



Prison Service Order

ORDER
NUMBER
2600

Legal issues relating to prisoners

Date of Initial Issue	
27/10/2003	Replaces SO 12, SO 16, CI 18/1985 and CI35/1989
PSI Amendments should be read before and in conjunction with PSO	
Date of Further Amendments	Amendments can be tracked in the Numerical Index.

EXECUTIVE SUMMARY

STATEMENT OF PURPOSE

This Prison Service Order (PSO) replaces Standing Order 12, Standing Order 16, CI 18/1985 and CI 35/89.

It contains information on a number of legal issues relating to prisoners and to staff. It does not change current procedures, but brings together existing guidance and some supplementary information requested by staff. It is not a substitute for advice from a solicitor or legal advisor.

The section on The Role of the Official Solicitor was requested by the office of the Official Solicitor as a number of prisons were unaware of his role and authority.

DESIRED OUTCOME

Prison staff will be aware of how to deal with enquiries about private prosecutions, CICA, the Official Solicitor, outstanding fines and attendance at court as a witness.

MANDATORY ACTIONS

The PSO restates the following mandatory actions which are already published in PSO 4600 Unconvicted Unsentenced and Civil Prisoners :

The prison must notify the Official Solicitor of the reception of all prisoners committed to custody for contempt of court (including persons committed under section 63(3) of the Magistrates' Courts Act 1980).

A medical report must be provided on request to the Official Solicitor, in those cases when the health of the prisoner committed for contempt makes it necessary to consider discharge.

The following actions are currently stated in the completion instructions attached to Form 986.

When you receive a fine defaulter from the court you are required to fill in Part A of Form 986 on LIDS. This is completed when the prisoner arrives at the establishment and their sentence has been calculated, and then returned to the court that issued the warrant. ***This must be completed and signed by an authorised person. A contact name and telephone number must also be completed so if the court has any queries they will know who to contact.***

Likewise when the prisoner has served his/her sentence, Part B of form 986 must also be completed and signed and returned to the court of issue. This must be done as soon as possible, because until the court receives Part B, records will show that the fine is still outstanding against the prisoner (even though they have served a sentence for non-payment).

There are no new mandatory actions.

RESOURCE IMPLICATIONS

There should be no resource implications for establishments.

IMPLEMENTATION DATE:	Immediate
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Peter Wrench Director	Area/Operational Manager
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Further advice or information on this PSO or the systems contained within it can be sought from:

Carrie Cannings 020 7217 2933 Prisoner Administration Group

PRISON SERVICE ORDER ON LEGAL ISSUES RELATING TO PRISONERS

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CHAPTER ONE: PRIVATE PROSECUTIONS BY PRISONERS

- 1.1 Private prosecutions brought by prisoners should be dealt with in the same way as civil litigation. Prisoners should be allowed to discuss a prospective prosecution, by correspondence with (or during visits from) their legal advisor or any other person. However all the normal restrictions on the content of correspondence will apply (see Standing Order 5). Visits from legal advisors should take place out of hearing in the circumstances covered by SO 5A 34.
- 1.2 Prisoners who intend to institute criminal proceedings should be advised that if they have any evidence that a criminal offence has been committed, it should be reported to the Police, whether it concerns an event which is alleged to have occurred within or outside a Prison Establishment. All possible assistance should be given to the Prisoner so that they are able to put their complaint to the police, they should also be advised to submit a request/complaints form to initiate an internal investigation if the incident occurred inside prison.

Dealing with complaints arising from private prosecutions

- 1.3 For complaints which do not require police investigation, they should be dealt with by the internal procedures. Please refer to PSO 2510 'Prisoners' Request and Complaints Procedures'. It is for the Governor to instigate any necessary action under PSO 1300.
- 1.4 If a complaint is made by a prisoner against another prisoner, this should be investigated and if there is evidence that a criminal offence has been committed then this should be reported to the Police. If the complaint is not of a serious nature then it should be investigated internally and it is for the Governor to take any necessary action under SO 3D2.

Facilities and productions

- 1.5 Once prisoners have succeeded in instituting a prosecution they should be treated in the same way as if they were party to civil proceedings i.e. they should be afforded such facilities as are necessary for the proceedings to be properly conducted, and any correspondence with their legal advisor should be dealt with under SO 5B 32 (3).
- 1.6 It may be that a prisoner who applies for a summons to be issued will ask to be present in court, or that the court (i.e. the Justice' Clerk) will seek the prisoner's production for questioning; in either case all applications should be referred to the Governor (or Directorate of High Security if the prisoner is a Category A and National Operations Unit (NOU) if the prisoner comes under the category of 'Protective Witnesses'). On all other issues of Production refer to PSO 4625.

Proceedings Against Staff

- 1.7 Staff may wish to bear in mind that the staff handbook (chap 31.4) provides that where criminal proceedings are instituted against members of staff for acts or defaults alleged to have been committed on duty, the Department will consider, on the merits of each case, whether to accept responsibility for their defence. For any queries please contact the Conduct and Performance Section of Personnel Management Group at Headquarters.
- 1.8 If a court agrees to authorise the commencement of proceedings, the Governor may be required to provide the full name and address of the person or persons accused of an offence. Governors should co-operate fully with the court, but are not obliged to provide such information to a prisoner or his solicitors; it is sufficient to provide the court (for both staff and prisoners) with the address of their current establishment. Private addresses should not be released.

CHAPTER TWO: APPLICATIONS BY PRISONERS TO THE CRIMINAL INJURIES COMPENSATION AUTHORITY

- 2.1 The Criminal Injuries Compensation Scheme came in to being as a result of the Criminal Injuries Compensation Act 1995. It provides for the payment of compensation to, or in respect of, persons who have sustained injury as a result of a crime of violence. The Criminal Injuries Compensation Board will entertain applications for ex-gratia payments of compensation from applicants who have sustained injury directly attributable to a crime of violence or to one of the other causes referred to in the appropriate Criminal Injuries Compensation Schemes.

Application - Procedures for making a claim

- 2.2 A prisoner who wishes to make a claim should write to:

The Criminal Injuries Compensation Authority,
Tay House,
300 Bath Street,
Glasgow G2 4LN,

or telephone 0141 331 5579 to request a claim form and guidance to claiming Criminal Injuries. This can be in relation to an incident whilst in prison, while on escort or alternatively before remand/sentence to prison.

- 2.3 Once the claim form is completed, it should be returned to the address shown on the form where it will be evaluated by a claims officer in the Criminal Injuries Compensation Authority (CICA).

Time limit

- 2.4 Completed applications should be sent to the CICA as soon as possible and must be received at their office no later than **2 YEARS** after the incident for which the claim is made. This time limit may be waived if the CICA consider that there is good reason for the delay and it is in the interests of justice to do so.

Who can apply?

- 2.5 For an application to be considered the applicant should have been:
- a) a victim of a crime of violence, or injured in some other way covered under the relevant scheme;
 - b) Physically and/or mentally injured as a result;
 - c) in England, Scotland or Wales at the time when the injury was sustained; and
 - d) injured seriously enough to qualify for at least the minimum award available under the relevant scheme (tariff levels can be found in the scheme guide booklet).
- or
- e) a dependant or relative of a victim of a crime of violence who has since died.

NO compensation will be paid under the scheme in the following circumstances:

- a) Where the applicant has previously lodged any claim for compensation in respect of the same criminal injury under any other scheme for the compensation of the victims of violent crime in operation in Great Britain; or
- b) Where the criminal injury was sustained before 1 October 1979 and the victim and the assailant were living together at the time as members of the same family.

The guidance provided by the CICA explains this in greater detail.

Allegations against staff or another prisoner

- 2.6 Any allegations made in an application against an Officer or another prisoner should, if not previously reported, be referred to the Governor for further investigation. The CICA will not consider a claim in which the incident has not been reported either to the police or prison authorities at the earliest possible opportunity.

Criminal Convictions

- 2.7 Paragraph 13(e) of the Scheme provides that an award may be withheld or reduced on account of an applicant's character as shown by his criminal convictions (excluding convictions which are spent). Even though an applicant may be blameless in the incident in which the injury was sustained, Parliament has provided in the Scheme that convictions which are not spent under the Rehabilitation of Offenders Act 1974 should be taken into account.

Independent Medical Examination

- 2.8 a) At some stage in their consideration of the application, the Board may wish the applicant to be medically examined by an independent medical practitioner. The board has authority to consult the medical officer of an establishment direct to decide upon whom to approach to carry out the examination.

b) If the independent doctor is willing to examine the applicant in the establishment, the Board will advise the doctor to make the necessary arrangements with the medical officer in charge at the establishment concerned.

c) However, if unavoidably a prisoner should be taken for examination to a place outside the establishment, the Board, after obtaining the necessary authorisation from the governor (see PSO 4625 Productions in Civil Proceedings), will advise the independent doctor to make the necessary arrangements with the governor and medical officer.

d) *Any request for a Category A prisoner to be examined outside the prison must be referred to the Category A team in The Directorate of High Security.*

CHAPTER THREE: THE ROLE OF THE OFFICIAL SOLICITOR

Civil Litigation

- 3.1 A majority of the work of the Official Solicitor arises in civil litigation, where one of the parties is incapable of conducting litigation properly, due to mental disorder, or because of their age. The Official Solicitor can be invited to act as “litigation friend”, either for an incapable claimant or defendant, mostly in cases involving personal injury claims, possession actions or applications in connection with estates. Other cases may involve actually representing the estate of a deceased person, where there is a claim against an estate for which no personal representative is willing to act.

Judicial Review

- 3.2 Increasingly the Official Solicitor is handling challenges to decisions of public authorities by way of Judicial Review.

Adult Medical and Welfare Declarations

- 3.3 The Official Solicitor represents mentally disordered adults, and sometimes acts as adviser to the court, at the hearings of applications concerning, for example, the sterilization of women suffering from severe learning disabilities, or the withdrawal of life sustaining treatment (PVS cases). Other applications may be made concerning a wide range of welfare disputes, usually in respect of residence and contact matters, when there is a serious justifiable issue requiring a decision by the court.

Divorce

- 3.4 The Official Solicitor can be called on to act for mentally incapable respondents to divorce petitions. This is because the court has to be satisfied that their interests are properly protected, both in the divorce and in the related disputes over financial provision and care of the children.

Liberty of the Subject (Contempt of Court)

- 3.5 The Official Solicitor has a duty to review cases of people committed to prison for contempt of court, and every case in which a person has been sent to prison for contempt is reviewed. If a defect in the committal is discovered, the matter may be referred either to the judge who made the order or to the Court of Appeal. If the contemnor wants to apologise to the court, the Official Solicitor may make an application on his or her behalf.
- 3.6 *In order that he may review these cases, the Official Solicitor must be notified about any civil prisoners who are remanded into custody for*

contempt of court. See also PSO 4600 Unconvicted, Unsentenced and Civil Prisoners.

The mandatory instruction is that:

The prison must notify the Official Solicitor of the reception of all prisoners committed to custody for contempt of court (including persons committed under section 63(3) of the Magistrates' Courts Act 1980). A copy of the warrant, together with the name, prison number and address of the prison should be sent to:

The Office of the Official Solicitor
81 Chancery Lane
London WC2A 1DD

- 3.7 *A medical report must be provided on request to the Official Solicitor, in those cases when the health of the prisoner committed for contempt makes it necessary to consider discharge. A copy of the report completed by the Medical Officer on admission of the prisoner will usually be sufficient for this purpose, unless specific concerns are raised by the Official Solicitor.*

Cases Involving Mental Disorder

- 3.8 When a person, whether an adult or a child, suffers from mental disorder, his or her financial affairs may be the subject to the control of the Court of Protection. This applies even if the Court of Protection has appointed a receiver to handle the patient's finances or (prior to disability) the patient made a power of attorney which has been registered with the court. The Official Solicitor is frequently asked to assist the court in reaching a decision.

Assistance to the Court

- 3.9 The Official Solicitor also acts as an adviser to the court, and can be called to give confidential advice to the Judges, to instruct counsel to appear before a judge to assist the court as advocate to the court, or to investigate any matter on which the court needs a special report, known as a *Harbin v Masterman* enquiry (1896 1 Ch 351). A common enquiry requested is to ascertain the mental capacity of a party to proceedings before the court. A special report may be requested by the court from the Official Solicitor when the judge feels he needs help to ascertain facts or information relevant to the case which would not otherwise be made available to the court.

Bail requests

- 3.10 The Official Solicitor can become involved when a defendant who is in custody and wishes to apply to a Judge in Chambers in the High Court for bail, and cannot afford (and cannot get public funding) to instruct a

solicitor. He/she may then make an application to the Judge in Chambers for the Official Solicitor to be assigned to act for them in the application.

- 3.11 A request for the Official Solicitor to be assigned to make an application to a Judge in Chambers is made by the prisoner, either in person or through their solicitor, completing Form F1084, which should be available within the prison.
- 3.12 In order to expedite the application, the Official Solicitor would need to know if the prisoner has applied for public funding to make a bail application and if not why not. If the prisoner has applied for public funding and it was refused they should give the reason for its refusal. Similarly, it would be helpful to learn of any previous applications for bail made by the prisoner and the results, together with the names of sureties who would be willing to stand for bail on the prisoners' behalf.
- 3.13 The Official Solicitor cannot apply for bail if a prisoner is appealing against a conviction or sentence imposed at the Crown Court, such application for bail pending appeal should be directed at the Criminal Division of the Court of Appeal. It is also important for the prisoner to know that under **RSC O.79 r 9 (12)** an application for bail to Judge in Chambers, which is refused will prevent the defendant from making any further application to a judge for bail.
- 3.14 The Official Solicitor should only be approached as a last resort after the prisoner has exhausted all other possible options.

CHAPTER FOUR: NOTIFYING THE COURTS OF OUTSTANDING FINES

- 4.1 It is important to notify the court both of the receipt of prisoners with outstanding fines and once those prisoners are released, of their release and the amount of any fines still outstanding.

Guidance to prison staff on completing form 986 - fine defaulters.

- 4.2 When you receive a fine defaulter from the court you are required to fill in **Part A of Form 986** on LIDS. This is completed when the prisoner arrives at the establishment and their sentence has been calculated, and then returned to the court that issued the warrant. *This must be completed and signed by an authorised person. A contact name and telephone number must also be completed so if the court has any queries they will know who to contact.*

- 4.3 *Likewise when the prisoner has served his/her sentence, **Part B of form 986** must also be completed and signed and returned to the court of issue. This must be done as soon as possible, because until the court receives Part B, records will show that the fine is still outstanding against the prisoner (even though they have served a sentence for non-payment).*

- 4.4 If a prisoner is transferred to another establishment mid-sentence, then you should ensure that the new establishment is made aware that:

- a) The prisoner is a fine-defaulter.
- b) That a copy of Form 986 Part A is attached to the prisoner's file.
- c) That they need to complete Part B of the form, when the prisoner is released.

If you have any queries on completing Form 986 please contact:
Carrie Cannings - 0207 217 2933.

CHAPTER FIVE: PROSECUTION WITNESSES IN CROWN COURTS AND MAGISTRATES' COURTS, PRISON STAFF AND INMATES.

5.1 This section is aimed as a guidance to prison staff and prisoners who are required to appear as prosecution witnesses in cases tried in Crown or Magistrates courts.

Prison Staff

5.2 A member of staff who makes a statement to a police officer investigating an incident in an establishment is a potential witness in a criminal trial. He/she should notify the governor that a statement has been made and the nature of that statement. The governor should give appropriate instructions to the member of staff, or where a large number of staff are involved, the governor may wish to consider issuing a Governor's Order, covering the following points.

- As a general rule staff should not discuss with prisoners any matters arising out of the incident.
- Prisoners who have been charged or who have been called as witnesses may have problems which they wish to discuss with staff. In such circumstances staff should confine any discussion to the subject raised by the inmate and not seek general information or offer opinion.
- A note that such a discussion has taken place should be made by a member of staff in the F2050.
- Governors should also ensure that at no time should any member of staff who has made a statement to the Police and is required to give evidence, is involved in the escorting of inmates to and from hearings relating to charges arising out of the incident. Nor should such staff normally be used to escort such inmates at any other time.
- Staff should be aware that they should not discuss the incident with colleagues or with inmates not involved in the incident, as to do so could potentially prejudice the outcome of the trial and could have serious consequences for the member of staff concerned.

5.3 If a member of staff is required to appear at court as a witness they will be notified by the police or Crown Prosecution Service by means of a letter or a Witness Order giving them the date of attendance at court.

- 5.4.1 On the required day of attendance at court staff should attend in civilian clothes. As they are appearing as representatives of the Prison Service, they should be smartly dressed for a court appearance.
- 5.5 Under no circumstances should staff travel to court in prison transport conveying prisoners to court. Arrangements should be made for staff to travel to court by public transport, contract taxi or their own vehicle. In addition, on arrival at court staff witnesses should in no circumstances go to the cells area. They should report to the reception area in the court and follow the instructions given to them. Before going into the court the member of staff may ask either the police officer in the case or the representative of the Crown Prosecution Service for sight of their statement in order to refresh their memory. In many cases staff will be met and briefed about the case by a senior police officer.
- 5.6 Having given their evidence and on leaving the courtroom, under no circumstances should staff have any discussion with other staff witnesses who have not yet been called. They should leave the precincts of the Court and either return to the establishment or go home, following whatever instruction they have been given. There may well be journalists outside the Court keen to interview staff as they leave. It is inappropriate for staff to make any comment to journalists during the duration of a trial and they should not do so.

Prisoners Appearing as Prosecution Witnesses

- 5.7 Any prisoner who makes a formal statement to police following an incident is a potential prosecution witness in a criminal trial. It follows that we have a duty to offer as much protection as possible to these prisoner witnesses. Prisoners should be advised not to discuss their involvement in the case with anyone else.
- 5.8 Any letter from the police or Witness Order from the Crown Prosecution Service which arrives at the establishment for an prisoner witness should be issued by a senior member of staff, Operational Manager F or above, in a private interview and the prisoner should be advised that the defendants in the case will be made aware of the identity of those whose statements are to be used in evidence. They should be advised to approach the governor if they are concerned about this disclosure, or have any other problems, and he/she will be able to put them in touch with the police officer in the case.
- 5.9 The establishment should open a register, kept securely in the governor's office, for prisoner witnesses to sign to acknowledge that they have read or have had read to them, letters from the police or Crown Prosecution Service.
- 5.10 Letters should be stored with the prisoners' valuable property to ensure they are not left where other prisoners may see them.

- 5.11 Prisoners should be advised that, if they are released and subsequently committed to prison, they should on reception identify themselves as a potential witness in a forthcoming trial.
- 5.12 Prisoners should be advised that all efforts will be made to give them the protection necessary before, during and after the trial. If any problems are experienced, governors should contact the Incident Management Support Unit number in cases involving large numbers of witnesses, or the police officer in charge of the case.

Criminal Trials – The Process

The Judge and Jury

- 5.13 The Court is presided over by a Judge who is addressed as ‘Your Honour’ in all Crown Courts except the Old Bailey where the Judge is addressed as ‘My Lord’. In a Magistrates’ Court where a bench of lay justices are sitting they should be addressed as ‘Your Worships’ or where a stipendiary Magistrate is sitting alone he or she should be addressed as ‘Sir’ or ‘Madam’ as appropriate.
- 5.14 The trial in a Crown Court is conducted before a jury of 12 people or, in certain circumstances, at least 10 who probably have no experience of the matter in question or common knowledge with the witness.

Your role

- 5.15 As a prosecution witness you will be examined by the prosecuting counsel for the crown. This means the counsel will take you through any statement which you have made to the Police.
- 5.16 After you have been asked questions by the prosecuting counsel you will be asked questions by the defence counsel. If there is more than one defendant standing trial, with different counsel, then each defence barrister will ask you questions in turn.

Appearance As A Witness

- 5.17 The main requirement of a witness is that you exercise commonsense and give helpful and honest evidence. A good witness is one who does not appear to be seeking any particular result from the answers that are given. Listed below are a number of rules and procedures, which must be followed.
1. You may not go into the courtroom until you are called as a witness. You should not sit in the public gallery before you have given evidence.
 2. Before giving evidence refresh your memory thoroughly from any statement which you have made to the prosecution.

3. Arrive early and try to compose yourself before going into the witness box. Be ready to tell the usher your religious denomination so that you can be provided with the right form of oath and holy book. If you need to swear on a holy book other than the Bible (old or new testament) or the Koran, it is wise to mention this in advance to a representative of the Crown Prosecution Service in order that they can ensure that the appropriate holy book is available in court when you are asked to give evidence. If you have no religious belief you should tell the usher when asked that you wish to affirm. Your evidence will then be on affirmation, which is treated as an oath.
4. If you are suffering from an illness or disability whereby lengthy standing will cause you pain, you should ask the Judge if you can sit down and explain why you wish to do so. You should not ask to sit unless it is necessary, for it may create a bad impression. There should be some water available in the witness box, if there is not you may ask the Judge if some may be provided.
5. Be ready to give your name, occupation and professional address, that is to say the establishment where you are employed. This will always precede the main content of your evidence.
6. Always listen very carefully to the questions.
7. Take your time in answering. Some counsel will try to rush or harass you. If this happens, you may appeal to the Judge for more time in which to answer.
8. Always tell the truth.
9. Never volunteer more information than you are asked for.
10. If you do not know the answer, say so. Do not be tempted to guess.
11. Never try to avoid a question by answering another that you have not been asked.
12. Do not become cross if counsel is aggressive, rude or unpleasant, or if they suggest that you are untruthful. This is not an uncommon tactic and is designed to unnerve or intimidate you. A simple allegation of untruthfulness is best met with a polite, simple denial.
13. In the witness box stand up straight and face the jury and address your answers towards the jury in a loud and clear voice.