



## **Guidance: Handling Complaints falling under Prison Rule 79N**

This Guidance should be read in conjunction with *Appendix 2 Guidance: Unacceptable Behaviour by Complainants & Others*.

### **Prison Rule 79N**

- (1) The Ombudsman may not deal with a complaint, other than in accordance with the procedure in paragraph (2) if he considers:
  - (a) it to be vexatious;
  - (b) it to be repetitive;
  - (c) it to be frivolous;
  - (d) it to raise no substantial issue; or
  - (e) that the complaint either on its own or taken together with other complaints is intended to seriously hamper the proper operation of the complaints procedure set out in this part of the rules.
- (2) The prisoner, former prisoner or visitor who submitted the complaint will be told in writing that his complaint is considered by the Ombudsman to fall under either Prison Rule 79N (1)(a), (b), (c), (d) or (e) and as a consequence it will not be dealt with any further.

### **Introduction to the application of Prison Rule 79N**

1. The presumption should be that complaints are made in good faith.
2. Every complaint should be considered on its own merits. Previous complaints falling under Prison Rule 79N should not lead to a presumption that any new complaint will fall under this rule.
3. To ensure Prison Rule 79N is fairly applied the context of a complaint should be considered, that is, any reason for a complainant's behaviour, the tone of correspondence both within the Prison Service Internal Complaints Process and with the office and likely grounds for the complaint.

4. A complainant should always receive a short explanation as to why his/her complaint has been considered to fall under Prison Rule 79N.
5. Written confirmation of a complaint falling under Prison Rule 79N should be sent to the complainant and include which element of the Rule it falls under and why.

### **What is a vexatious complaint?**

6. A vexatious complaint is a complaint which the complainant:
  - a. Pursues while engaging in harassing behaviour for example shouting or using threatening language to Ombudsman staff either in person on the phone;
  - b. Seeks to exercise pressure on the Ombudsman or Ombudsman staff, for example by imposing unreasonable demands or expectations on resources;
  - c. Makes excessive contact with the Ombudsman's Office
7. An opportunity should be provided to the complainant to amend their behaviour. Warning should be given to the complainant in writing that their behaviour is such as to alert the Senior Investigation Officer to concerns.
8. Should behaviour, as set out in paragraph 6 above, continue the Senior Investigation Officer will write to the complainant setting out such behaviours and closing the complaint or group of complaints.

### **What is a repetitive complaint?**

9. A repetitive complaint is one in which:
  - a. A complainant persists with a complaint that has already been investigated and does not provide new or material information;
  - b. A complaint could fairly be seen as obsessive.

### **What is a frivolous complaint?**

10. A frivolous complaint is one in which:
  - a. A complainant seeks to prolong contact by continually changing the substance of the complaint or by raising further concerns or questions during the course of an investigation;
  - b. The complaint is about trivial matters out of proportion to their significance and requiring resource disproportionate to the impact

on the complainant, for example, an apology may already have been issued and matters have been put right.

**What is a complaint that raises no substantial issue?**

11. A complaint raising no substantial issue is one in which:
  - a. The matter raised cannot practically be resolved;
  - b. The complainant fails to clearly identify the substance of the complaint despite reasonable efforts by Ombudsman staff to clarify the complaint.

**What is a complaint, or complaints, designed to seriously hamper the proper operation of the complaints procedure?**

12. For a complaint or group of complaints to be designated as designed to seriously hamper the proper operation of the complaints procedure, intent must be demonstrated.
13. The Ombudsman will have discretion to engage directly with such complainants regarding their intention.