

Suggested Prisoner Complaints Model for Irish Prisons

Judge Michael Reilly
Inspector of Prisons

Office of the Inspector of Prisons
24 Cecil Walk
Kenyon Street
Nenagh
Co. Tipperary
Ireland

Tel: (+353) 67 42210
E-mail: info@inspectorofprisons.gov.ie
Web: www.inspectorofprisons.gov.ie

**Suggested Prisoner Complaints Model for Irish Prisons by
the Inspector of Prisons Judge Michael Reilly**

Presented to the Minister for Justice and Equality pursuant to
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Inspector of Prisons

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Chapter 1

Introduction

- 1.1 I have been asked by the Minister for Justice and Equality (hereinafter referred to as ‘The Minister’) 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.
- 1.2 I believe it is necessary to begin by setting out some general considerations and matters of broad principle:-
- (a) This Report deals with the system for handling prisoner **complaints**. It is important to stress that this should not be confused with 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:-
 - (i) Some detainees, in a prison setting, tend to be much more vulnerable and open to abuse than others (due to factors such as age, sexual orientation, racial origin etc.).
 - (ii) 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’ etc.).
 - (iii) 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 just 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.**

- (b) Some of the matters that may (or may not) become the subject of complaint will be criminal in nature (e.g. violent assault, sexual abuse etc). It is of the utmost importance that all such matters are referred immediately to An Garda Síochána for investigation. It is equally important, however, that this should not automatically bring disciplinary enquiries to an end and it certainly cannot be allowed to deter Prison Management from taking what they judge to be appropriate actions designed to ensure protection of the complainant. A prisoner like any other person suspected of criminal activity (e.g. assaulting a fellow prisoner) is entitled to avail himself of the safeguards that exist to ensure that persons suspected of criminal activity enjoy the presumption of innocence. This does not mean, however, that protective measures taken by Prison Managers must be put on hold. It certainly does not mean that where the alleged perpetrator happens to be a member of staff, he/she must be free to refuse to answer questions or cooperate with an enquiry being conducted in a disciplinary context. This matter has been addressed effectively in the case of An Garda Síochána in the **Garda Síochána Act 2005** and the **Garda Síochána (Discipline) Regulations 2007**. The same legal regime should apply in the case of Prison Staff.
- (c) 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 including, 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.

That said it is also necessary, of course, to recognise that, where the alleged wrongdoer is a member of staff, the more serious the complaint the greater the temptation/pressure is to 'go easy' because of the potential implications for the staff member concerned. In this situation, the very minimum that is required is that the complaints mechanism should be independently supervised and my recommendations reflect this principle.

- (d) The introduction of a new prisoner complaints mechanism based around the recommendations put forward in this Report should not mean that other avenues of complaint currently open to prisoners would be set aside. It is essential that prisoners should still be free to complain to persons or bodies such as the Minister, the Director General of the Irish Prison Service (hereinafter referred to as the 'Director General'), a Public Representative, the Irish Human Rights Commission, the Visiting Committee, directly to the Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment in Strasbourg (hereinafter referred to as the 'CPT') or others should they so wish. In all probability such complaints would be referred to the Director General in order that an investigation could be initiated. It is to be expected that

the Director General would have these complaints investigated through the mechanism emerging from the contents of this Report but there could be cases (e.g. where a serious complaint was made against a Prison Governor) where the Director General might deem it appropriate to follow a different course, in the interest of fairness and openness. All prisoners should be aware of the avenues of complaint that are open to them. Those who lodge complaints (through whatever channel) should be aware of the arrangements through which the complaint will be investigated.

- (e) While I am aware that ‘whistleblowing’ legislation is in the process of being prepared it is in everyone’s interest that the Irish Prison Service operates to the highest possible standards and that those who are aware of corruption or malpractice within the organisation can report it knowing they will be protected. This has been addressed in the case of An Garda Síochána in the **Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007**. The same legal regime should apply in the case of Prison Staff.

1.3 All prisoners are entitled to make complaints. At present the prisoners’ complaints procedure is governed by Rules 55 to 57 of the Irish Prison Rules 2007. The Prisons Act 2007 is silent on a complaints procedure.

1.4 I presented a report to the Minister pursuant to Part 5 of the Prisons Act 2007 titled “*Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline*” (hereinafter referred to as my ‘2010 Report’) on the 10th September 2010. The purpose of that Report was to give an overview of the current procedures relating to prisoner complaints in Irish Prisons, to give guidance having regard to our domestic and International obligations on best practice and make recommendations.

- 1.5 In paragraph 1.5 of my 2010 Report, I stated that the procedures in operation in Irish Prisons relating to prisoners' complaints fell short, having regard to the criteria referred to in my said Report and International best practice.
- 1.6 Prior to suggesting a new complaints model it is necessary to spell out the importance of having a complaints procedure which meets the requirements of the Minister as referred to in paragraph 1.1 above. This I have done in Chapter 2.
- 1.7 It is also important to set out the necessary elements which must be included in a complaints system. This I have done in Chapter 3.
- 1.8 In Chapter 4, I refer to the research that I carried out in order that the model that I recommend in Chapter 8 can be said to comply with our international obligations, our domestic obligations, is fair and transparent and meets best international practice.
- 1.9 I have dedicated a separate chapter (Chapter 5) to the necessary independent element which must form part of any prisoner complaints procedure (paragraph 1.2(c)) and I make the case that this oversight should be vested in the Office of the Inspector of Prisons..
- 1.10 In Chapter 6, I detail the results of my research into the number of complaints logged in all prisons over a 12 month period (see Appendix A). The purpose of this research was to give an idea of the number of complaints which might need to be investigated.
- 1.11 In Chapter 7, I propose that prisoners' complaints could be divided into four categories. I give guidance on the types of complaints that could be included in each category. I deal with certain aspects of the Prison Disciplinary Code for Officers and other general aspects relevant to the model which I recommend in Chapter 8.

- 1.12 In Chapter 8, I suggest a working model that could be introduced for investigating each category of complaint as referred to in Chapter 7. I set out the process with timelines. I have not addressed the time limits within which complaints should be made as I consider this should more appropriately be dealt with after a decision on a complaints model has been made. The model suggested in Chapter 8 would break new ground and it would pose challenges for the Irish Prison Service. It would lead to necessary culture changes.
- 1.13 In Chapter 9, I refer to the question of resources.
- 1.14 There will always be an element of trial and error when any new system is being introduced. This is particularly so in this case where 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. In this context I have in mind, for example, the possibility that this State would at some point ratify or implement the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (OPCAT). This would be a very welcome development which could trigger the need for a fresh look at our prisoner complaints mechanism. Its implications cannot however be evaluated until we know (a) that OPCAT will be implemented and (b) exactly how this will be achieved. 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.
- 1.15 If the model as suggested in Chapter 8 was to be introduced in Ireland the Inspector of Prisons should include in his/her Annual Reports or in stand alone Reports, *inter alia*, details of the number of complaints made, the nature of the complaints, by whom they were investigated and the outcome. In this

connection the Inspector would have to be sensitive to his/her obligations to observe fair procedure. Such a report would give a public assurance that the scheme was transparent and that the Inspector of Prisons would be seen to be the external independent link in the system. The report could contain observations. It could detail any defects in the system and could deal with any other matters of general concern.

Chapter 2

The Importance of a Good Complaints System

- 2.1 The deprivation of liberty is the punishment in itself. Whilst deprived of their liberty prisoners are still entitled to be treated with humanity and with respect for the rights and the inherent dignity of the human person and the State is obliged to treat prisoners in accordance with this principle.
- 2.2 As prisons are closed custodial environments the State, on behalf of prisoners, has an absolute duty to exercise and vindicate those fundamental rights that have not been lawfully taken from prisoners by reason of their imprisonment.
- 2.3 By their nature prisons are coercive institutions. Prison staff securely contain a group of persons – the prisoners. While many of the terms and conditions of the imprisoned person are directly controlled by law and prison rules such law and rules usually give prison staff considerable discretion in determining exactly what the prisoner will experience.
- 2.4 Some of these discretionary decisions are clearly very important. Many of the decisions would seem, to persons living outside prison in the general community, as very minor. For example, decisions concerning the allocation to individual cells, access to workshops, to schools or to work parties, whether visits should be allowed openly or in restricted circumstances – may give rise to suspicions of favouritism in the mind of a prisoner who does not understand prison procedures. All such issues, if not appropriately dealt with, could become big issues for prisoners. The list is as endless as the areas of the prisoners' lives which the prison controls directly or indirectly.
- 2.5 Making decisions correctly involves not only ensuring compliance with the local rules but also adopting all the requirements of fairness and accountability in the process. Recorded reasons for discretionary decisions are crucially important so that all prisoners can know why a particular decision has been reached and see that it is consistent with other decisions.

- 2.6 The mere fact of explaining the outcome of a discretionary decision to a prisoner will often prevent any grievance from arising in the first place.
- 2.7 There will always be some complaints about decisions. Many people in prison feel totally powerless about their situation and respond to this by complaining about everything. Other prisoners feel victimised at some period or periods of time and blame those around them who seem to have all of the power.
- 2.8 There will always be some prisoners who, no matter what they endure, will never complain at all. 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.
- 2.9 Complaints (major or minor) which go unanswered or not properly answered may become major sources of trouble in a prison setting. Where this happens prisoners may express their frustration through violence, damage to property and in other instances by engaging in group disturbances.
- 2.10 If a prison system does not have a formal complaints system which allows prisoners to express their real or imaginary grievances through a legitimate avenue they will, in all probability, find illegal methods of raising such issues.
- 2.11 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.

Chapter 3

Essential Elements of a Good Complaints System

3.1 I do not intend setting out the legal principles with supporting authorities that must underpin any prisoner complaints model as I have clearly set these out in my 2010 Report. The principles set out in my 2010 Report are informed by the International Instruments that Ireland is a State Party to, the non binding Instruments emanating from the United Nations and the Council of Europe, the Jurisprudence of the European Court of Human Rights, the Reports of the CPT, the provisions of the Irish Constitution, the Jurisprudence of the Irish Courts, Irish domestic laws (all of which I have referred to in previous reports) and Standards 119 to 126 of the *Standards for the Inspection of Prisons in Ireland* that I published on the 24th July 2009.

3.2 The Mission Statement of the Irish Prison Service includes the following:-

“The mission of the Irish Prison Service is to provide safe, secure and humane custody for people who are sent to prison.....”

It should be the responsibility of the Governor in each prison to ensure that the prison lives up to the mission statement. It should also be the responsibility of each Governor to maintain discipline and good conduct within his/her prison.

3.3 In addition to the fundamental principles referred to in paragraph 3.1 and subject to the general comment I have made in paragraph 1.2(d) a good complaints system should have the following features:-

- (a) All complaints should be treated with the appropriate level of confidentiality and be addressed to the Governor.
- (b) Systems must be in place to ensure that prisoners can complain to the Governor without running the risk of being identified as the source of such complaints.

- (c) Systems must be in place to ensure that prisoners can make complaints of a general nature to the Governor.
- (d) It must be easily understood. All prisoners and staff must be fully conversant with the system.
- (e) Assistance must be available to prisoners who seek help because of literacy or other problems.
- (f) Complaint forms must be available in all parts of the prison.
- (g) There must be strict time limits which should only be extended in exceptional circumstances.
- (h) Complaints involving allegations of mistreatment or discrimination must always be considered as falling within the most serious of categories.
- (i) There must be a mechanism to compel officers and others to cooperate and answer questions subject to such persons retaining their legal rights.
- (j) There must be an efficient and effective investigation.
- (k) There must be procedures for oral hearings at least for more serious complaints. Where the procedures allow for an oral hearing prisoners should be entitled to call and cross examine witnesses. Prisoners should have the right to have with them a colleague from within the prison to assist them articulate their complaints, make representations, cross examine witnesses etc.
- (l) There must be an effective remedy by way of appeal where complaints are not upheld.
- (m) Disciplinary actions should always remain a matter for prison management and must be guided by issues such as proportionality. There must be an effective appeal mechanism against any penalty imposed.
- (n) There should be no repercussions should prisoners make a complaint. Prisoners must have an absolute guarantee that they will not be discriminated against in any way for making formal complaints whether or not upheld.
- (o) Proper records must be maintained even where complaints are withdrawn or resolved informally.

3.4 The following should be observed in order to ensure the efficiency of the complaints procedure:-

- (a) Where practicable, but subject to paragraph 3.3(h), all complaints should be resolved at the lowest possible level. This would ensure that matters are resolved as speedily as possible. It would also ensure that members of prison staff would take responsibility for their part in the process. Having Governors dealing with a large number of low level complaints is both a waste of their time and undervalues the contribution that should be made by other staff.
- (b) There must be a full explanation in writing for decisions made following the investigation of all complaints. Very often a full explanation of a decision will enable a prisoner to accept a decision with which he/she is not happy. The time spent obtaining and communicating the explanation is well spent.
- (c) Where a complaint is not upheld the prisoner should be informed as to what the next stage in the complaints process is.
- (d) As stated earlier there must be an independent element to the complaints procedure. The principle that 'no one should be a judge in their own cause' demands that it should be possible to move a complaint outside the prison at the final stage. This would ensure that someone not involved in the prison process would have the opportunity to review decisions taken within the prison or re-investigate the complaints as appropriate.

3.5 It has been the tradition that prisoners who wish to make complaints about any issue, be it trivial or serious, in the great majority of cases make their complaints to the Prison Governor. This means that they bypass the prison staff that they have regular contact with. Many of the issues which are at present raised could easily and more quickly be dealt with by the staff who work with the prisoners all of the time. This would require the following culture changes:-

- (a) Prison officers would have to be willing and able to take on board the complaints. It should be pointed out that officers of lower rank cannot investigate officers of higher rank even if a complaint is such that it could be dealt with at a low level in the prison. Officers would have to conduct a thorough examination of the complaints, conduct appropriate enquiries or investigations and give reasoned replies in writing to prisoners within the time limits prescribed.
- (b) Prisoners should have confidence in the prison staff in the expectation that their complaints would be dealt with fairly and within the time limits prescribed.

3.6 While it is not absolutely necessary to do so I feel I should point to three important aspects which, if they were to the forefront of prison policy and prison thinking, would encourage the necessary culture changes envisaged in paragraph 3.5.

- (a) Many International Instruments and in particular the European Convention on Human Rights guarantee respect for individuals' (in this case prisoners') fundamental rights and freedoms. The Irish Prison Service must ensure that it has adequate measures in place to ensure compliance by all staff with such obligations.
- (b) Prison staff at all levels should be personally accountable and responsible for their own acts or omissions. All staff should be satisfied as to the lawfulness of their actions. It should never be an excuse that they were following orders.
- (c) In addition to officers being personally accountable for their actions the Irish Prison Service should ensure that there is a clear chain of authority in each prison in order that it is always possible to determine which superior officer is ultimately responsible for the acts or omissions of subordinate prison staff.
There should be no ambiguity on this point. All prison staff from Governor to recruit prison officer should be aware of

such a chain of authority. It should also be possible for any inspecting authority such as the CPT or the Inspector of Prisons to have ready access to documentation setting out clearly the duties and responsibilities of each member of staff in this chain of authority.

Chapter 4

Research

- 4.1 There are many variations of independent oversight bodies or regulatory authorities with jurisdiction over prisons to be found in Europe and elsewhere. In particular many of these bodies can accept complaints from prisoners. These bodies can range from Independent Lay Visiting Bodies, Local Complaints Committees, specialist Judges and Courts, Human Rights Bodies to Prisoner Ombudsmen. The extent to which each type conforms with the criteria of a competent independent authority depends, *inter alia*, on the powers afforded to the body, who it is appointed by, who it reports to and whether it has statutory backing or not.
- 4.2 My research was informed by what I found both internationally and domestically.
- 4.3 In an international context, when formulating the complaints model as referred to in Chapter 8, I paid particular attention to this country's legal obligations to our prisoners as enshrined in the various International Treaties that we, as a Country, are party to. I was also conscious of the Jurisprudence of the European Court of Human Rights and where relevant the jurisprudence of other Countries, the Reports of the CPT and those other International Instruments that are relevant to a prisoner complaints procedure.
- 4.4 In a domestic context, when formulating the complaints model, I was also conscious of the provisions of the Irish Constitution, of our domestic laws (both primary and secondary legislation) and of the jurisprudence of our Courts.
- 4.5 In addition to the above I carried out a review of prisoner complaints systems in many countries which included the following;- New Zealand, Western Australia, Canada, Sweden, Denmark, Germany, France, South Africa, England/Wales, Scotland and Northern Ireland. In addition to carrying out

the review of the system in Northern Ireland I also received a comprehensive briefing on the working of such system from Ms. Pauline McCabe, Prisoner Ombudsman for Northern Ireland. This was most helpful and for that I thank her.

I took advice from international experts with knowledge of prisoner complaint procedures and specifically from a number of members of the CPT.

4.6 Following my review of the various systems and the advice that I had obtained (paragraph 4.5) and conscious of our legal obligations (paragraphs 4.2 to 4.4) I am satisfied that the following features should, **as a minimum**, be incorporated into any prisoner complaints model which would, not alone be workable, but would accord with best practice, be transparent and attract public approval and acceptance:-

- (a) Complaint forms (in appropriate languages) be freely available without having to get permission or requisition a complaint form.
- (b) Be resolved (subject to paragraph 3.3(h)), if possible, at the lowest level in the prison with appropriate appeal procedures.
- (c) Have strict time limits.
- (d) The results of all investigations be communicated in writing.
- (e) Ensure that prison staff from Governor to recruit officer is responsible and held responsible not alone for their prisoners and for the running of the prison but also for their actions.
- (f) Ensure, subject to appropriate safeguards, that all prison personnel are obliged to cooperate with all enquiries.
- (g) Ensure that all internal mechanisms are exhausted before an appeal to an independent person or body.
- (h) Ensure that proper records are maintained.
- (i) Ensure that where fault is found consequences follow.

- 4.7 I should point out, as I have done elsewhere in this Report, that the role of bodies having a general monitoring oversight of prisons or who can receive complaints from prisoners is distinct from the role played by the body charged with an obligation to investigate prisoner complaints in compliance with laid down, clear and unambiguous procedures. Of course I am not suggesting that such other bodies are not influential in helping to improve prison conditions etc. **but the two roles are separate and distinct.**
- 4.8 I am satisfied from my research, referred to in this Chapter, that the prisoner complaints model as recommended in Chapter 8 meets the obligations that we as a Country owe to our prisoners, is fair and transparent and is in compliance with best international practice.

Chapter 5

Independent Element of Proposed Complaints Model

- 5.1 I have pointed out in previous reports that at present there is no independent element in the investigation process relating to prisoners' complaints in Ireland, though prisoners can of course send complaints to independent bodies such as Visiting Committees or public representatives.
- 5.2 In all prisoner complaint models that I have examined prison management and prison officers play a significant role in the investigation of complaints. It is, therefore, necessary that there is an element in the process which ensures transparency, is independent and by extension attracts the support of prisoners, management and the general public.
- 5.3 **No matter what complaints procedure is introduced it should never remove from the prisons the important responsibilities which prison governors and their staff have towards prisoners. Therefore, the initial responsibility for investigating complaints, subject to the subsequent independent element, must always remain within the prison.**
- 5.4 There are a number of persons or bodies who could fulfil the independent element of which the following are the most obvious:-
- (a) A Prisoner Ombudsman
 - (b) A panel of lawyers
 - (c) The Irish Human Rights Commission
 - (d) The Inspector of Prisons
- 5.5 In order to be effective the Office of a Prisoner Ombudsman would, of necessity, have to be fully staffed and adequately funded. It should be a stand alone office, created by Statute and reporting to the Minister or to the Oireachtas as appropriate. In Northern Ireland where the prison population is approximately 1,600 the Ombudsman's Office has a staff of 10. In addition to

dealing with complaints the Ombudsman's Office investigates deaths in custody.

- 5.6 The independent element could be outsourced to a panel of lawyers. This could be time consuming, would be expensive and would require a 'build up' of experience by such lawyers. It could be assumed that in addition to the panel of lawyers there would be further staff requirements to service such investigations.
- 5.7 While it would be possible to extend the remit of the Irish Human Rights Commission to enable it to **investigate** (as distinct from simply **receive**) complaints, the point might be made that it does not make obvious sense to burden the body which has a wide remit in the area of human rights protection/compliance generally with the task of investigating complaints (many of which may not have to do with fundamental human rights) emanating from one category of citizens i.e. prisoners. Apart from the general consideration, it would, in all likelihood, involve delay in the introduction of a new system while the Commission set about the task of building up the expertise necessary to perform the task. That said, it is also the case that the Irish Human Rights Commission has established a very credible reputation in the area of human rights protection and it would be reasonable for the Minister/Government to consider whether it would be appropriate for the Irish Human Rights Commission to have a specific role in the investigation/adjudication of individual prisoner complaints separate from its existing mandate on human rights protection generally.
- 5.8 The Inspector of Prisons could fulfil the independent element as set out in paragraph 5.2. The role of the Inspector of Prisons is underpinned by Statute thereby ensuring its independence. The independence of the office has been accepted. I have built up a wealth of knowledge, not alone of the Irish Prison System but of international best practice. I have unfettered access to prisons and to prison records at all times. Irrespective of what independent element is introduced I will continue, fulfilling my mandate under the Prisons Act 2007, to have general oversight of all prisoner complaints.

Recommendation

- 5.9 While it is a matter for the Minister to determine the independent element that should form part of a prisoner complaints procedure I am satisfied that the Inspector of Prisons could fulfil such a role.**

Chapter 6

Types of Complaints Logged in a 12 Month Period

- 6.1 Complaints can arise about all kinds of matters in a prison environment from the trivial to the serious.
- 6.2 It would be impractical to have a separate complaints procedure for each individual type of complaint. Complaints, therefore, should be divided into separate categories.
- 6.3 In order to have some idea as to the extent of the anticipated work load to deal with complaints I researched all complaints logged in all prisons covering a period – 1st July 2010 to 30th June 2011. The purpose of this research was twofold:-
 - (a) To ascertain the number of complaints logged in a twelve month period, and,
 - (b) To ascertain the number of complaints which could be categorised as falling into defined categories for which separate procedures would apply.

The results of my research are set out in **Appendix A**. Based on experience elsewhere it is reasonable to assume that, if a prisoner complaints' procedure which was seen to be fair and transparent was to be introduced in this Country, the number of complaints would be likely to increase in the short term.

Chapter 7

Categorising of Complaints and Other Issues

7.1 It is important that I make the following general points in order that the model proposed in Chapter 8 can be put in context:-

- (a) I am strongly of the view that it is the responsibility of Irish Prison Service Management and local Governors to maintain discipline and good order within prisons while, at the same time, ensuring that the rights of individual prisoners are upheld and vindicated. Experience shows that if the protection of individual prisoner rights is ignored or accorded lower priority than it merits, it is as likely as not that good order will very soon suffer.
- (b) If the investigations of all complaints against prison staff were to be undertaken directly by the Inspector of Prisons, this would, in effect, take away the responsibility to manage and discipline the prison staff from Irish Prison Service front-line supervisors.
- (c) Proper records must be maintained of all complaints received, the steps taken in the process employed to resolve such complaints (including any appeals), the rationale behind resolutions of complaints and the reporting of all decisions taken at various stages of the process.
- (d) When a complaint is made, it is in the interests both of the complainant and the prison system that it is disposed of, not just fairly, but as efficiently and as quickly as possible. For this reason I suggest timelines. Speed of processing, while desirable, must not impact on fairness and thoroughness. This, however, should not act as an excuse for delay at any stage of the process.

- 7.2 It is clear from **Appendix A** that practically all complaints are about everyday things in the prison. The list is extensive but can range from delayed mail, the quality or quantity of the food, the desire to change cell, the desire to attend workshops or education, not getting medication on time, the cancelled hospital appointment, the cancelled visit, visits not on time, restricted visits without explanation, not having appropriate out of cell time, not having access to the gym, bullying by staff or prisoners, revelations about a prisoner's sexuality, about his/her ethnic background, a matter concerning his/her family life, the professional judgement of an independent expert such as the doctor or dentist, a complaint against the governor to an allegation of serious assault.
- 7.3 Procedures for dealing with complaints should differ depending on the seriousness of the complaint. While it is obvious that certain complaints fall into a serious category (such as serious assault) others, generally speaking, fall into a less serious category (such as access to the snooker table). There is no absolute way of listing complaints by reference to a fixed category. This aspect of the complaints procedure dealing with the categorising of complaints should be revisited from time to time in the light of operating experience. It must be a matter for prison governors to determine the categorisation to be applied to individual complaints, such determination to be carried out within 24 hours of receipt of the complaint. This is something that can only be judged in the particular circumstances. It cannot be assumed that a complaint is in a lower category because the subject matter might not appear to an outsider to be important (e.g. a belief by someone that a particular person or particular officer was treating him/her in a discriminatory manner). All complaints must be looked at by reference to the level of the distress caused to the individual and the extent to which his/her rights may be abused. It is important that all parties to a complaint are aware from the earliest possible time as to the gravity being attached to the complaint. Such persons must have an opportunity of raising this with the Governor. The reasons for all determinations must be recorded in writing by the Governor.

As Inspector of Prisons he/she would always have general oversight of all matters relating to prisoner complaints. If complaints were obviously

miscategorised e.g. a serious assault being categorised as a minor complaint I would consider this a serious matter which should be brought to the notice not only of the Director General of the Irish Prison Service but also of the Minister.

If the Inspector of Prisons considered that there was miscategorisation but that the issues were arguable (in other words, not a case of obvious miscategorisation by the Governor) the Inspector should, in the first instance, discuss the matter with the Governor, with the proviso that the final decision in relation to the categorisation should rest with the Inspector. It follows from this that it must be open to the Inspector to intervene in any case at any particular time on the issue of categorisation, either on his/her own initiative or on request from the complainant, the respondent or his/her representative.

- 7.4 Depending on the gravity of the complaint different procedures would apply to the investigating process. I have already recommended the course to be followed where matters complained of appear to involve criminality. Complaints should be divided into four broad categories as follows:-

Category A Complaints

These complaints would be the most serious. Examples of these complaints could include allegations of assault, racial discrimination, serious intimidation and serious threats by prison officers. Such complaints could, if upheld, result in a finding of criminal misconduct but either way would be considered as serious breaches of prison discipline.

Category B Complaints

These complaints could be classed as mid category complaints falling between serious complaints and minor complaints. Examples of these complaints could include allegations of discrimination, verbal abuse by officers and inappropriate searches. Such complaints, if upheld, could be considered as breaches of prison discipline.

Category C Complaints

These complaints which could be classed as minor would be at the low end of the spectrum. Examples of these complaints could include allegations of missing clothes, not getting post on time, not getting appropriate exercise. These complaints are more in the nature of ‘service complaints’ and would arise, in the main, where prisoners were dissatisfied with the level of service in the prison or by a particular officer. If upheld they would not attract a criminal sanction and, except in extreme cases, would not attract disciplinary sanctions.

Category D Complaints

These would be complaints alleging misconduct or mistreatment by professionals providing services to prisoners such as doctors, dentists etc.

Categorisation Generally

7.5 I am conscious that the above categorisations could be described as very broad (some might say vague) in nature. I have, however, made the point at paragraph 7.3 – **and I cannot over emphasise this point** – that, in a prison context, the seriousness or otherwise of any particular complaint can only be judged by reference to the particular circumstances of that case. An offensive/insulting remark made, for example, by an officer to a particular prisoner may, in itself, be regarded as a relatively minor matter in the context of the inevitable robust exchanges that take place on a daily basis in prison. But it would be an entirely different matter if the remark was part of a persistent pattern causing – and possibly designed to cause – that particular prisoner very real distress or anger.

Disciplinary matters

7.6 I have stated in paragraph 7.4 that if complaints under categories A, B and C were upheld this could in all cases and would in certain cases lead to disciplinary proceedings. The present Disciplinary Code for the Irish Prison Service is contained in the **Prison (Disciplinary Code for Officers) Rules 1996**. I have stated clearly in paragraph 1.2(b) that prison staff must **not** be free to refuse to answer questions or cooperate with an enquiry being

conducted in a disciplinary context. I also stated that this matter has been effectively addressed in the case of An Garda Síochána in the **Garda Síochána Act 2005** and the **Garda Síochána (Discipline) Regulations 2007**. The same legal regime should apply in the case of Prison Staff. This would make clear to all members of the Irish Prison Service what would be expected of them and the consequences that could follow non compliance. In this connection failure to observe the following should be deemed disciplinary matters:-

- (a) All officers should be obliged to cooperate with any enquiry (internal or external) and give true answers to any questions put.
- (b) All members of the Irish Prison Service of whatever rank should be obliged to carry out diligently any investigation requested of that person whether by a senior officer, the Director General of the Irish Prison Service or any other authorised person including the Inspector of Prisons.
- (c) Officers of all ranks should be responsible not alone for their own actions but also for the inappropriate actions of their subordinates. This responsibility should extend to their failures to take appropriate actions and to the failures of their subordinate officers in this regard.
- (d) Inappropriate communication of the substance of complaints or of the investigation of such complaints as this would raise serious issues of confidentiality and could pose serious risk to the complainant.

Robust disciplinary sanctions are a necessary ingredient of any prisoner complaints procedure.

Matters relevant to all Complaints

7.7 Prior to setting out the procedure for investigating the different categories of complaints as set out in paragraph 7.4 it is necessary to make the following points as they are relevant to all complaints:-

- (a) Complaint forms in duplicate and in different languages (the original for the Governor and the copy to be retained by the prisoner) and envelopes addressed to the Governor of the Prison must be freely available in all parts of the prison – landings, workshops, recreational areas etc. Prisoners must be able to access the complaint forms without asking for them.
- (b) Assistance must be available (if necessary by phone) to prisoners who seek help in completing complaint forms.
- (c) Interpreters must be available to assist those prisoners who need such services to complete complaint forms and at all other times.
- (d) “Post Boxes” for complaint forms must be provided in relevant places (landings, recreational areas etc) in the prison for the posting of completed complaint forms to the Governor. Prisoners must also be able to hand complaint forms to Governors or to others for transmission to Governors. In all cases confidentiality must be maintained.
- (e) Records of all completed complaint forms received by the Governor must be maintained by the Governor. These records must be updated on a daily basis.
- (f) The Governor must be responsible for deciding into which category the complaint should fall to be investigated. **See my comments in paragraph 7.3.**
- (g) The investigation of all complaints must include an investigation of all matters relevant to the complaint.
- (h) Proper records of the complaint procedure and all documents generated during the procedure must be maintained by the Governor.

Chapter 8

Suggested Prisoner Complaints Model

- 8.1 **All reference to the Inspector of Prisons, in this Chapter, is to be taken in the context of the proposed Inspector's role as the independent element (Chapter 5) and not to be confused with the existing role of the Inspector as set out in the Prisons Act 2007.**
- 8.2 I set out in this Chapter the procedures for the investigation of the four categories of complaints set out in paragraph 7.4.

Investigation Process for Category A Complaints

- 8.3 Subject to what I have said in relation to the investigation of criminal matters (paragraph 1.2(b)) the Governor of the prison must be answerable for all aspects of the investigation.
- 8.4 Within 3 days of receiving the complaint the Governor should:-
- (a) Acknowledge personally to the complainant that he/she is conducting the investigation or if not personally investigating at that point that he/she is having it investigated and by whom. The complainant should be informed as to the procedure and the timelines.
 - (b) Immediately secure all CCTV.
 - (c) Ascertain the names of all officers, medical personnel and auxiliary staff on duty and/or in the area on the day of the incident being complained of.
 - (d) Ascertain the names of all prisoners or other potential witnesses in the vicinity at the time of the incident.
 - (e) Subject to the maintenance of good order and safe and secure custody or for health issues ensure that the complainant and any witnesses are not moved from the prison until interviewed by the investigation team as referred to in paragraph 8.5.

- (f) Obtain a report from the Senior Medical Officer in the prison (if relevant).
- (g) If the complaint suggests criminal activity the actions set out in paragraph 1.2(b) must be taken immediately.

It goes without saying that the first priority where immediate protection action is required, is that the necessary steps be taken in this regard without delay (e.g. separating feuding prisoners or ensuring that an officer who may be the subject of complaint ceases to have access to the prisoner, the wing – or, in serious cases the prison itself – pending the outcome of the investigation).

- 8.5 Within one week of assembling the evidence and information outlined in paragraph 8.4 the Governor should brief an Investigation Team on the complaint.

The Investigation Team referred to above should be a specialised unit set up within the Irish Prison Service. It should be independent of all prisons. Its members should be properly trained in all aspects of the investigation process. This training should be such as to reflect best international practice. The Investigation Team should have full powers to investigate and in this context must have access to medical records.

Whatever legislative reforms are necessary to achieve this should be put in place.

The Investigation Team would conduct the investigation on behalf of and under the direction of the Governor.

- 8.6 Due process should be afforded to all persons appearing before the investigators. It should be a disciplinary offence for officers to fail to cooperate with the Investigating Team.
- 8.7 The investigation should be concluded within 3 weeks of the briefing referred to in paragraph 8.5.

- 8.8 Within one week of the conclusion of the investigation referred to in paragraph 8.7 the Governor should make findings. These should be communicated in writing to the following:-
- (a) The prisoner making the complaint.
 - (b) The officer against whom the complaint had been made (if any).
 - (c) The Inspector of Prisons who should also be provided with a copy of the entire investigation file.
 - (d) The Director General of the Irish Prison Service who should also be provided with a copy of the entire investigation file.
- 8.9 If a complaint was not upheld the prisoner should be informed in writing of his/her right to appeal. He/she should be free to call upon assistance to help lodge such an appeal. A time limit of 6 weeks for lodging such an appeal should, except in exceptional circumstances, apply. This time limit would date from the date on which the prisoner was informed in writing of his/her right to appeal.
- 8.10 An appeal from a finding of a Governor referred to in paragraph 8.9, in a form to be agreed, should be to the Inspector of Prisons.
- 8.11 On receipt of an appeal referred to in paragraph 8.10 the Inspector of Prisons would review the investigation carried out by the Governor.
- 8.12 With regard to the appeal what I have in mind is a model whereby the complainant is made aware:-
- (a) That an appeal is taking place.
 - (b) That he/she has a right to submit or have submitted on his/her behalf such observations as he/she may wish to offer.
 - (c) That the appeal will take place on the basis of all documentation received.
 - (d) That the outcome will be communicated to him/her in writing.

- 8.13 I am anxious to avoid an over elaborate appeal/review system recognising that all matters involving adjudication affecting the rights of individuals may be subject to appeal to the Courts. With regards to the Courts what I have in mind is the general right of any individual who's rights have been the subject of adjudication outside the judicial system, to appeal to the courts on a point of law (e.g. on the ground that due process was not observed). I am not suggesting that the appeal findings of the Inspector should be routinely open to a further appeal on substance to a Court.
- 8.14 The review would examine, *inter alia*, all aspects of the investigation. It would seek to establish that the process was complete, fair, transparent and robust, that all evidence had been gathered, that all relevant witnesses had been interviewed and their evidence tested, that due process had been adhered to and that the findings were in accordance with the evidence.
- 8.15 It should be open to the Inspector of Prisons to engage persons who he/she adjudges to be competent and independent (e.g. practicing lawyers) to conduct enquiries that he/she may deem necessary to enable him/her to process the appeal and reach a decision.
- 8.16 Except in exceptional circumstances the reviews should be completed within 6 weeks.
- 8.17 Following the review the Inspector of Prisons would take one of the following actions:-
- (a) Direct that no further action would be taken and confirm the findings of the Governor.
 - (b) Direct further enquiries of the Governor. In this case the Governor would be obliged to carry out fresh investigations and make further findings which could be appealed in the manner set out heretofore.

- (c) Initiate a new investigation. The Inspector of Prisons could take charge of this investigation.
- (d) Take further evidence.
- (e) Reverse the findings of the Governor without further inquiry.

In any of the circumstances (a) to (e) the Inspector of Prisons would communicate his/her findings in writing to the prisoner, to the officer complained of (if any), the Governor of the Prison and the Director General of the Irish Prison Service within 14 days.

- 8.18 In all cases the findings of the Inspector of Prisons would, subject to an individual's general right of access to the Courts (paragraph 8.13), be final and not open to further appeal.
- 8.19 Within 4 weeks of the conclusion of the process outlined in paragraphs 8.3 to 8.11 and paragraph 8.17 whichever was the later, the Governor should initiate disciplinary procedures where warranted by the findings.

Investigation Process for Category B Complaints

- 8.20 A Chief Officer in the prison (**preferably** not the Chief Officer in charge of the area where the incident allegedly occurred or the area where the complainant was accommodated) should investigate these complaints. In order to avoid duplication I set out hereunder those areas where the investigation of Category B Complaints should differ from Category A Complaints.
- 8.21 Within 14 days of receiving the complaint the Chief Officer should have concluded his/her investigation and have made findings.
- 8.22 Within 7 days of making his/her findings referred to in paragraph 8.21 the Chief Officer should communicate in writing the result of such findings to the following:-

- (a) The prisoner who had lodged the complaint.
- (b) The officer (if any) against whom the complaint had been made.
- (c) The Governor.

- 8.23 If a complaint was not upheld the prisoner should be informed in writing of his/her right to appeal. He/she should be free to call upon assistance to help lodge such an appeal. A time limit of 6 weeks for lodging such an appeal should, except in exceptional circumstances, apply. This time limit would date from the date on which the prisoner was informed in writing of his/her right to appeal.
- 8.24 An appeal from the findings of a Chief Officer referred to in paragraph 8.21, in a form to be agreed, should be to the Governor.
- 8.25 The Governor should carry out a review in like manner to that referred to in the process for dealing with Category A Complaints (see paragraphs 8.12 and 8.14). Except in exceptional circumstances this review should be completed within 6 weeks. Subject to paragraph 8.26 and an individual's right of access to the Courts the decision of the Governor should be final.
- 8.26 There could be a further appeal to the Inspector of Prisons but this would be confined to a review to confirm or otherwise that proper procedures had been followed. A time limit of 6 weeks should apply for such an appeal to be made.
- 8.27 Following the review referred to in paragraph 8.26 the Inspector of Prisons would take one of the following actions:-
- (a) Direct that no further action would be taken and confirm the findings of the Governor.
 - (b) Direct the inquiry is reopened. In this case the Chief Officer would be obliged to carry out fresh investigations and make

further findings which could be appealed in the manner set out heretofore.

- (c) Reverse the findings of the Governor without further inquiry.

In any of the circumstances (a) to (c) the Inspector of Prisons would communicate his/her findings in writing to the prisoner, to the officer against whom the complaint is made (if any) and the Governor of the Prison within 14 days of receipt of the appeal referred to in paragraph 8.26.

- 8.28 Within 4 weeks of the conclusion of the process outlined in paragraphs 8.20 to 8.27, whichever was the later, the Governor should initiate disciplinary procedures where warranted by the findings.

Investigation Process for Category C Complaints

- 8.29 The Class Officer in the area of the prison where the complainant was accommodated should investigate these complaints. If the Class Officer assigned to carry out the investigation was unable to comply with the time limit referred to in paragraph 8.30 (such as not being rostered for duty) another Class Officer should carry out the investigation. The prisoner should be notified accordingly in writing.
- 8.30 These complaints should be resolved informally within 24 hours with an absolute time limit of 7 days. The result of the informal resolution should be communicated to the prisoner in writing. Proper records should be kept of such complaints, of all documentation generated and the procedures employed for dealing with same.
- 8.31 An appeal from the investigation of a Class Officer should be to a Chief Officer (**preferably** not the Chief Officer in charge of the area where the incident allegedly occurred or the area where the complainant was accommodated). A time limit of 3 weeks from the date of the communication of the result of the initial investigation to the prisoner should apply to such appeals. The decision of the Chief Officer, which should be communicated to the prisoner in writing, should be final.

- 8.32 If complaints, which would obviously fall within this category, were made informally and/or orally to an officer they should be recorded in writing, by the officer, the procedures for investigating same should be followed and the results communicated to the prisoner in writing.
- 8.33 It should be noted that the Inspector of Prisons would have general oversight of this complaints procedure when carrying out his/her normal inspections of prisons.

Investigation Process for Category D Complaints

- 8.34 Complaints about the professional judgement of independent experts such as doctors, dentists etc. which potentially could be of a very serious nature should not fall to be resolved within a prison complaints procedure.
- 8.35 All such complaints which are, by their nature, confidential require to be referred in the first instance to the prisons' medical officers for possible resolution.
- 8.36 If such complaints cannot be resolved by the prisons' medical officers within 14 days then this should be a matter for the professional bodies regulating such independent experts.
- 8.37 Complainants should be facilitated by prison management in making complaints to professional bodies.
- 8.38 Complaints concerning access to medical services are not in themselves medical complaints and could be appropriately dealt with under procedures for investigating Category A, B or C Complaints as appropriate. The choice of category would be dictated by the gravity of the complaint.
- 8.39 Records created in relation to these investigations should be available to the Inspector of Prisons and to appropriate investigative entities such as the CPT.

Complaints against Governors

- 8.40 If a complaint is made alleging wrongdoing by a Governor **personally** the Director General should be informed as soon as is practicable.
- 8.41 The Director General should categorise these complaints in the manner set out in Chapter 7 subject to the Complainant's and Respondent's rights of appeal to the Inspector of Prisons.
- 8.42 The Director General should investigate these complaints in a robust manner following the same guidelines and timelines as set out in this Chapter.
- 8.43 Governors should have the same rights of appeal as set out in this Chapter.
- 8.44 Of course, in the context of complaints which this Report deals with, Governors must be subject to the same disciplinary code as other officers.

General Comment

- 8.45 Should Category A or B Complaints be withdrawn by the complainant the following should apply:-
- (a) The investigation should continue if there is credible independent evidence available which could, *prima facie*, support the complaint. In such a case proper procedures (already referred to) with all relevant safeguards would have to be adhered to in order to ensure due process.
 - (b) An investigation as to the reasons for the withdrawal should be carried out in all cases.

The procedures, timelines etc. as set out in this Chapter for investigating such complaints should be followed.

- 8.46 In Category A complaints and complaints against Governors personally the Inspector of Prisons should be informed as soon as each step in the investigation process had been completed in order that he/she could satisfy

himself/herself that the timelines were being adhered to. Timelines should not be exceeded except in exceptional circumstances which should be fully documented. Each prison should provide the Inspector of Prisons with a monthly report, in a form and containing such information as would be agreed between the Irish Prison Service and the Inspector, detailing all categories B and C Investigations commenced, in process of investigation and completed during the previous month. Each prison should also, on a monthly basis, inform the Inspector of all category D Complaints received during the previous month. This should be in a form and contain such information as would be agreed between the Irish Prison Service and the Inspector.

- 8.47 In compliance with Rule 70.5 of the **European Prison Rules 2006** prisoners' relatives or legal advisors should be entitled to make complaints on behalf of prisoners. In these cases the procedures outlined in this Report should be followed as though the complaint had been made by a prisoner but only if the prisoner was to consent.
- 8.48 It is of course for the Minister to decide on the appropriateness or otherwise of the complaints model outlined in this Report. If a decision in favour of the introduction of such a model was to be made an announcement to this effect should be published. This would enable the Irish Prison Service to engage in a training process for Governors and all other prison staff. It would also give confidence to prisoners and the general public that an appropriate process would be put in place.
- 8.49 I have not, in this Report, given comprehensive advice on such matters as to how investigations should be carried out, what evidence should be harvested, what witnesses should be interviewed or the method of interview or how oral hearings should be conducted.

Important Comment

- 8.50 If complaints were not rigorously and impartially investigated by Governors or officers I would consider this a serious matter which should**

**be brought to the notice not only of the Director General of the Irish
Prison Service but of the Minister.**

Chapter 9

Resource Implications

- 9.1 If the complaints model I have recommended was to be introduced, this would have some modest resource implications. I have been mindful of cost issues in the course of my examination on the basis that, in present circumstances, it would simply be unrealistic to expect that any complaints model carrying a high price tag would be implemented in the immediate future. Apart from that, I do not believe that the introduction of a credible complaints system for prisoners requires heavy resource commitment or that the effectiveness of any complaints system is to be judged by reference to the level of resources devoted to it.
- 9.2 I cannot at this point indicate precisely what resources would be required – much will depend on how, for example, the investigation team recommended at paragraph 8.5 is established (probably by resource reallocation rather than additional resources) and whether and to what extent it was judged necessary to engage independent support in the course of a particular appeal (paragraph 8.15). I will be happy to engage further with the relevant Departmental Officials on these issues when they come to examine the Report and when the Minister has decided the detailed features of the new complaints mechanism.

Appendix A

Audit of prisoners complaints	
Types of complaints	Total
Assaults by staff	76
Assaults by prisoners	4
Attitude of prison officer	2
Transport - Left in van	1
Roughly treated while being re-located	3
Excessive force used	1
Racial comments by staff	10
Racial Comments by prisoners	1
Victimisation by staff	3
Discrimination by staff	6
Intimidation by staff	1
Sexual comments by officers	1
Verbal abuse by officer in cell	2
Sexual assault by staff	5
Unspecified mistreatment by staff	9
Verbal abuse by officers	13
Harassment by officers	4
Bullied by staff	1
Complaint of Class Officer	1
Complaint of ACO	2
Officer talking about prisoner	3
Prisoners in other prison threatening family	1
Sexual assault by other prisoner	1
Dental professional complaint	1
Medication	17
Doctor professional complaint	7
Nurse	3
Medical Staff	4
Medical Care	6
No interpreter	1
Refused toilet use by staff	3
Form not returned	34
No form	20
Clothes/property stolen	2
Missing property	3
Punishment	4
On floor for 25 days	1
Withdrew complaint	6
One set of clothes only allowed	0
Tore up form	5
Phone call	1
General complaint Re: Food	1
Complaint form thrown in bin by prisoner	1

Dog	7
Dog handler	1
Visits	7
Not given job in prison	1
Isolation	1
Tuck shop	3
Wants to be moved	1
Denied dinner	1
Damage runners	1
Wrong name on Governor parade	1
Officers making fake allegations	1
Condition of cell	2
Removed from toilet when using it	1
Missed Medical Appointment	1
False info given to family	1
Image shown on TV without consent	1
Treatment of visitors	1
Called an informant	2
Wants to be taken off 23 hr lock up	1
No details given	11
Weapon found in cell (allegedly)	1
Pushed into cell	1
Not given toilet paper	1
Damage to finger	1
Placed in Special cell - no reason given	1
TR not given	2
Unethical treatment	1
Wants open visits	2
Clothes ripped by officers	1
lost form	1
Search procedures for visitors	2
Searching of cell	4
Inappropriate search of prisoners	2
Opening correspondence	1
Miscellaneous	1
Exercise	1
Burn from pipe under counter	1
Laundry	1
Post - delays or missing	3
Unspecified prison procedures	1
Denied info on Habeas Corpus	1
Transfer to other prison without reason	1
Overall Total	348