

STANDARD 5

RESPECT, AUTONOMY AND PROTECTION AGAINST MISTREATMENT

5

INTRODUCTION TO STANDARD 5: RESPECT, AUTONOMY AND PROTECTION AGAINST MISTREATMENT

Questions which may be helpful in monitoring and inspecting the PANEL principles:

P

PARTICIPATION:

- Are prisoners consulted about information to be shared with their families?
- Is prisoner consultation routine regarding recreational activities, products in the canteen and events?
- Are prisoners encouraged to participate in decisions that affect their lives and do they receive the necessary support to do so?
- Is there effective communication between the prison and prisoners regarding issues like complaints or changes made to regime?

A

ACCOUNTABILITY:

- Is the prison proactive in identifying the rights and entitlements of prisoners and the required action to secure them?
- Are processes monitored and reviewed regularly to ensure that they uphold the rights and entitlements of prisoners?
- Do all prisoners have access to mechanisms of accountability like legal, consular or third party advice to safeguard them against mistreatment?
- Are remedies provided by the prison in the event that rights of prisoners have been infringed or they have not received their entitlements?

N

NON-DISCRIMINATION AND EQUALITY:

- Are those prisoners who are most vulnerable, marginalised or who have a protected characteristic identified for the purposes of this standard?
- Is the prison proactive in supporting those who are vulnerable or have a protected characteristic in accessing the services available to them and participating in processes?
- How do prisoners with protected characteristics or other vulnerable groups experience this standard?
- Do staff challenge discriminatory or inappropriate attitudes of prisoners and cultivate an environment of respect and understanding?

E

EMPOWERMENT:

- Do all prisoners understand their entitlements under this standard?
- Where prisoners face barriers to accessing services and information, is the prison proactive in identifying these and progressively removing them?
- Are prisoners placed at the centre of decisions made regarding matters in this standard, particularly those where they have an element of personal choice?
- How is information shared with prisoners regarding their entitlements, choices and prison processes regarding respect and protection against mistreatment?

L

LEGALITY:

HMIPS expect that all approaches to Respect, Autonomy and Protection Against Mistreatment are grounded in human rights law and in conformity with the Scottish Prison Rules. A number of rights underpin this standard and they include the Right to a Fair Trial (Article 6 ECHR) which is relevant to accessing legal advice and consular assistance, Right to Private and Family Life (Article 8 ECHR) regarding the sharing of information with family members and emphasis on confidentiality and privacy. Lastly, the Freedom of Expression (Article 10) is relevant to accessing information and being permitted to voice opinions about products, services or events.

PROTECTED CHARACTERISTICS MUST BE CONSIDERED AND REFERENCED THROUGHOUT

A climate of mutual respect exists between staff and prisoners. Prisoners are encouraged to take responsibility for themselves and their future. Their rights to statutory protections and complaints processes are respected.

Throughout the prison, staff and prisoners have a mutual understanding and respect for each other and their responsibilities. They engage with each other positively and constructively. Prisoners are kept well informed about matters which affect them and are treated humanely and with understanding. If they have problems or feel threatened they are offered effective support. Prisoners are encouraged to participate in decision making about their own lives. The prison co-operates positively with agencies which exercise statutory powers of complaints, investigation or supervision.

QUALITY INDICATORS (QI)

- 5.1** The prison reliably passes critical information between prisoners and their families.
- 5.2** Relationships between staff and prisoners are respectful. Staff challenge prisoners' unacceptable behaviour or attitudes and disrespectful language or behaviour is not tolerated.
- 5.3** Prisoners' rights to confidentiality and privacy are respected by staff in their interactions.
- 5.4** The environment in the prison is orderly and predictable with staff exercising authority in a legitimate manner.
- 5.5** Prisoners are consulted and kept well informed about the range of recreational activities and the range of products in the prison canteen as well as the prison procedures, services they may access and events taking place. The systems for accessing such activities are equitable and allow for an element of personal choice.
- 5.6** Prisoners have access to information necessary to safeguard themselves against mistreatment. This includes unimpeded access to statutory bodies, legal advice, the courts, state representatives and members of national or international parliaments.
- 5.7** The prison complaints system works well.
- 5.8** The system for allowing prisoners to see an Independent Prison Monitor works well.

5.1

THE PRISON RELIABLY PASSES CRITICAL INFORMATION BETWEEN PRISONERS AND THEIR FAMILIES.

FEATURES

- **Facilitation of contact between family and prisoners**
- **Appropriateness of information sharing**

SPECIFICATION

There is a policy in place which sets out the approach to passing critical information from prisoners to families and vice versa. The policy is understood by staff, put into practice and includes decisions around whether contact should be made on behalf of the prisoner, or whether the prisoner themselves should be allowed to make contact.

Prisoners are able and encouraged to participate in the decision about what information is shared with family members, and are able to pass personal information on if they wish.

Information sharing is appropriate and clear. Data protection is a priority and appropriate safeguards are in place in the policy to ensure prisoners' rights are protected.

When sharing news from the outside with a prisoner, this is done in a confidential and sensitive way. News is shared with compassion and sensitivity in a private space. Where a prisoner receives upsetting news, such as a family bereavement, there are procedures in place to ensure their physical and mental welfare.

The prison allows access to a telephone in the event of an emergency or change in situation. If the prisoner is not able to access a telephone but wishes to inform family members of an event or change of situation, the prison responsibly ensures information is shared with the family member.

Legal Standards

Section

CPT Standards 2015	Page 90(125)
Mandela Rules 2015	Rule 68 – 70
European Prison Rules 2006	24.6; 24.8; 24.9
Havana Rules 1990	Section 22; 56; 58
Scottish Prison Rules 2011	Rule 42
Data Protection Act 1998	

5.2

RELATIONSHIPS BETWEEN STAFF AND PRISONERS ARE RESPECTFUL. STAFF CHALLENGE PRISONERS' UNACCEPTABLE BEHAVIOUR OR ATTITUDES AND DISRESPECTFUL LANGUAGE OR BEHAVIOUR IS NOT TOLERATED.

FEATURES

- Staff and prisoner interactions
- Management of attitudes, language and behaviour is fair and balanced
- Unacceptable attitudes and behaviour are appropriately challenged
- Good behaviour is actively encouraged, supported and promoted

SPECIFICATION

Staff and prisoner interactions are respectful. Prisoners and staff interact appropriately with language that is mutually respectful and acceptable. This includes not only verbal exchanges but also the non-verbal. The theory of how these interactions should occur matches with the practice in the everyday context.

Staff conduct themselves and perform their duties in a manner to influence the prisoners and command their respect. Interactions are respectful in both high intensity and low intensity situations throughout the prison. Staff relationships observed in both difficult and more ordinary situations are appropriate, proactive and responsible for the de-escalation of potentially challenging behaviour. This is observed in all areas of the prison, not only the residential halls.

An attitude of promoting good behaviour as well as preventing bad behaviour exists amongst the staff. Unacceptable, thoughtless and ignorant behaviour, especially with regard to protected characteristics and vulnerable groups, which falls short of bullying (see Standard 3) is challenged with a view to encouraging alternative behaviour which is more appropriate or acceptable. Good behaviour is praised.

Legal Standards

Section

CPT Standards 2015	Page 21(60); 22(26); 89(121)
Mandela Rules 2015	Rule 77
European Prison Rules 2006	Rule 56.2; 75
Scottish Prison Rules 2011	Rule 91.1

5.3

PRISONERS' RIGHTS TO CONFIDENTIALITY AND PRIVACY ARE RESPECTED BY STAFF IN THEIR INTERACTIONS.

FEATURES

- Confidentiality and privacy are key concerns
- Adequate space is available for confidential conversations
- Prisoners know of their right to confidentiality and privacy

SPECIFICATION

Staff are aware of prisoners' rights to confidentiality and privacy in their interactions with all prisoners. Whenever there is a breach of these rights, the prison investigates and remedies the situation.

One-to-one conversations are encouraged where necessary and confidential information is not displayed or left out in a position where other prisoners may see. Staff have time during their shift to facilitate confidential engagement with prisoners. It is possible for prisoners to contact staff at any time, including during the night.

Opportunities for confidential and private conversations are available such as small rooms in the residential areas and staff use them routinely.

Prisoners know their right to confidentiality and privacy and feel confident to ask staff for more privacy when they need it.

Legal Standards

Section

European Prison Rules 2006

Rule 23.4; 23.5; 52.4

Havana Rules 1990

Section 87(e)

5.4

THE ENVIRONMENT IN THE PRISON IS ORDERLY AND PREDICTABLE WITH STAFF EXERCISING AUTHORITY IN A LEGITIMATE MANNER.

FEATURES

- **Consistency and predictability of regime**
- **Proportionate and individualised decision making**
- **Positive prison environment**
- **Procedures exist for prisoners to freely and appropriately challenge decisions**

SPECIFICATION

Prison regime plans are consistent and predictable. Prisoners know what to expect in terms of the daily regime and patterns which guides their levels of expectations. This lends to the legitimate authority exercised by staff in the prison environment.

Before a change in the regime is made, the prisoners are consulted. If a change is made to the regime or the daily pattern and routine, the prisoners are informed and it is communicated effectively to all prisoners.

The prison environment is positive. It is focused on the care and opportunities for prisoners as well as orderly and calm. This includes the elements which are not procedural e.g. how decisions are communicated and the manner in which the prisoner is able to engage in the process.

Legal Standards

Section

Mandela Rules 2015

Rule 36

European Prison Rules 2006

Rule 3; 49; 50; 51.2

Scottish Prison Rules 2011

Rule 91.1

5.5

PRISONERS ARE CONSULTED AND KEPT WELL INFORMED ABOUT THE RANGE OF RECREATIONAL ACTIVITIES AND THE RANGE OF PRODUCTS IN THE PRISON CANTEEN AS WELL AS THE PRISON PROCEDURES, SERVICES THEY MAY ACCESS AND EVENTS TAKING PLACE. THE SYSTEMS FOR ACCESSING SUCH ACTIVITIES ARE EQUITABLE AND ALLOW FOR AN ELEMENT OF PERSONAL CHOICE.

FEATURES

- **Embedded approach to consultation**
- **Information sharing of services, events and procedures**
- **Equitable access to activities**
- **Prisoner participation in decisions**

SPECIFICATION

Activities included are recreational and cultural events, the range of products available in the canteen and anything over and above the ordinary regime.

Consultation of prisoners routinely occurs in decision making. Examples include, though are not exhaustive of, the PIACs, focus groups, initiatives around how to spend the common good fund.

Participation of prisoners in any changes to be made occurs. A full range of prisoners are consulted, including an emphasis on those with protected characteristics, vulnerable prisoners and those who are marginalised. Minutes are produced, recorded and fed back to prisoners. The prison is proactive in ensuring that prisoners are freely able to participate by providing alternative means of communication or consultation where necessary, and supporting prisoners who have additional needs.

Information is shared across the prison. Noticeboards are filled with information and event notices which are replenished regularly. Information channels exist and operate effectively to share information, which could include a radio station or filming the PIAC meeting and playing this on the prison television.

Prisoners are aware of activities occurring in the prison or services available to them.

Access to activities and services are equitable and are available to all prison populations, in particular protection, remand and women prisoners, but also vulnerable prisoners or those with a protected characteristic.

Legal Standards

Section

European Prison Rules 2006

Rule 31.5

5.6

PRISONERS HAVE ACCESS TO INFORMATION NECESSARY TO SAFEGUARD THEMSELVES AGAINST MISTREATMENT. THIS INCLUDES UNIMPEDED ACCESS TO STATUTORY BODIES, LEGAL ADVICE, THE COURTS, STATE REPRESENTATIVES AND MEMBERS OF NATIONAL OR INTERNATIONAL PARLIAMENTS.

FEATURES

- Information is available to safeguard prisoners against mistreatment
- Unimpeded access to information
- Support available to ensure access to information and services

SPECIFICATION

Access to information includes the Prison Rules, human rights law, legal contacts, complaints forms, sentence statements and minutes/decisions made regarding them e.g. RMT and regime plans.

Prisoners are aware of the information that they need and where to access it. They know what information they are permitted to access.

Unimpeded access is ensured and potential barriers to access are identified. Potential barriers like the cases of foreign prisoners, low literacy, learning difficulties or special needs, are identified and prisoners who fall into those categories are effectively supported by the prison in gaining access to the information required.

Visits for statutory bodies, legal advice, the courts, state representatives and members of national or international parliaments are facilitated. The agent's visits area is accessible and flexible in engaging with external bodies, by way of appropriate spaces and video links where necessary. Access for external agencies is facilitated by the prison.

Legal Standards

Section

CPT Standards 2015

Page 92(130)

Mandela Rules 2015

Rule 53; 56(2-4); 61; 62; 119(2); 120

European Prison Rules 2006

Rule 23.1-23.3; 23.6; 24.3; 37.1-37.5; 98.1; 98.2

Scottish Prison Rules 2011

Rule 7; 120; 121

5.7

THE PRISON COMPLAINTS SYSTEM WORKS WELL.

FEATURES

- **Operation of complaints procedure**
- **Relationships with outside complaints agencies**
- **Prisoner confidence in the complaints system**

SPECIFICATION

The complaints procedure works well. Forms are readily available without having to request them from staff. Complaints are investigated thoroughly and a well-informed response is communicated timeously to the prisoner in a format which he or she will understand.

Prisoners are able to appeal the decision and are supported in doing so.

An Internal Complaints Committee is well run and held regularly and on time, with paperwork completed timeously and appropriately.

Prisoners have confidence in the complaints system. There are no real or perceived repercussions for putting in a complaint and if there are, the Governor challenges this proactively. The prison is proactive in supporting all prisoners who wish to lodge a complaint, particularly those who may need extra support like those with low literacy or learning difficulties, and foreign language speakers.

The prison has a good working relationship with outside complaints agencies. Prisoners are aware of the appeal mechanism to the Scottish Public Services Ombudsman (SPSO) and the prison responds, as necessary, to the findings and decisions of the SPSO.

Legal Standards

Section

CPT Standards 2015

Page 19(54); 92(130-131)

Mandela Rules 2015

Rule 56(1); 57

European Prison Rules 2006

Rule 70.1-70.7

Scottish Prison Rules 2011

Rule 122; 123; 124; 125

5.8

THE SYSTEM FOR ALLOWING PRISONERS TO SEE AN INDEPENDENT PRISON MONITOR WORKS WELL.

FEATURES

- **Visibility of information about Independent Prison Monitoring**
- **Staff understanding of Independent Prison Monitoring**
- **Unfettered access of Independent Prison Monitors (IPMs)**
- **Knowledge and engagement of prisoners with IPMs**

SPECIFICATION

The work of IPMs is visible. Forms are readily available in each hall and the Freephone number is available near the prisoner telephones, as well as being on the globally approved numbers list. Posters are on the noticeboards and the boxes are prominent.

Prisoners know what an IPM is, how to contact them and what their role is. Prisoners are able to explain which box is the IPM box and are aware that the Freephone number can be added to their telephone list. Where extra support to see an IPM is required, the prison provides it.

Staff understand the role of IPMs. Staff are able to explain what an IPM is, what their role is in the prison, and how this is distinct from the complaints procedure. Staff understand their responsibility to refill forms and ensure that these are readily available for prisoners. Staff know how to contact IPMs and are able to point prisoners in the right direction should they need to.

IPMs are allowed unfettered access. It is recognised that IPMs are able to move freely around the prison and meet prisoners. This is facilitated and permitted by prison management and staff.

Legal Standards

Section

CPT Standards 2015

Page 19(54); 92(132)

European Prison Rules 2006

Rule 93.1-93.2

Public Services Reform (Inspection and Monitoring of Prisons)(Scotland) Order 2014

As a whole

QI ADDITIONAL LEGAL STANDARDS	SECTION
5.1 CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 62.4; 85.3
CoE Recommendation Concerning Foreign Prisoners 2012	Section 15.2; 22.9; 22.10
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988	Principle 16(1) and 16(3)
CoE Recommendation on the Use of Remand in Custody 2006	Section 32
5.2 CoE Recommendation on the Code of Ethics for Prison Staff 2012	Section 6; 14
CoE Recommendation on the Management by Prison Administrations of Life Sentence and other Long-Term Prisoners 2003	Section 18a
CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 88.3
CoE Guidelines Regarding Radicalisation and Violent Extremism 2016	Section 8; 12
5.3 CoE Recommendation on the Code of Ethics for Prison Staff 2012	Section 15; 31; 32
Code of Conduct for Law Enforcement Officials 1979	Article 4
5.4 Code of Conduct for Law Enforcement Officials 1979	Article 2
CoE Recommendation on the Code of Ethics for Prison Staff 2012	Section 25
CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 53.2; 88.1
CoE Recommendation on the Management by Prison Administrations of Life Sentence and other Long-Term Prisoners 2003	Section 2; 18(a); 20(c)
5.5 CoE Guidelines Regarding Radicalisation and Violent Extremism 2016	Section 11
CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 50.3
CoE Recommendation on the Management by Prison Administrations of Life Sentence and other Long-Term Prisoners 2003	Section 5; 21

QI ADDITIONAL LEGAL STANDARDS	SECTION
5.6 CoE Recommendation on the Code of Ethics for Prison Staff 2012	Section 28
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988	Principle 16(2); 17; 18; 28
CoE Recommendation Concerning Foreign Prisoners 2012	Section 15.1(a); 15.1(d); 21.1-21.4; 24.1-24.4; 25.1-25.4
CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 105.1; 105.2; 105.4; 120.1-120.3
CoE Recommendation on the Use of Remand in Custody 2006	Section 26-27
5.7 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988	Principle 33
CoE Recommendation Concerning Foreign Prisoners 2012	Section 15.1(c)
CoE Recommendation on Conditional Release 2003	Section 33; 34
CoE Recommendation on the Use of Remand in Custody 2006	Section 44
CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 121; 122.1-122.5; 123; 124
Scottish Prison Rules (Complaints) Direction 2013	As a whole
5.8 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988	Principle 29
CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 126



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