appropriate forums. I refer to this in greater detail in Recommendation 13.

## **Recommendation 6**

**Category B complaints should be resolved at the lowest possible level.**

### **Rationale**

It is for the IPS to put in place a mechanism to ensure the proper investigation of Category B complaints. The majority of prisoner complaints refer to ‘minor matters’. As such they should be resolved informally and within the shortest possible time. Documentation detailing the making of such complaints and the steps taken for their resolution must be maintained.

Many of the aspects of the present Category C and B procedures currently operating could be usefully adapted to meet an investigative process for Category B complaints.

Appropriate training should be provided. In Recommendation 11, I refer to the broader issue of training.

My comments in Recommendation 5 regarding ‘fair procedure’ and the duties of the ‘Designated Officer’ are also relevant to internal prison investigations of Category B complaints.

### **Recommendation 7**

**Prisoners should be entitled to make complaints to relevant professional bodies.**

#### Rationale

These are complaints, referred to in paragraph 3.24, that should have been resolved as Category D complaints. However, for the reasons set out in paragraph 6.44 the categorisation of such complaints and their investigation did not accord with what had been intended.

Prisoners should have the same recourse to make complaints to professional bodies as have people in the community.

My observations in paragraphs 6.42 to 6.45 should be taken into account when formulating a procedure whereby prisoners are entitled to make complaints to professional bodies.

### **Recommendation 8**

**Prisoners should be entitled to seek explanations for decisions made by IPS Headquarters, Governors and others.**

#### Rationale

IPS Headquarters staff and Prison Governors and others make decisions on matters such as the transfer or non transfer of prisoners from one prison to another, the temporary release or refusal of temporary release of prisoners, the allocation of prisoners to specific cells etc which can affect the everyday life of prisoners.

The IPS 'Policy Document' and 'Manual' set out procedures where, except in exceptional circumstances where the giving of such information could affect the security or good order of a prison, prisoners should be entitled to receive answers to reasonable questions raised by them in connection with such decisions. It was anticipated that there might be failures to convey such information. In the event of failure to furnish answers to such questions prisoners were entitled to lodge complaints under Category F referred to in paragraphs 3.27 to 3.29.

The procedures laid out in the 'Policy Document' and the 'Manual' seem robust. However, where explanations are rejected or not forthcoming within a timeframe prisoners should be entitled to bring these circumstances to the Ombudsman in similar manner as with a complaint.

### **Recommendation 9**

#### **Frivolous and Vexatious complaints must be addressed.**

##### Rationale

It would be simplistic to suggest where complaints are not upheld that automatically such complaints, or a proportion of such complaints, should be deemed 'frivolous' and/or 'vexatious'. This would be to ignore the many Instruments both international and domestic which provide that prisoners are entitled to make complaints without fear of consequences.

The Irish Prison Service should have a Policy to explain how 'frivolous' and/or 'vexatious' complaints are identified and dealt with.

'Frivolous' and/or 'vexatious' complaints can be categorised in a number of ways. However, deciding whether a complaint is 'frivolous' or 'vexatious' is a balancing exercise which must take into account all the circumstances of the case.

Any adjudication leading to a finding that a complaint is 'frivolous' and/or 'vexatious' must follow due process and fair procedure.

## **Recommendation 10**

### **Fair procedure must apply in all investigations.**

#### **Rationale**

The concept of ‘fair procedure’ has engaged lawyers and courts down the years. Courts in this country and elsewhere have defined and elaborated on the obligations that apply to parties engaged in conflict resolution to the extent that the rules that apply to ‘fair procedure’ are now well settled.

In a prisoner complaints situation it is important, that, not alone are the rules of ‘fair procedure’ adhered to, but the perception of such adherence to the rules is vital. This applies to all persons engaged in the prisoner complaints procedure including, not only, Governors, Chief Officers, Investigators, prison staff and others but also to the senior management of Irish Prison Service Headquarters.

Training in the rules of ‘fair procedure’ for those engaged in the prisoner complaints process must be provided by experts.

As the rules of ‘fair procedure’ are well settled parties to the complaints process must desist from interpreting such rules for their own perceived benefit or by suggesting that the principles of ‘fair procedure’ should be placed to the forefront for any particular interested person or group. **While it should not be necessary to spell it out ‘fair procedure’ applies to all parties be they prisoners making complaints, prison staff complained of, witnesses in the proceedings and particularly to those carrying out investigations and adjudicators.**

The Irish Prison Service College should ensure that relevant training in the rules of ‘fair procedure’ is provided not alone in initial training for recruit officers but as part of ongoing training.

### **Recommendation 11**

**Relevant and adequate training in the prisoner complaints process must be afforded to all relevant staff.**

#### Rationale

The compelling arguments for providing such training are clear from reading this Report.

Not alone should staff be given training in all aspects of the prisoner complaints process but they should also be advised as to their responsibilities such as their responsibility to cooperate with the process.

As part of this training the relevant roles of Senior Management of Irish Prison Service Headquarters, of the ‘Designated Officer’, of local Senior Management, of Chief Officers and others engaged in the process must be made clear.

### **Recommendation 12**

**All Statutory obligations and duties under agreed protocols must be adhered to.**

#### Rationale

Prison personnel of all ranks must adhere not alone to domestic statutory obligations and agreed protocols but also to this country’s international obligations enshrined in international treaties and instruments.

### **Recommendation 13**

**Prison staff at all levels from Director General to Recruit Officer must be held accountable for their actions and/or for their failures.**

#### Rationale

Where adverse findings are made following either an internal prison investigation or an external investigation by the Ombudsman and where these findings may point to a possible breach of discipline such findings must be examined by the appropriate authorities.

The Disciplinary Codes applicable to all grades of IPS staff must be robust and fair and if deficiencies in such Codes exist immediate steps must be taken to remedy same.

#### **Recommendation 14**

**All staff from Director General to Recruit Prison Officer must ensure that the culture of the Irish Prison Service does not hinder the operation of a prisoner complaints structure.**

#### **Rationale**

All prison personnel of every rank must ensure that the '*rights of the individual*' are more important than the '*protection of the system*'.

#### **Recommendation 15**

**An effective communications system must be put in place.**

#### **Rationale**

It is evident from this report that there was a complete lack of communication by IPS Headquarters Senior Management with Operational Grades, at all levels, across the prison estate.

Effective communication is a two-way process. It is how information is conveyed so that it is received and understood and it is listening and making the other person feel heard and understood.

Regular and open communications are a necessity if any new initiative is to succeed. Effective open communication brings about greater levels of understanding, trust and confidence which will improve teamwork, decision making and problem solving.

### **Recommendation 16**

**The Inspector of Prisons, having oversight of the prisoner complaints procedure, should carry out periodic reviews of the operation of the procedure.**

#### **Rationale**

I anticipate that whatever complaints process is put in place it will be on a non statutory basis initially. Prior to placing such a scheme on a statutory basis the Minister would be entitled to seek a review, evaluation and analysis of the scheme as operating.

In addition to the above, because of the closed nature of prisons, independent oversight of procedures in prisons is necessary as is demonstrated in this Report.

As the Inspector of Prisons is constantly monitoring prisons and listening to the views of prison staff, prisoners and stakeholders it would make sense for him/her to carry out periodic reviews of the prisoner complaints procedure particularly in view of his/her oversight role of the process.

If this Recommendation is accepted any review, evaluation or analysis should be confined to the internal procedure in the prisons and should not attach to the role of the Ombudsman who, as an independent office holder, should not be subject to scrutiny in this forum. To avoid any possible confusion of roles a Memorandum of Understanding should be drawn up between the Inspector of Prisons and the Ombudsman.

### **Recommendation 17**

**If my recommendations are accepted immediate changes to Primary and Secondary Legislation will be required.**

#### **Rationale**

This is self evident.

### **Additional Important Considerations**

There will always be some prisoners who, no matter what they endure, will never complain. It means that they do not expect anything from the prison system, not even fairness. This may be an indication of systematic abuse, victimisation, discrimination or intimidation at some level within the prison or prison system. It may also be a sign that they have opted out altogether from any idea of ever integrating into mainstream society.

It is important to stress that even with a working, robust and independent prisoner complaints system there will always be the much broader issue of prisoner grievances. It is, unfortunately, the case that many genuine grievances and sometimes quite serious prisoner grievances will never become the subject of complaint. This is down to the fact that:

- (a) Some detainees, in a prison setting, tend to be much more vulnerable and open to abuse than others (due to such factors as age, sexual orientation, racial origin etc.);
- (b) It is also the case that some abusing prisoners are much less likely than others to be the subject of a complaint (due to factors such as known and feared propensity towards violence, the fact that they may belong to or have the support of an intimidating prisoner ‘clique’, the fact that families on the ‘outside’ could be targeted on the ‘say so’ of bullying prisoners on the ‘inside’ etc.);
- (c) Where the abuser happens to be a member of staff the victim may be reluctant to complain because of possible longer-term ‘repercussions’.

There is an absolute duty on Prison Management to be alert at all times to risks of the kind described and to take the action necessary to eliminate or, at the very minimum, minimise the emergence of such risks.

**It is not, in other words, at all satisfactory in the context of addressing the issue of prisoner abuse/grievance, to rely on the fact that there is an effective complaints system in place.**