PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

Closed and Banned Visits

SELF HELP TOOLKIT

Closed Visits

What are closed visits?

A 'closed visit' is any form of visit where the prisoner and visitor are prevented from having any form of physical contact and prevented from passing any item. This is most often through separation by a pane of glass or barrier. It may also be through strict supervision during a 'non-contact' visit.

Closed visits can be applied to all prisoners, whether on remand or serving a sentence. They can be applied in relation to any visits – whether social or legal.

When can closed visits be imposed?

Closed visits note may be imposed as administrative measures where necessary for the grounds specified in Prison Rule 34(3) (YOI Rule 9(3)).

In the majority of cases, closed visits will be imposed to prevent the smuggling of contraband items through visits. However, PSI 15/2011, Management and Security of Visits, which sets out the rules and procedures related to closed visits, does not make it clear what the necessary standard of proof is where closed visits are imposed on the basis of smuggling prohibited items:

- Para 3.2 states closed visits should be applied where there is an '*identified risk* of smuggling prohibited items' through visits;
- Para 3.8 states closed visits should be applied where prisoners are '*proved or reasonably suspected* of involvement in prohibited item smuggling through visits, or are *considered to pose a reasonable risk* of involvement'.

It is our view that, at minimum, the standard of proof should be '**reasonable suspicion**' or '**proved suspicion**' as this is a more objective standard than being merely '**considered**' to pose a risk. Either way, closed visits may follow a risk/suspicion in relation to either the prisoner or the visitor – e.g. following a search of the visitor prior to the visit. However, it should only relate to conduct at the visit itself and not the prisoner's conduct elsewhere in the prison. Any assessment of risk should be conducted on an individual basis.

How is the decision to impose closed visits made?

Before imposing closed visits, the prison should demonstrate that it has:

i) taken into account all the individual circumstances of the case;
ii) acted proportionately; and
iii) kept the requirement for closed visits under review.

The prison must consider the following criteria (in accordance with para 3.10 PSI 15/2011):

- the type of prohibited item suspected of being smuggled and the threat it poses to the prison;
- any previous history of involvement with that item – i.e. pattern of drug use as demonstrated by a MDT, evidence from the prisoner's security file etc.;
- whether this is an isolated example or a repeat offence;
- analysis/use of intelligence or incidents indicating patterns of misuse of drugs or use/trafficking of mobile phones or other contraband, derived either from visits or from behaviour in the prison;
- CCTV evidence or actual possession of prohibited items on a post-visit search;
- correspondence/telephone monitoring evidence of attempted or actual smuggling through visits;
- finds from cell searches; and
- the index offence(s) and previous criminal record.

So, the prison should not operate a policy whereby prisoners are automatically put on closed visits as a result of particular incidents – for example, a failed MDT or the smuggling of a mobile phone. Each case must be considered afresh, regardless of the incident involved.

In particular, a single positive MDT should not necessarily be taken to provide sufficient evidence of smuggling drugs or of a risk that you have been persuaded to smuggle drugs.

Can closed visits be imposed as a punishment?

No. closed visits are an administrative measure, not a punishment. As such, they can be applied regardless of whether or not a prisoner has actually been charged with smuggling prohibited items through a visit. Notification of closed visits should be quite separate from any adjudication procedure.

How long can closed visits be imposed for?

In the first instance, closed visits may be imposed for up to three months. However, Governors/Directors have a discretion to impose closed visits for shorter or longer periods if they feel the circumstances warrant it. Closed visits

should only be applied for the specific period of time for which you are considered to be at risk

Will it affect my visits entitlement?

No. Closed visits should not be based on your visits entitlement for a particular period nor continue indefinitely until a specific number of visits have been forfeited. You may choose to take fewer or no visits whilst under closed visiting conditions. It should not affect your statutory visits order entitlement.

Are zero tolerance policies and the blanket imposition of closed visits permissible?

Some prisons operate so-called zero tolerance policies under which all prisoners found in possession of mobile phones or mobile phone accessories will automatically be placed on closed visits for three months without an individual risk assessment.

This 'blanket' approach has been found by the Prisons and Probation Ombudsman to be unfair and disproportionate. It also conflicts with published national policy. In response to one case the Ombudsman recommended that a prison operating such a policy should stop doing so. So, it may be unlawful for you to be put on closed visits for a fixed period of three months as an automatic minimum period simply on the basis of a zero tolerance policy without an individual risk assessment.

If I am already on closed visits, can further closed visits be imposed?

If you are already on a period of closed visits, and a further incident occurs indicating that you still pose a risk of smuggling prohibited items, the prison may impose a further period of closed visits.

However, the prison should not expect you to complete the initial period of closed visits before starting the second period. The second period of closed visits should commence immediately. It should not be imposed consecutively to the first period as this would likely to be seen as a disproportionate response to your risk.

Will the imposition of closed visits be reviewed?

Yes. A closed visits decision should be reviewed every month to assess whether there is a continuing need. If circumstances have changed so that closed visits are no longer necessary or proportionate then they should be lifted. For example, if a prisoner has had negative MDTs and there are no indications of drug abuse or drug dealing activity then closed visits are no longer necessary or proportionate to any reasonable risk of smuggling drugs.

This obligation to review the continuing need for closed visits applies to both an initial period of closed visits, and any further period applied during the initial period.

Can I appeal the decision to impose closed visits?

If you feel that closed visits have been wrongly imposed or have been continued unnecessarily after a period of three months, you can appeal the decision via the prison complaints procedure. If you have exhausted the internal procedure (forms COMP1 and 1A) and are unhappy with the response, you can then refer the complaint to the Prisons and Probations Ombudsman.

In order to strengthen any appeal, you should:

- request written reasons for the imposition of closed visits;
- include written reasons why closed visits should be ended;
- request to be updated with the outcome of each monthly review;
- request a summary of any 'intelligence' or evidence relied upon to support closed visits by the prison.

Governors are supposed to expedite appeals against closed visits and resolve them within one month of the original imposition.

If I am transferred to another prison, will closed visits still apply?

Yes. If you are still subject to closed visits when transferred, the prison you are being transferred to will maintain the closed visits, for the duration of the period they were due to apply at the previous prison.

Will closed visits affect my Incentive level?

Decisions taken in relation to status under the Incentives scheme should be based on an assessment of a pattern of behaviour. The Incentives scheme is separate from disciplinary proceedings. However, incidents such as the smuggling of drugs or other prohibited items will be taken into account when your status is reviewed. An individual incident would not usually, by itself, warrant a downgrading in status, but a particularly serious incident or a number of less serious incidents would be more likely to result in such a change.

How might closed visits affect my categorisation?

Decisions taken in relation to categorisation and/or re-categorisation should be based on an assessment of the likelihood of your escape and the risk you would pose if you were to do so. As with the Incentives scheme, generally decisions about categorisation or allocation should be treated separately from decisions under any disciplinary procedure. An individual incident such as the smuggling of drugs or other prohibited items would not usually, by itself, warrant categorisation to a particular level. However, any history of incidents will be a factor in determining your categorisation and/or allocation.

Banned Visits

What are visitor bans?

A visitor ban is when a Governor, acting on authority delegated by the Secretary of State, prohibits social visits to a prison or prisoner for a specified period. Prison Rules 73 and 35A(4) and YOI Rules 11(4) and 77 allow the Governor, to prohibit social visits (other than those ordered by the independent Monitoring Board) to a prison or a prisoner for a specified period.

When can a visitor ban be imposed?

This power to ban visitors has to be exercised in a reasonable manner in order to be lawful. A ban may only be imposed if the grounds within Prison Rule 35A(4)/YOI Rule 11(4) are satisfied. These are:

a) In the interests of national security;
b) for the prevention, detection, investigation or prosecution of crime;
c) in the interests of public safety;
d) for securing or maintaining security or good order and discipline in the young offender institution;
e) for the protection of health or morals;
f) for the protection of the reputation of others;
g) for maintaining the authority and impartiality of the judiciary; or
h) for the protection of the rights and freedoms of any person.

In most cases this will relate to the smuggling of items, although it may relate to conduct on a visit.

Visitors should only be banned if caught smuggling prohibited items (for example List A & B items such as drugs or mobile phones) and there is reason to believe that they were deliberately trying to smuggle the items into the prison. Generally, it is not considered appropriate to impose bans on visitors for smuggling List C prohibited items, unless there are other serious aggravating factors.

List A, B and C items are as defined in section 40A of the Prison Act 1952 (as amended by section 22 of the Offender Management Act 2007):

- **List A items** – drugs, explosives, firearms or ammunition and any other offensive weapon.
- **List B items** – are alcohol, mobile telephones, cameras, sound recording devices (or constituent part of the latter three items).
- **List C items** – anything prescribed for this purpose by the Prison Rules; this currently includes any tobacco, money, clothing, food, drink, letters, paper, books, tools, IT equipment.

Visitors should not be banned purely on the basis of an indication by a drug dog or on the basis of intelligence alone, unless that intelligence contains clear and persuasive evidence of smuggling or racketeering.

Any visitor ban imposed by the Governor must be **reasonable** in order to be lawful. The Governor also has discretion not to impose a ban in **exceptional circumstances**. Such circumstances would include when a ban would: cause disproportionate harm to the prisoner's or the visitor's **right to a family life** (which is protected under Article 8 of the European Convention of Human Rights (ECHR)); or a ban would cause disproportionate harm to the rights of the **prisoner's child or children** to access a parent (protected under Article 9(3) UN Convention on the Rights of a Child).

How long can a visitor ban be imposed for?

A ban will normally be for up to three months. However, it is for the Governor to decide whether a longer or shorter ban is appropriate in all the circumstances. Longer than normal bans might be appropriate where:

i) It is already the policy at the prison to apply a ban for longer than three months as a norm;
ii) A visitor has been caught twice or is caught again following the end of one period of ban;
iii) The visitor has sought to circumvent a ban already in place, in which case a further ban of one month will normally be added;
iv) The visitor is known to be seriously involved in drugs trafficking; or
v) The drug passed is a Class A drug or is in large quantity.

What happens after the visitor ban has ended?

Once the initial period of a ban has ended, the visitor(s) will normally have to visit you in closed or non-contact conditions for a further three months. As above, the length of this period of closed visits is at the discretion of the Governor. In addition, the visitor(s) will normally be subjected to searches every time they come until the prison is satisfied the visitor(s) are no longer a risk.

If prison staff discover that your visitor(s) have tried to enter the prison while banned, this will normally result in the visitor ban being extended by a month. Again, the length of the extension is at the discretion of the Governor.

Can I or my visitor(s) appeal a visitor ban?

If you feel the ban on your visitor will cause you serious problems, for example depriving your children of contact and hindering your attempts to maintain family life or that the ban has been wrongly imposed, you can appeal by way of the complaint system as mentioned above in relation to closed visits.

In order to strengthen any appeal, you should:

- request written reasons for the visitor ban;
- include written reasons why the visitor ban should be ended;
- request a summary of any ‘intelligence’ or evidence relied upon to support the ban by the prison.

Governors are supposed to expedite appeals against visitor bans and resolve them within one month of the original imposition. If the appeal is successful, and it is considered that the ban should not have been applied, the number of visits lost (if any) should be reinstated.

If your visitor(s) consider that their ban is unreasonable, visitors can also appeal by way of writing or phoning the Governor giving reasons why they think the ban is unreasonable. The Governor should review the decision to ban and/or the duration of any ban and respond in writing. If the Governor does not wish to overturn or amend the initial decision to impose the visitor ban, the matter should be referred to the Deputy Directors of Custody (or Director of High Security Prisons) for a final decision.

Will a visitor ban affect my Incentive level?

As above in relation to closed visits, decisions taken in relation to status under the Incentives scheme should be based on an assessment of a pattern of behaviour. The Incentives scheme is separate from disciplinary proceedings. However, incidents such as the smuggling of drugs or other prohibited items will be taken into account when your status is reviewed. An individual incident would not usually, by itself, warrant a downgrading in status, but a particularly serious incident or a number of less serious incidents would be more likely to result in such a change.

How might a visitor ban affect my categorisation?

Decisions taken in relation to categorisation and/or re-categorisation should be based on an assessment of the likelihood of your escape and the risk you would pose if you were to do so. As with the Incentives scheme, generally decisions about categorisation or allocation should be treated separately from decisions under any disciplinary procedure. An individual incident such as the smuggling of drugs or other prohibited items would not usually, by itself, warrant categorisation to a particular level. However, any history of incidents will be a factor in determining your categorisation and/or allocation.

PAS offers free legal advice and information to prisoners throughout England and Wales regarding their rights, conditions of imprisonment and the application of the Prison Rules.

We pursue prisoners' complaints about their treatment in prison by providing advice and information and, where appropriate, taking legal action.

Examples of issues we can advise on include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, resettlement and healthcare matters. We also provide advice on Family Law to female prisoners and on Immigration Law to prisoners with issues relating to detention or deportation.

If you have something that you'd like to discuss with one of our Caseworkers, you can:

Write to us at
Prisoners' Advice Service
PO Box 46199
London EC1M 4XA
(Mark your envelope Legal Mail Rule 39 in all correspondence with PAS)

Call us Monday, Wednesday or Friday
between 10am and 12.30pm or 2pm and 4.30pm,
or Tuesday evening between 4.30pm and 7pm
on
020 7253 3323

We produce the Prisoners' Legal Rights Bulletin, three times a year. This shares information about key cases and changes in Prison Law.
It is free to prisoners. To sign up for this, please write to the address above.

The Legal Education Foundation

www.prisonersadvice.org.uk

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