

# A PAS SELF HELP TOOLKIT

**PRISONERS' ADVICE SERVICE**

.....  
THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND  
REPRESENTATION TO PRISONERS

**JUSTICE BEHIND BARS**

# ***A Prisoner's Guide to Lesbian, Gay and Bisexual Rights***

## **Introduction**

This toolkit has been produced by Prisoners's Advice Service (PAS) and is aimed at those prisoners who self-identify as lesbian, gay or bisexual, as well as those who may identify in similar ways or are questioning their sexual identity. It may also be useful to those who do not self-identify as LGB but engage in same-sex sexual activity. There is a separate toolkit to assist transgender prisoners.

The purpose of the toolkit is to provide prisoners with practical knowledge of the prison rules and procedures, together with the law regarding discrimination and human rights as they relate to LGB prisoners. We hope that you will feel able to challenge inappropriate behaviour and unlawful decisions in custody. However, the information in this toolkit is not legal advice. Before taking any legal action, you should speak to a lawyer, who can provide advice specific to your situation, or you can write to, or call, PAS.

The kit has been expressly written with the needs of LGB prisoners in mind. In March 2019 the Bent Bars Project (for details, please see page 19) conducted a survey of over 100 LGBT+ prisoners and asked them which areas of prison life they would like to be covered. By working together with Bent Bars, PAS has tried to cover as many areas as possible that directly relate to your needs in custody. If you are aware of an issue that has not been covered, please feel free to write to us and we will endeavour to assist (PAS' details can be found on page 19).

The production of this Self Help Toolkit for LGB prisoners was made possible thanks to the generous support of The Tudor Trust and The Paul Cottingham Trust.

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## **THE LEGAL OVERVIEW**

### **YOUR RIGHTS AND THE PRISON'S DUTIES**

The prison service, like many other public bodies, has certain obligations to LGB prisoners. These include the duty not to discriminate against you on the grounds of your sexual orientation. Discrimination occurs in prison when you are treated in a worse or less favourable way because you are a gay, lesbian or bisexual prisoner. The prison also has an obligation to respect your human rights.

The main laws that offer protection as an LGB prisoner are the Equality Act 2010 and the Human Rights Act 1998.

### **THE EQUALITY ACT 2010**

The Equality Act 2010 is the law that governs discrimination in England and Wales. The Act sets out the different forms of discrimination that people might be subjected to, and on what grounds it is illegal to discriminate.

The Act set outs a number of what are known as 'protected characteristics'. These are:

- Age
- Sex
- Gender reassignment
- Disability
- Marriage and civil partnership
- Pregnancy
- Race
- Religion or belief
- Sexual orientation

Generally, under the Act you must not be treated worse or less favourably than someone else because you have one of these protected characteristics. For example, prison officers cannot treat you less favourably because of your sexual orientation. This may amount to discrimination.

The Act also makes it unlawful for a prison to discriminate against you because they think you might have a protected characteristic. This is known as discrimination by perception. For example, it would be unlawful for the prison to treat you less favourably because they thought you might be LGB.

The Act also makes it unlawful for a prison to discriminate against you because you are connected to someone who has a protected characteristic. This is known as discrimination by association. For example, if you were friends with an LGB prisoner, and the prison treated you less favourably because of it, this would be unlawful.

The main different types of discrimination outlawed by the Act are:

- Direct Discrimination
- Indirect Discrimination

- Harassment
- Victimisation

### Direct Discrimination

This is when you are treated less favourably (i.e. worse) than someone who is not LGB in a similar situation. For example, if a prison officer treats you less favourably than they would treat a straight prisoner because you identify as LGB, this would amount to direct discrimination. This type of discrimination cannot be justified (apart from on the grounds of age); i.e. a prison officer cannot say he or she had a good reason for treating you in the manner that they did because you are LGB.

### Indirect Discrimination

This is when a particular organisation has a rule or policy that applies to everyone but it specifically disadvantages people with a protected characteristic. This form of discrimination can be justified if there is a good reason for the policy or rule. However, an organisation must be able to back up the good reason for the policy or rule with evidence.

An example of indirect discrimination would be if a prison had a policy that straight married prisoners could have extra visits with their partners on weekends, but excluded from this married LGB prisoners, or those in civil partnerships. The rule or practice in this case would put LGB prisoners at a disadvantage in comparison with straight prisoners, who would be able to receive the extra visits.

### Victimisation

This is when you are treated unfairly by an organisation (such as a prison) because you have made a complaint about discrimination you have experienced. This can also apply to someone supporting a person who is complaining about the treatment they have received.

An example of this would be where a prisoner submitted a COMP1 (a standard complaint form, see page 14) about a prison officer's conduct, such as homophobia, and officers then treated that prisoner less favourably because they had made the complaint, or tried to make the prisoner withdraw the complaint.

### Harassment

This is when a person is subject to unwelcome conduct relating to a protected characteristic.

Unwelcome conduct includes a wide range of behaviour, but the most common examples are both spoken and written abusive words, inappropriate jokes and physical gestures.

Harassment is unlawful if it is connected to your sex or your sexual orientation and the effect of the harassment is to violate your dignity or to create an intimidating, hostile, degrading, humiliating, or offensive environment for you.

For example, if a prison officer makes jokes because you are LGB, or calls you inappropriate and offensive names, this would constitute harassment under the Equality Act 2010.



Harassment under the Act also includes sexual harassment. Examples of sexual harassment include unwanted sexual advances, touching, sexual jokes or comments, the public display of pornographic pictures and the sending of material of a sexual nature.

For example, if a prison officer made an unwanted sexual advance towards you or made a joke of a sexual nature, this would constitute sexual harassment.

There is also a further form of harassment under the Act. This is where a person receives less favourable treatment because of their reaction to harassment. This only applies where the harassment is related to your sex, or sexual orientation.

For example, if a prison officer made an unwanted sexual advance towards you but you rejected them and they then made life more difficult for you by issuing you with an Incentive and Earned Privileges (IEP) warning or reducing your hours of work, this would also amount to harassment.

## **THE HUMAN RIGHTS ACT 1998**

The Human Rights Act 1998, introduced the European Convention on Human Rights directly into UK law. The Human Rights Act 1998 requires public authorities (i.e. prisons and the Probation Service) to act compatibly with a person's Convention rights. This means that the prison has to respect your rights when making decisions about your care or treatment. If they fail to do so, in some circumstances they could be acting in breach of the law.

The following is a list of the rights in the Human Rights Act that pertain to LGB prisoners:

- Article 2 of the Convention protects the right to life. The prison has a duty to protect your life. This may include a duty to protect you from the risk of harm and a duty to investigate deaths and near deaths in prison.
- Article 3 of the Convention provides protection from inhuman and degrading treatment and torture. For example, the prison must not use any form of punishment that could be considered cruel, humiliating or violent. The prison authorities should also protect you from suffering this kind of treatment at the hands of other prisoners. Under Article 3, the prison has a duty to effectively investigate complaints regarding inhuman or degrading treatment. (This is set out in more detail below.) Article 3 is not limited to acts of physical ill-treatment; it also covers causing psychological damage, such as, either, creating mental health problems or making them worse.
- Article 7 of the Convention prevents you from being punished without law. It means that you cannot be charged with a criminal offence for something that was not a crime when you committed it. It also prevents you from receiving a heavier punishment or sentence than was available at the time you committed an offence
- Article 8 of the Convention protects the right to private life, family and correspondence. Article 8 is a very broad right and your status as LGB should come under the scope of protection afforded by it. Any interference with your private life must be in accordance with the law (i.e. it must be on the basis of a rule or policy in the prison) and it must be proportionate (i.e. the interference must be no more than is necessary.)

- Article 10 of the Convention protects the right to freedom of expression.
- Article 11 of the Convention protects the right to freedom of association.
- Article 12 of the Convention protects the right to marry.
- Article 14 of the Convention requires that all of the rights and freedoms set out in the Act must be protected and applied without discrimination.

Below is a list of instances – discussed in more detail – where your human rights may be engaged as an LGB prisoner. For example:

- Your Article 3 rights might be engaged if the prison authorities failed to provide you with effective protection, or to take reasonable steps to protect you, from the criminal acts of other prisoners (i.e. a sexual or violent assault), which the prison authorities knew about or ought to have known about. Your Article 3 rights might also be engaged if the prison service failed to refer a serious sexual or violent assault you have suffered to the police or if the police failed to carry out an effective investigation into a complaint of a violent or sexual assault.
- Your Article 8 rights might be engaged if the prison service made unlawful decisions based on your sexual orientation as this affects your right to a private life.
- Your Article 14 rights might be engaged if you were discriminated against because of your sexual orientation.

## **WHAT TO EXPECT FROM STAFF AND OTHER PRISONERS**

### What to Expect From Staff

All prison staff have a duty to comply with the Equality Act 2010. You can read more about this in Prison Service Instruction (PSI) 31/2011 (which should be available to you in the prison library). Staff also have a duty to comply with the Human Rights Act 1998. If they fail to comply with the Equality Act 2010 or to act compatibly with your rights under the Human Rights Act 1998, you may be able to bring legal proceedings against them.

### What to Expect From Other Prisoners

Unfortunately, the Equality Act 2010 only prohibits discrimination by the prison staff, as under the Act they are what is known as a service provider. It does not legally stop other prisoners from being homophobic or bi-phobic. That does not mean however that the prison should not take action should these incidents arise. PSI 32/2011 'Ensuring Equality', provides that many incidents can be resolved by prompt staff action, including by staff challenging inappropriate behaviour.

The prison does have obligations under the 'Public Sector Equality Duty'. This is a general duty under the Equality Act. The prison, when exercising its functions and powers, must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and



those who do not;

- foster good relations between people who share a protected characteristic and those who do not.

The Equality Act 2010 explains that the second aim (advancing equality of opportunity) involves, in particular, having due regard to the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics;
- take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people;
- encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

An example of how a prison might fulfil its duties under the Public Sector Equality Duty would be to set up LGBT groups for prisoners, or make sure that each wing or spur has a prisoner who is the Equalities Representative.

## **SEX IN PRISON AND SEXUAL HEALTH**

Sex in prison is still very much a taboo subject, although we know it does happen. There is no formal policy on relationships or sex in prison (see also cell sharing and relationships on page 11). Relationships, and sexual relationships in particular, are managed through prison decency policies. PSI 30/2013 'Incentives and Earned Privileges', imposes a behavioural requirement on prisoners, which states that they must act, "with decency at all times, remembering prisons / cells are not private dwellings (this includes not engaging in sexual activity)."

It should be noted, however, that the Prison Rules do not prohibit sexual acts between prisoners and consensual acts would not count as an offence in and of themselves.

Should you have sex in prison, it is important to look after your physical and emotional well-being.

### Condoms

As a prisoner you can access condoms should you need to. Use of a condom can effectively reduce the risk of HIV/AIDS, gonorrhoea, chlamydia, and syphilis, and offers some protection against genital warts and herpes.

PSO 3845 'Blood Borne and Related Communicable Diseases', provides that condoms may be prescribed in prison if, in the clinical judgment of a doctor, there is a risk of HIV or other sexually transmitted diseases (STDs).

Different prisons have different procedures for this. For example, in some prisons condoms are readily available, whereas in others they are only available on specific request. Condoms may also be requested from nurses at Healthcare.

As a prisoner, you have the same rights to access the quality and range of NHS services as

the general public. This is provided for in Prison Rule 20 and section 249(1) of the National Health Service Act 2006.

As an LGB prisoner you have the right to access HIV treatment and treatment for any STD. Some prisons provide their own STD clinics, which are operated by external NHS services. Your prison healthcare provider, however, must ensure that these services are set up for you to use.

### PrEP (Pre-Exposure Prophylaxis)

PrEP (pre-exposure prophylaxis) is a drug which prevents people from getting HIV. It can be taken by people who do not have HIV but are at risk of getting it. In March 2020 the NHS announced that PrEP was now available on prescription.

For more information on sexual health in prison contact the Terrence Higgins Trust (details are listed on page 22).

Although sex in prison can be consensual, it can also be coerced. This is a criminal offence (see section on reporting sexual abuse on page 10).

### Medical Confidentiality

Those working in Healthcare, whether a GP, nurse or administrative staff, have a legal and professional ethical duty not to disclose any of the information you share with them to any other party without your expressed consent. This is known as the duty of confidentiality. All the information you share with Healthcare should remain private and should not be shared with others – including prison officers - other than with your express permission.

This means that whatever is recorded about your healthcare (e.g. records from appointments with the doctor, dentist, sexual health provider, mental health nurse) should not be accessible by prison officers (unless you give permission for it to be shared) so your health records are kept separately from your case record files.

The NHS guidelines on confidentiality provides a 'Confidentiality Model' which all prison healthcare providers should adopt. Prison healthcare providers should:

- protect your information from being shared;
- inform you as to how your information will be used and provide a choice to you as to whether you want it to be shared.

Your consultations with nurses, your GP or Healthcare should be conducted in private. This should be out of sight and hearing of prison officers.

### Self-Harm

We know that LGB prisoners experience a high level of anxiety and distress in prisons and this can lead to self-harm and self-injury. People engage in self-harm and self-injury for many different reasons and it is important not to make assumptions or judgments about why someone might self-harm. If you are self-harming, or you are worried about someone who is, you can speak to Safer Custody in the prison.



The first port of call is to speak to a wing officer, your personal officer or Healthcare. Family members can also contact the prison on the telephone and ask to speak to Safer Custody.

You may also want to call the Samaritans on 116 123, or write to them. Their advice line is a free and confidential service and should be available to call free from your PIN phone. (For details, see page 21).

## **REPORTING SEXUAL ABUSE AND HOMOPHOBIC VIOLENCE TO THE POLICE**

Sexual violence or assault in prison is never acceptable. The prison has a duty to protect you from sexual assault and homophobic abuse. If you have been a victim of sexual assault or violence, it is important that you speak to someone you trust in order to seek support. If you wish to report it you can contact the Police Liaison Officer in your prison. You can do this by making a wing application. You can also speak to your personal officer. You should never be prevented from reporting these crimes.

We understand that reporting these incidents can be very stressful and emotional in itself. It might be that you want to discuss what happened to you with Healthcare, a friend in prison, a legal representative or PAS first.

### What the Prison Has to Do

Before reporting an abusive incident to the police, the prison will first consider whether the case can be dealt with by the Prison Adjudication System, and whether the victim wants the crime to be referred to the police. The Prison Adjudication System will, however, not be suitable where there has been an allegation of a serious assault or sexual violence.

Where allegations of serious assault or abuse have been made, the prison must refer these to the police. In practice each prison has a Police Liaison Officer and if you want to report a crime you should ask, or make an application to see, the Police Liaison Officer.

### The Police's Duty to Investigate a Crime

Not every crime reported to the police will be investigated. However, the police do have a duty to investigate serious sexual and violent assaults. The police should investigate a crime in prison in the same way as if it had happened in the community.

### The Victims' Right to Review Scheme

If, after investigating your complaint, the police decide not to bring proceedings where they have the authority to do so, or not to refer your case to the Crown Prosecution Service (CPS), then you can apply for that decision to be reviewed. This is known as the Victims' Right to Review Scheme.

You will need to write to the local police force which investigated your complaint and ask for a review of their decision. Their contact details will be provided on their official correspondence with you.

You should make a request for a review within three months of being notified of the police's

decision. After this time, requests for review are dealt with at the police force's discretion. Once you have made a complaint, a review should take place and a decision should be communicated to you within 30 days of the date of the request.

The CPS also operate a Victims' Right to Review Scheme. Under their scheme you can write to the CPS and ask them to review their decision if it relates to a CPS decision not to charge someone with an offence or not to prosecute someone. A request for a review should be made within three months of the date of the CPS decision not to take action.

## **CELL SHARING**

If you have concerns over your safety, or there are issues with your current cell mate relating to your sexuality, you can ask to share a cell with another LGBT+ prisoner. However, there is no right to share your cell with another LGBT+ prisoner even if you are in a relationship with them.

If you share a cell, you and the person you are sharing it with will undergo a cell sharing risk assessment. The assessment will record the level of risk each prisoner poses to the other and whether there are any factors which indicate potential risk. You should not be sharing a cell with someone who is known for violence against the LGBT+ community. If you are, it is important to raise this with a member of staff immediately, either through your personal officer or another officer within the wing office.

The prison has a duty of care towards you to protect you from harm whilst in prison. The prison could be in breach of its duty of care towards you if you are located in a cell with a prisoner who is known to commit offences against LGBT+ people. If any harm came to you as a result, then a civil claim in negligence could be issued in the courts and you could be eligible for compensation for any injuries you received. If you ever find yourself in similar circumstances, you should contact a solicitor immediately, or speak to PAS and we will refer you to one.

### Cell Sharing and Relationships

Some prisoners form relationships in prison and wish to share their cells with their partner.

As noted on page 8, there is no formal policy on relationships or sex in prison.

PSI 5/2018 'Prisoner Discipline Procedures (Adjudications)', states at paragraph 1.111 that, "If two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate."

### What Does This Mean For Me?

Practically this means that you can share a cell with your partner or have sex with your cellmate. However, if you are caught having sex, then the prison can separate you. In extreme circumstances you may face disciplinary charges.

### Segregation Issues & Safer Custody

Please refer to PAS' fact sheet on segregation, which you can request by contacting PAS (see details on page 19).



## **COMMUNICATION WITH LGBT+ PRISONERS & GROUPS, AND ACCESSING LGBT MATERIALS**

### Corresponding with Other Prisoners

PSI 49/2011 'Prisoner Communication Services', at 2.24, provides that correspondence between convicted prisoners requires the approval of the Governors of both prisons concerned, except where the prisoners are close relatives or where they were co-defendants at their trial and the correspondence relates to their conviction or sentence. The Governor of each prison will have to approve the request before correspondence can be sent.

Prisoners may also be allowed to correspond with ex-prisoners, in the community, subject to any concerns there may be regarding threats to security, and, if on license, the views of their Community Probation Officer.

### Communication with LGBT+ Organisations

There is no rule against writing to LGBT+ organisations. One potential difficulty some prisoners face is that a number of organisations use a PO BOX for correspondence.

PSI 49/2011 at 2.25 states that prisoners must not normally be allowed to write to a PO Box number, but if the prisoner does not know the private address of the correspondent, the Governor may, if satisfied that security is not threatened, allow the letter to be sent (this will not normally be an issue where the person/organisation in question is a recognised body such as PAS, Bent Bars Project, Samaritans).

If you are having difficulties corresponding with an LGBT+ organisation, you should follow the complaints process to try and resolve it.

### Access to LGBT+ Reading Materials and Magazines with LGBT+ Content

Prison Rule 33 provides that every prison shall have a library and every prisoner shall be allowed to have access to books and to exchange them.

PSI 02/2015 'Prison Library Service', sets out what materials the prison library should stock. It provides that the range of stock should reflect the nature and requirement of the prison population and regime. Consideration should also be given to providing materials in a range of languages. DVDs and computer games with '18' rated certificates are not permitted to be stocked.

Prison libraries should also stock newspapers and magazines. PSI 02/2015 and Prison Rule 33 provide that these will be stocked according to decisions made within the prison you are in. If the prison has funds, it can provide newspapers and magazines which reflect the needs of the local prison population. It is reasonable to expect that a prison library would stock some LGBT+ material. If it does not, you can speak to your local librarian and request that they obtain some.

Publications you might like to read, or request, include, Attitude Magazine and Gay Times (which are aimed at men), Diva (aimed at women) and AZ Magazine and Pride Life (either).

### Access to Materials Which Contain Adult Content

PSI 12/2011 'Prisoners Property' sets out what items you are allowed to possess in prison. At paragraph 2.19 the policy sets out where materials may be confiscated.

The Governor must temporarily confiscate any newspaper, periodical or magazine or any particular issue, or any book, if he or she considers that the content presents a threat to good order or discipline or to the interests of prison or national security, or that possession of the material is likely to have an adverse effect on the prisoner's physical or mental condition. The Governor must also impose restrictions on the display of material which he or she considers to be likely to cause offence by reason of its indecent or violent content, or to be inconsistent with the prison's commitments to eliminate discrimination and harassment and to promote equality, taking account of local circumstances.

Further guidance as to what is meant by indecent or violent content is provided by Chapter 10 of the National Offender Management Service (NOMS) Public Protection Manual (January 2020). It provides that material must not be provided to a prisoner if:

- *It is obscene within the meaning of the Obscene Publications Act 1959. This covers the publication of material that has a tendency to “deprave and corrupt” those likely to read, hear or see it. No absolute definition of “obscene” is possible; each individual item has to be judged on its own merits. The CPS website has a list of the types of content that might be prosecuted, but this is not exhaustive. It is important to note that obscenity is not confined to images. Written material can be obscene as well, eg graphic descriptions of child abuse. Also, obscenity is not limited to material of a sexual nature.*
- *It uses threatening words and is intended to stir up racial or religious hatred contrary to the Public Order Act 1986 and the Racial and Religious Hatred Act 2006.*
- *It features children inappropriately (such as indecent images, or pseudo-photographs, images made by computer graphics or otherwise – which appear to be of children)*
- *It is extreme pornography (i.e. that the images are pornographic and they are grossly offensive, disgusting or of an obscene character and portray violent acts)*
- *It is otherwise sexually explicit. This restriction applies even though the material in question may be legal and/or no longer classified as obscene. “Explicit” means any image of:*
  - *ejaculation;*
  - *penetration (whether oral, vaginal or anal);*
  - *a young person (whether naked or clothed);*
  - *a sexual act that depicts restraint, coercion or violence*
- *It promotes or supports acts of terrorism, domestic extremism or radicalisation..*
- *It is a film, video game or other material to which the BBFC has refused a certificate.*
- *It is an 18-rated film and or video game – see PSI 30/2013 Incentives and Earned Privileges, paragraphs 10.6 to 10.11.*

All decisions to withhold or remove material must be based on an assessment of the effect of the material on the rehabilitation or offending behaviour of the prisoner requesting it, or of other prisoners, crime prevention, or of the effect of the material or its display on good order and discipline.



Other considerations - in particular, anyone's personal views - should not be taken into account.

Governors' powers over the display of materials (for example, on a cell wall) are wider than over their possession: while it may be possible to ban some items from display because of their capacity to cause offence to others, it will not usually be reasonable to prevent their possession solely for that reason.

Any restrictions adopted (including completely withholding materials) must be necessary and proportionate to the nature of the risk, and must be the least needed to address that risk. Proper account must be taken of the prisoner's right to receive information and the general policy of Her Majesty's Prison and Probation Service (HMPPS) of not applying censorship. These must be balanced against potential harm before a decision is taken.

Applying the policy, you can have access to some adult pornography, however, the policy prohibits you from having possession of material with an erect penis.

## **LGBT+ INITIATIVES IN PRISON**

Some prisoners find it helpful to create support networks in prison by setting up LGBT+ groups and events. However, the opportunities for such activities vary across the prison estate. Some prisons have pre-existing LGBT+ groups that prisoners can join. Some even organise Pride activities.

If your local prison does not have much to offer by way of LGBT+ projects or groups, your first port of call should be speaking to your wing's Equalities Representative or the prison's Equalities Officer.

Prisons have a duty, known as the Public Sector Equality Duty, (see page 7) to advance equalities opportunities. If your prison does not have an LGBT+ group, it has a duty to consider whether one would help eliminate discrimination. If after taking the relevant steps, the prison still refuses to provide LGBT+ projects or groups then you should consider whether you wish to make a complaint.

## **WHAT TO DO IF YOU THINK YOUR RIGHTS ARE NOT BEING RESPECTED**

### Making a COMP1 or DIRF Complaint

If you feel that you have been a victim of discrimination or that your human rights have been breached there are number of steps you can take.

- First, you can speak to a friend, or the Equalities Representative on your wing and liaise with them.
- Second, you can speak to your Equalities Officer, who will be a paid member of prison staff. You can make an application on your wing to see them.
- Third, you can submit a complaint, either by form COMP1 (when the complaint does not require confidentiality) or by DIRF (Discrimination Incident Reporting Form, when the complaint is about discriminatory behaviour). These can be found on your wing or in the prison library.

Prisoners' Complaints are dealt with in the Prisoner Complaints Policy Framework. The framework provides that:

- Complaints should normally be submitted within three months of the incident or of the circumstances which give rise to the complaint, or the date on which they became known to the prisoner.
- Complaints should be posted into the locked 'Complaints' boxes on the wings.
- You should normally receive a response to a COMP1 within five working days (10 working days if the complaint involves another establishment or is against a member of staff).
- If you are not satisfied with the response you can submit a COMP1A ("Stage 2" appeal, see page 16) or a further DIRF.
- Fourth, you can make a complaint to the Prison and Probation Ombudsman (PPO). The PPO is independent from the prison service and if it accepts your complaint you will be allocated a caseworker who will investigate (see below and page 16).
- Finally, you may wish to consider obtaining legal advice and taking legal action. This can be done at any stage, however, a solicitor will need to see evidence of complaints and the responses you have received in order to fully advise you of the next best steps in your case.

At any point during this process, you can also call, or write to, PAS for advice and support.

### How the Prison Should Deal With DIRF Complaints

PSI 32/2011 'Ensuring Equality' at Annex F provides specific guidance as to how DIRFs should be processed. The PSI states that:

- All DIRFs must be logged by the prison.
- If a DIRF concerns a serious incident and/or allegation of misconduct by staff, it is usually referred for investigation.
- Prisoners must be informed of what is happening with their complaint and any outcome of the investigation.
- DIRFs concerning other issues that do not amount to a serious incident or misconduct by staff should be handled by a management-level member of staff.
- As part of the complaint process you should be interviewed by the manager and they should explore with you the issue that you have raised.
- The manager should then seek to address the issue through appropriate means, which may include informal conflict resolution, action through systems such as IEP, adjudications etc., or specific action to expedite an outcome.
- A written response explaining the action taken should be sent to you in all cases.



- Where a prisoner is not satisfied about the outcome of a DIRF with regard to an incident to which they have been subject, they should submit a “Stage 2” complaint (see below)

### Stage 2 Complaints

If you are unhappy with the “Stage 1” response to a COMP1 (meaning the initial response to your complaint), you have a time period of seven calendar days to make a “Stage 2” appeal to management on a COMP1A form. You can expect a response to a COMP1A within five working days.

### The Prisons and Probation Ombudsman (PPO)

If you are unhappy with the response to a COMP1A (“Stage 2”) appeal you should contact the Prisons and Probation Ombudsman (PPO) at:

***The Prisons and Probation Ombudsman, Third Floor, 10 South Colonnade, Canary Wharf, London E14 4PU***

- The PPO is independent from the prison and you will be allocated a caseworker who will receive all the documents from the prison about what happened to you.
- A finding by the PPO that the prison has discriminated against you, or acted unlawfully, can be important. The PPO has the power to make recommendations to the prison to prevent this happening again in the future.
- The time limits for complaints to the PPO are based on the date that you receive the final response from the prison and are set out as follows:
  - You must submit your complaint to the PPO within three months of receiving the final response from the prison.
  - If you have not received a final response from the prison within six weeks of the final stage of the complaint you can contact the PPO (in practice they will rarely take the complaint at this point but should contact the prison to see why they have not replied to you).
  - Unless there are exceptional circumstances, your complaint must be submitted within 12 months of the actual events complained of.

### Confidential Access Complaints (COMP2)

If your complaint relates to a specific staff member and you do not wish them to see your complaint, you should use the confidential access system by completing a COMP2. Always read the notes on the form carefully to see if your complaint is suitable for confidential access. You should normally receive a response to a COMP2 within five working days if addressed to the Governor / Director, or within six weeks if addressed to the prison group Director / the Director’s Line Manager.

If you think your complaint is suitable for confidential access, place the complaint in the envelope and seal it. Then address it to the person who you want to read it. This must be one of the following: the Governor / Director of the prison where you are held, the prison group Director

/ the Director's Line Manager in a contracted prison, or the Chair of the local Independent Monitoring Board (IMB). Then, post the envelope in the 'Complaints' box. The envelope will only be opened by the person to whom it is addressed. Also, written submissions may be sealed in an envelope, marked Confidential Access and posted in the 'Complaints' box.

### The Independent Monitoring Board (IMB)

The IMB is responsible for monitoring the treatment of prisoners to ensure that it is fair, just and humane. By law, every prison must have an IMB and, although it does not constitute a stage in the formal complaints procedure, prisoners can complain to the IMB and ask them to investigate matters within the prison for them. Forms to make an application to the IMB should be available on your wing. You should fill out the form and put it in the box marked 'IMB'.

### Legal Claims

If your complaints are not resolved by the prison service, you may want to consider taking legal advice to see if you can take legal action.

In order to obtain the correct legal advice, you will need to have secured evidence relating to your case, by taking the above practical steps via complaining or speaking to officers.

It is important that you make a complaint as soon as an event happens. You need a clear paper trail in order to show that the prison has acted in an unlawful way. Use the information above in order to point out to the prison that it has done is unlawful.

We understand at PAS that complaints can be lost. We would advise you to keep a separate note of the complaints you have made in case they do get lost. That way you will have a separate log of all the events. You may also want to approach other prisoners or other members of staff to see if they are willing to support you, or confirm your side of the story. If they have viewed the incident directly themselves, they can also make a complaint.

Once you have made a complaint you will need to consider whether the response you receive deals with your complaint adequately. If it does not, you may want to approach a solicitor – or PAS – to see if they are able to provide you with advice as to whether you can bring a legal claim.

### Types of Legal Claim

There are two types of claim that prisoners can bring if they feel they have been discriminated against, or that their human rights have been breached: (1) a civil claim; and (2) a claim for judicial review. These are explained below:

#### (1) Civil Claim

Civil claims for financial damages usually concern events that have happened in the past, and are not to do with ongoing treatment.

For example, if in the past six months you may have been subject to homophobic treatment by a prison officer, and this has not occurred again; in those circumstances you may be able to bring a claim for discrimination against the prison, and/or a claim for a breach of your article 8 rights of The Human Rights Act 1998 (see pages 6-7).



Both human rights claims and discrimination claims have time limits. These are limits imposed by the law to make sure that you bring your case to court in time.

For most discrimination cases, the time you have to bring your case to court is within six months. (This means that you must bring a claim before those six months are up. Claims can sometimes be brought after those six months are up. For example, if there is continuous ongoing discrimination. The courts also can grant what is known as an extension of time to bring a case. However, they are not always granted, and extension of time is the exception rather than the rule and cannot always be relied upon. Where possible it is always best to speak to a solicitor, or contact PAS, to get advice in relation to time limits to bring claims.)

For Human Rights Act 1998 cases, the time limit in which to bring your case to court is within one year of the date of the decision or action you are complaining about.

For negligence claims, the time limit in which to bring your case to court is three years if you have suffered a personal injury (i.e. either a physical or mental injury) or six years if you have not suffered an injury.

Time limits are very important in civil claims, so it is always best to act quickly. It is always important to identify whether you have a claim so that the above time limits can be established. If you are unsure whether your claim is valid, one of PAS' Caseworkers will be able to assist you.

## (2) Judicial Review

Another type of claim is known as judicial review. This is a procedure where you challenge a particular decision as unlawful by asking a judge to review it.

Judicial review concerns decisions made by prison staff and officers, or failures of prison staff and officers and the treatment is ongoing.

For example, a claim for judicial review would be appropriate where:

- a decision has been made that you and your partner with whom you share a cell should be separated;
- a decision has been made that you are not permitted to access LGBT+ reading materials;
- a decision has been made that you should receive an adjudication for being caught having sex in your cell.

A judicial review claim has to be brought promptly and, in any event, within three months of the date of the decision you are challenging. It is therefore important to act quickly. Additionally, before you can bring a claim for judicial review you have to show that you have used the prison's complaint system. You should therefore make sure you submit your COMP1s and COMP1As or COMP2s or DIRFs in a timely manner.

## Legal Aid

Legal Aid (public funding) may be available to take actions for judicial review and to bring civil claims for breaches of the Equalities Act 2010 and the Human Rights Act 1998. In many cases a solicitor can make an application on your behalf to claim Legal Aid. An application for Legal Aid is subject to a merits test (i.e. how likely it is that you will win your case) and a means test (i.e. how much money you have available to you).

## ORGANISATIONS THAT CAN HELP WITH LGB ISSUES

### PRISONERS' ADVICE SERVICE

PRISONERS'

ADVICE

SERVICE

JUSTICE BEHIND BARS

PAS offers free legal advice and support to adult prisoners throughout England and Wales regarding their human and legal rights, conditions of imprisonment and the application of Prison Law and the Prison Rules. We can also advise on matters of Family Law, and of Immigration Law to prisoners with issues relating to detention or deportation.

We pursue prisoners' complaints about their treatment in prison and, where appropriate, we take legal action on their behalf. Examples of issues PAS can advise upon include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, contact with children, resettlement and healthcare matters.

If you would like to speak to a Caseworker at PAS, call us on: **020 7253 3323**

Our Advice Line is open on Monday, Wednesday and Friday between 10am and 12.30pm, or 2pm and 4.30pm, or on Tuesday evening between 4.30pm and 7pm.

Or write to us at: **Prisoners' Advice Service, PO Box 46199, London EC1M 4XA**

(When writing, mark your envelope, "Legal Mail Rule 39". This ensures the letter is not opened by prison staff.)

### THE BENT BARS PROJECT



The Bent Bars Project is a letter-writing project for lesbian, gay, bisexual, transgender, transsexual, gender-variant, intersex and queer prisoners in Britain.

The project was founded in 2009 in response to a clear need to develop stronger connections and build solidarity between LGBTQ communities inside, and outside, of prison walls.

Bent Bars aims to work in solidarity with prisoners by sharing resources, providing mutual support and drawing public attention to the struggles of queer and transgender people behind bars.

The project also collects and distributes information for LGBTQ prisoners on a range of issues, including: harm reduction practices (safer sex and safer drug-use), HIV and HepC prevention, homophobia, transphobia, coming out in prison.

If you would like to sign up to the Bent Bars letter-writing project, write to us at: **Bent Bars Project, PO Box 66754, London WC1A 9BF**



## BLACKOUT UK



BlackOut UK is a not-for-profit social enterprise run and owned by a volunteer collective of black gay men. They aim to encourage and stimulate debate and discussion online and face-to-face through their website, writer workshops, networking events, and supporting interventions to meet the needs of black queer men.

You can contact them via email at:  
[blkoutuk@gmail.com](mailto:blkoutuk@gmail.com)

## BOOKS BEYOND BARS



Books Beyond Bars send books and other educational materials, free of charge, to incarcerated LGBTQIA+ people across the United Kingdom.

If you would like a copy of their main order form (or a discreet version with the full name of the project and any specific reference to LGBTQIA+ content removed), you can contact them via email on: [booksbeyondbarsuk@gmail.com](mailto:booksbeyondbarsuk@gmail.com)

Completed order forms can be sent to:  
**Books Beyond Bars, PO Box 5554, Manchester, M61 0SQ**

## ELOP



ELOP is a holistic lesbian and gay centre that offers a range of social, emotional and support services to LGBT communities. Core services include counselling and young people's services.

They can be contacted by telephone on: **020 8509 3898**; or email them at: [info@elop.org](mailto:info@elop.org)

## GALOP



Galop supports lesbian, gay, bisexual and trans people experiencing hate crime, domestic abuse or sexual violence.

Call their National Lesbian, Gay, Bisexual and Trans+ Domestic Abuse Helpline on: **0800 999 5428**

Their email is: [advice@galop.org.uk](mailto:advice@galop.org.uk)

## PETER TATCHELL FOUNDATION



The Peter Tatchell Foundation provides help and support to hundreds of victims of human rights abuses, including homophobia, biphobia and transphobia.

Call the foundation on: **020 3397 2190**

Or write to them at: **The Peter Tatchell Foundation, 14 Marshalsea Road, London SE1 1HL**

## PRISON REFORM TRUST



The Prison Reform Trust (PRT) is an independent UK Charity working to create a just, humane, and effective penal system. They offer advice and information to prisoners and their families.

You can call their Prisoners' Families Helpline on: 0808 808 2003 between 9am and 8pm. A short voicemail can also be left on the Advice and Information Service on : **0808 802 0060**

Or write to them at: **Prison Reform Trust, FREEPOST ND 6125, London EC1B 1PN**

Alternatively you can email at: **advice@prisonreformtrust.org.uk**

## SAMARITANS



The Samaritans work to reduce suicide and self-harm in prisons, where prisoners are between five to ten times more likely to take their own lives than those on the outside.

If you are self-harming, or you are worried about someone who is, you can call their Helpline. All prisons are required to allow prisoners access to the Samaritans' Helpline free of charge.

Their Helpline number is: **116 123**

Or write to them at: **Samaritans, Freepost RSRB-KKBY-CYJK, PO Box 9090, Stirling FK8 2SA**

## SWITCHBOARD LGBT+ HELPLINE



Switchboard provides an LGBT+ Helpline, offering a safe space for anyone to discuss LGBT+ related issues, including sexuality, coming out, gender identity, sexual health, abuse and emotional wellbeing.

You can call the Helpline on: **0300 330 0630** – it is open 10am to 10pm every day.

Their address is: **Switchboard, PO BOX 7324, London N1 9QS**

## STONEWALL



Stonewall was founded in 1989 by a small group of people who had been active in the struggle against Section 28 of the Local Government Act. They work to empower individuals, and focus on changing and protecting laws to ensure equal rights for LGBT people.

You can contact their information service (freephone) on: **0800 050 2020**, Monday to Friday 9.30am to 4.30pm

Or write to them at: **Stonewall, 192 St. John Street, London, EC1V 4JY**



## THE TERRENCE HIGGINS TRUST



The Terrence Higgins Trust is the UK's leading HIV and sexual health charity. Its aim is to contribute to the end of HIV transmissions, improve sexual health and support people living with, and affected by, HIV and poor sexual health. It ensures that the voices of people affected by HIV are heard.

If you would like advice and information about HIV, call THT Direct on: **0808 802 1221**

Or write to: **Terrence Higgins Trust, 314-320 Gray's Inn Road, London WC1X 8DP**

## UK BLACK PRIDE

### UK BLACK PRIDE

Alongside the official annual UK Black Pride Event, the organisation also provides community outreach and advocacy for the experiences of the UK's black LGBT community.

Their email address is:  
**Josh@ukblackpride.org.uk**

## UK LESBIAN & GAY IMMIGRATION GROUP (UKLGIG)

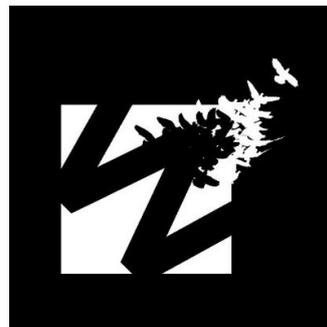


The UK Lesbian & Gay Immigration Group supports LGBTQI+ people through the asylum and immigration system. They provide psychosocial and emotional support for LGBTQI+ people seeking asylum to help improve their confidence and self-esteem and reduce isolation. They also provide legal information and advice, and campaign for improved treatment of people seeking asylum.

If you require support or advice you can call on: **020 7922 7811**, Monday to Friday during Office hours.

Or write to them at: **UKLGIG, CAN Mezzanine – Borough, 7-14 Great Dover Street, London, SE1 4YR**

## WOMEN IN PRISON



Women in Prison delivers independent, non-judgmental and friendly support to women across the women's prison estate.

You can call WiP on freephone  
**0800 953 0125**

Or write to: **Women in Prison (Freepost), 2nd Floor, Elmfield House, 5 Stockwell Mews, London SW9 9GX**

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[www.prisonersadvice.org.uk](http://www.prisonersadvice.org.uk)



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