

Prisons & Probation

Ombudsman
Independent Investigations

Learning lessons bulletin

Complaints investigations | Issue 9

Complaints about discrimination

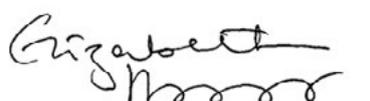
Foreword

This bulletin contributes to an emerging conversation about how prisons can better engage with and resolve prisoners' complaints about discrimination. It looks at more than 200 complaints about discrimination in prisons investigated by the Prisons and Probation Ombudsman (PPO) over the past five and a half years. It analyses recurrent issues and identifies four lessons which we hope will help improve the way prisons prioritise and investigate complaints about discrimination.

As a public body, HM Prison and Probation Service (HMPPS) has a duty to ensure equality and prevent discrimination. One important way in which HMPPS can fulfil its responsibilities is by ensuring complaints about discrimination are investigated promptly and effectively and, where necessary, taking action to address any problems identified. What our investigations show, however, is that all too often discrimination complaints are not investigated promptly, that the staff who investigate them often lack the training and confidence to address equalities issues effectively, and that prisons often fail to collect the equalities data needed to carry out a meaningful

investigation. This risks undermining prisoners' confidence in the effectiveness and legitimacy of the complaints process.

The solutions are straightforward: prisons need to allocate sufficient resources to the investigation of complaints about discrimination; and they need to ensure that the staff responsible for investigating these complaints (whether dedicated Equalities Officers or managers generally) are properly trained, that allegations of discrimination are addressed directly and not ignored or glossed over, and that equalities data is routinely collected. We recognise that this is not always easy to do when resources are tight. Unless these steps are taken, however, prisons – and the wider public – cannot be sure that they are treating prisoners fairly and equally.



Elizabeth Moody
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Background

The Equality Act 2010¹ identifies nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy or maternity, race, religion or belief, sex, and sexual orientation. The public sector equality duty gives public sector organisations, like prisons, specific responsibilities under the Act

to eliminate discrimination and advance equality of opportunity.² However, there is established and emerging evidence that suggests there are disproportionate outcomes for people in the criminal justice system with some of these protected characteristics.

David Lammy's recent review into the treatment of, and outcomes for, black, Asian and minority ethnic (BAME) individuals in the criminal justice system³ showed members of the BAME population are disproportionately imprisoned and report disproportionately negative treatment as compared to white prisoners. These disproportionate experiences are echoed for other protected groups within the criminal justice system. For example: both younger (18-20) and Muslim prisoners are more likely to have basic incentive and earned privileges (IEP) status,⁴

and prisoners with disabilities report worse experiences in reception, during their first few days and during transfer.⁵

Policymakers are working to address this disproportionality. However, prisons must also have an effective way to investigate and, if necessary, address and remedy individual concerns about discrimination based on protected characteristics. This publication engages with these issues, and makes recommendations to help maintain these systems' efficacy and legitimacy.

Policy

As a public authority, HMPPS has three duties under the Equality Act: eliminating unlawful discrimination, providing equal opportunities, and fostering good relations. These duties are underscored in PSI 32/2011, *Ensuring Equality*,⁶ which provides a framework for managing equality issues within prisons.

PSI 32/2011 also requires prisons to maintain an effective system for reporting and responding to incidents of discrimination in order to help perform the duties imposed by the Act. The method of reporting provided for in the PSI is the Discrimination Incident Reporting Form (DIRF).

The DIRF is not the only way prisoners can submit a discrimination-related complaint. Prisoners can also submit complaints in the usual way set out in PSI 02/2012⁷ and identify that their complaint involves discrimination (usually by ticking a box to indicate this). Regardless of how discrimination is reported, prisons should record and monitor these incidents, and address them in a timely way.

Context and PPO cases

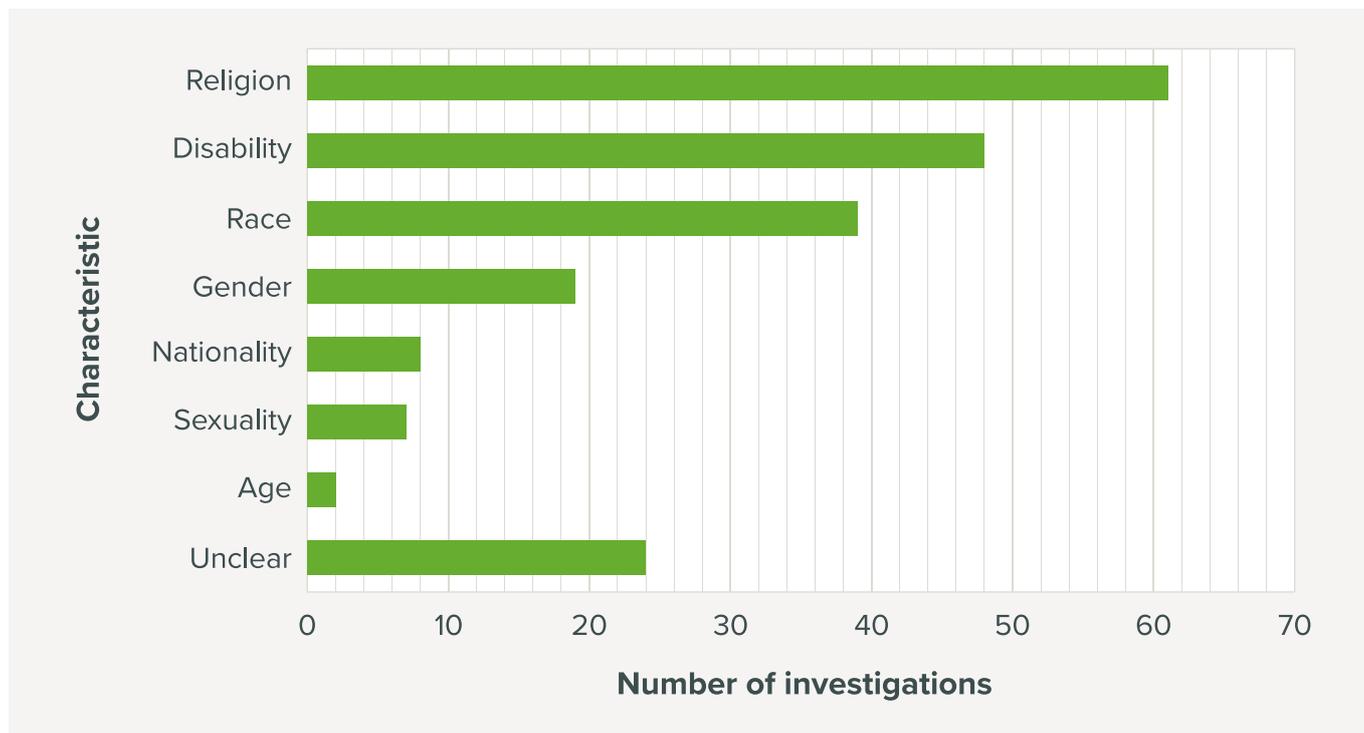
The Prison Reform Trust, in partnership with the Zahid Mubarek Trust, recently published research into the substance and handling of complaints arising from DIRFs. Their report raised a number of concerns about the DIRF process. Among these, the report identified issues with the standard of proof applied, instances of retaliation for prisoners submitting DIRFs, and overall confidence in the process.⁸ The PPO has a particularly relevant vantage point from which to examine these issues. We therefore add our voice to this conversation.

This bulletin looks at a sample of 208 complaints involving discrimination issues which were submitted to the PPO from January 2012 to July 2017 and subsequently investigated. The sample includes all complaints submitted during this time period that fulfilled our eligibility criteria, and either specifically mentioned 'discrimination' or were initiated using the DIRF process.

There are a few limitations to the sample. First, it is likely that it undercounts the number of discrimination complaints the PPO receives, as the search method could exclude some relevant complaints where discrimination issues were not apparent at the outset of the process. Further, our data only includes a self-selecting sample of complaints that proceed past the prison stage, and should not be taken as representative of discrimination complaints across the prison estate.

Of the personal characteristics protected by the Equality Act, the most common complaints investigated by the PPO alleged discrimination on the basis of religion, followed by disability, race, gender, nationality, sexuality, and then age. In 12% of the complaints included in this sample, the relevant protected characteristic is unknown. This occurs in two instances. In some cases, complaints to the PPO involve only procedural issues – the length of time to respond to a DIRF, for example – and the investigation will not collect data on the substance of the initial discrimination complaint. In other cases, a prisoner will claim discrimination that does not stem from a protected characteristic – discrimination based on the prisoner's offence, for example. In these two scenarios, the PPO records the protected characteristic as 'unclear'.

Figure 1: PPO complaint investigations by protected characteristic involved, 1 January 2012 – 30 July 2017



This bulletin identifies four themes that arise from investigating complaints about discrimination, and offers lessons about the allocation of resources, appropriate training, engaging with equality issues, and seeing the bigger picture. It summarises the PPO evidence about how prisons handle these complaints, and makes recommendations about how they can handle them more effectively in order to improve the legitimacy of the complaints system and help ensure custody is safer and fairer.

The allocation of resources

In most prisons, responsibility for investigating and responding to complaints about discrimination lies with a designated Equalities Officer. However, in the course of many of our investigations, equalities staff tell us the hours allocated to their equalities role were cut as a result of a reallocation of resources within the prison, in response to a reduction in staff numbers. Typically a full-time Equalities Officer has been replaced by a part-time Equalities Officer. This means Equalities Officers frequently have to do the same important job with significantly less time and fewer resources. As a result, the administration of discrimination complaints can suffer – staff may take longer to complete investigations, and complaints may get mislaid, overlooked or forgotten while they wait to be investigated. We have found several instances where this is the case.

Case study A

Mr A submitted a DIRF complaint about what he considered harsh treatment on the induction regime. Both the equalities manager and equalities officer spoke to him on occasions to tell him the incident was being investigated and to apologise for the delay. Five months later, Mr A still had not received a response to his original complaint. Mr A submitted a complaint to the PPO about the length of time it had taken to respond to his DIRF.

When we questioned the prison, they admitted they had mislaid Mr A’s complaint. In explaining this, they referred to staff changes. In particular, the Equalities Officer position had changed hands with an insufficient handover, and the role had been downgraded to a part-time position despite a continuing full-time workload. In the disorganisation that followed these changes, Mr A’s DIRF form had been lost and the prison neither investigated nor responded to his complaint.

In the case above, we upheld the complaint based on the mislaying of the form and the time it took to identify this error and respond to Mr A. However, we did not make any recommendations as, during the investigation process, the prison acknowledged their error, apologised, and responded to Mr A’s complaint.

We recognise the resourcing pressures many prisons are experiencing. However, the ability to complain in an efficient and effective way is paramount in a decent prison system that respects human rights, and particularly so in the case of discrimination complaints. If prisoners are to have confidence in the complaints system in general and in HMPPS's commitment to fair and equal treatment in particular, prisons must allocate sufficient resource to the investigation of complaints about discrimination.

Lessons to be learned

Lesson 1

Prisons should allocate appropriate resources to investigating equalities concerns, to ensure discrimination complaints are investigated promptly and effectively and that they are able to act quickly to set things right where necessary.

Appropriate training

PSI 32/2011 sets out management responsibilities for ensuring equality across the prison estate. Both the receipt of and response to a DIRF must be logged, and DIRF complaints must be monitored. The information from these complaints should be used to inform the prison's equality action plan. To carry out the tasks mandated under the PSI, staff should be appropriately trained to fulfil their role, including understanding their responsibilities under the Equality Act and the PSI. However, we often find that those who are tasked with investigating and responding to discrimination-related complaints in prisons have not received the appropriate support and training to do so.

Case study B

Mr B had surgery on his knee, following which he had serious mobility issues. After several requests, he was moved to a disabled cell. However, two days later, he was told to move to another cell, and threatened with a disciplinary charge if he refused. Mr B tried to contact both the equalities manager and a senior manager, but received no response to his messages. He told staff he wanted an explanation as to why he could not remain in a disabled cell following surgery that left him incapacitated. An operations manager responded to his complaint, saying the cell to which they had moved him was suitable for his needs.

Mr B appealed, complaining about the frequency of moves, the unsuitability of the proposed cell, the lack of assistance during the moves, and the lack of contact from both the equalities manager and the senior manager. He said this was discrimination against a disabled prisoner.

The senior manager responded to Mr B's complaint, saying his assigned cell was suitable for him, that he and the equalities manager did not know he was trying to speak with them, and that there was no discrimination against him.

Mr B complained to the PPO. We upheld his complaint. We considered Mr B had requested minimal reasonable adjustments following his surgery and these were either refused or delayed. The prison pointed out that Mr B was not a registered disabled prisoner; however, HMPPS guidance states that a person does not have to be registered as disabled to qualify for reasonable adjustments.

During the course of our investigation, the equalities manager told us she had received no training and little guidance for her post, particularly with respect to managing prisoners with disabilities. Our investigation also found the prison did a poor job of communicating with healthcare staff about Mr B's needs, and failed to assist Mr B to the best of their abilities. We made a number of recommendations – among them, that the prison further develop the role of equalities manager, ensuring the post-holder is provided with additional training to improve their service to prisoners.

In the case of Mr B, above, the equalities manager was unaware of their responsibilities under either the Equality Act or the relevant PSI, having no prior experience in an equality and diversity role, and receiving little to no training to support them to do their job adequately. Moreover, the manager and the prison seemed to be under the impression that a prisoner had to be registered disabled to receive relatively minor reasonable adjustments to facilitate safety and mobility. This lack of training, and misunderstanding of responsibilities under the Act and PSI, caused a great deal of inconvenience for a prisoner with impaired mobility, and resulted in a lengthy complaint that could reasonably have been avoided.

In some prisons, often in response to reduced staffing levels, the Equalities Officer is no longer responsible for investigating and replying to all

DIRFs, and responsibility for this has been devolved to managers generally. The principle behind this is that all managers should be engaged with and take responsibility for equalities issues, rather than seeing them as a niche issue to be dealt with by specialists. Although we welcome the principle of ‘mainstreaming’ equality issues, in our experience this only works well if all those involved have received appropriate training. As the next section of this bulletin illustrates, we see too many cases where it is clear that managers do not understand the issues and lack confidence in responding to complaints about discrimination.

We are not the only organisation to observe the negative impact of lack of training and support for those investigating complaints about discrimination. In 2008, a review of successes and failures in implementing race equality in prisons, following the Commission for Racial Equality’s report, noted that investigations into complaints about discrimination were of poor quality, and that investigators rarely received training and were poorly supervised.⁹ This point is further underscored by the Prison Reform Trust and Zahid Mubarek Trust in their research on DIRF complaints, which found continued gaps in equalities training, particularly with respect to understanding the burden of proof associated with these complaints.¹⁰

We identify the following lesson:

Lessons to be learned

Lesson 2

Prisons should ensure those responsible for dealing with discrimination-related complaints understand their responsibilities under the PSI and Equality Act, and receive appropriate training and support to fulfil their duties.

Engaging with equality issues

Investigating and responding to discrimination complaints can be very different from dealing with standard complaints in terms of both substance and process. With respect to the substance of these complaints, complaint handlers need to engage with discrimination issues in a way that underscores the commitment to fairness and ensuring equality contained in the PSI, directly addressing bullying, harassment, or unfair treatment based on protected characteristics.

PSI 32/2011 explicitly states the complaints system must ensure the equality elements of complaints are recognised, recorded, and investigated. However, one common theme we find across complaint investigations is the failure to engage with and directly address issues of discrimination. We also identified this issue in our recent publication on *Transgender prisoners*.¹¹ In some cases, managers respond to complaints about discrimination by simply asserting there has been no discrimination, without any attempt to investigate or to address the complaint. We also frequently find that complaint handlers will respond to a complaint without mentioning the equalities issues at all – they will investigate as though it was a standard complaint, but not address issues of discrimination or remedy any associated injustice. The case of Mr C below is one such example.

Case study C

Mr C was profoundly deaf, and required the use of two hearing aids. He was transferred from one prison to another. During the transfer, one of his hearing aids was put in a holdall along with several other items. These items were not processed for two weeks and, when the holdall items were returned to him, the hearing aid was missing.

Mr C submitted a complaint, which was passed to his former location for a response. The response did not address the circumstances of his complaint, simply stating his possessions should have moved with him.

Mr C appealed, saying he felt discriminated against and that the prison had not taken his disability into account. His complaint was again sent to his former location for a response. After nearly five months the prison replied. They said no hearing aid was listed on his property card, and they could not find a hearing aid in the property room or the safe. Mr C made a further application to his new prison and received a similar reply.

Mr C complained to the PPO. We upheld Mr C’s complaint. Mr C was profoundly deaf and had been without one of his disability aids for more than a year by the time he complained to us. While it is good practice to list all disability aids on a property card, this is not a mandatory instruction, and in our experience such aids are often not listed. The prison appeared to be unaware of this, and dismissed his complaint.

Further, despite the fact that Mr C specifically mentioned disability discrimination in his complaints, the prison failed to engage with this issue. They treated his complaint as though his hearing aid were a standard piece of property, rather than a disability aid, and did not acknowledge the disadvantage Mr C had suffered as a result. We concluded that the prison had fallen short of the standards of PSI 2/2012.

In this case, the prison investigated Mr C's complaint as they would a standard complaint about lost property. Although Mr C clearly identified it as such, the prison did not log it as a discrimination complaint, in line with PSI 32/2011 and did not address the injustice Mr C suffered as a profoundly deaf prisoner left without one of his necessary disability aids. This lack of engagement is an unfortunately common theme across discrimination complaints, regardless of the overarching type of complaint – we see this theme arise in the case of complaints about property, food, or staff behaviour, for example. Given this prevalence, we identify the following lesson:

Lessons to be learned

Lesson 3

In line with the requirements of PSI 32/2011, staff should log any complaint involving discrimination, and complaint handlers should directly address any identified discrimination issues.

Seeing the big picture

In addition to the differences of substance identified in the previous section, investigating discrimination complaints can also be procedurally different from investigating standard complaints. The complaints system usually addresses individual issues; however, equality complaints frequently involve gathering information about broader, systemic issues. Because of this, complaint handlers may have to seek information outside of the particular individual or incident that is the subject of the complaint, and look at wider trends or patterns. This is true regardless of who deals with the complaint – whether the prison or the PPO.

PSI 32/2011 requires prisons to monitor equality information on both prisoners and service provision, and that that this monitoring data is published. Despite this, we regularly find this data is not

available. As a result, it is difficult to adequately address the equality issues raised in such complaints. Indeed, in the last five years, we have seen a number of cases where it has been impossible for us to investigate the substance of the complaint because broader diversity data is not available. Such was the case with Mr D, below.

Case study D

Mr D complained about favouritism and discrimination in the allocation of wing jobs (which are often seen as desirable jobs). He alleged the prison employed only white British prisoners for servery roles. The prison said in response that Mr D did not get the servery job because of issues between himself and the other servery workers.

A few months after Mr D's initial application, the prison issued a notice 'in response to repeated complaints from prisoners regarding discrimination'. This stated that in order to be selected for any wing-based work, prisoners had to be on a waiting list; that waiting lists would follow a first come first served basis; and that appointments to wing roles would no longer be decided at wing level.

On an individual level, we found evidence that confirmed the prison's explanation for Mr D's failure to secure a servery job. Mr D's C-NOMIS notes showed that, while his own work was exemplary, his criticism of others' work led to friction.

However, Mr D's complaint also raised concerns about the prison's ability to address complaints of discrimination. We were unable to investigate Mr D's complaint that only white British prisoners were hired for servery jobs because the prison did not monitor or record the characteristics of those holding key jobs to assess whether there was discrimination. We were especially concerned about this as the Notice to Prisoners had referred to 'repeated complaints from prisoners regarding discrimination'. Prisons should have access to this kind of information to enable them to investigate complaints about discrimination in a reasonable and proportionate way. This did not happen here and, as a result, we made a recommendation that the prison establish regular monitoring of personal characteristics and the distribution of key prisoner jobs.

The legitimacy of the DIRF and broader complaint system depends on investigating discrimination complaints effectively. In order to do this, complaint investigators often need access to relevant data to understand the context and veracity of the complaint. This is not only beneficial for the complaint process, it also contributes evidence for the equality impact assessment, and the prison's broader equality action plan. We identify the following lesson:

Lessons to be learned

Lesson 4

In line with PSI 32/2011, prisons should establish regular monitoring and data collection of personal characteristics of prisoners and key service areas including, but not limited to, the allocation of jobs.

Conclusion

The failure to investigate complaints about discrimination properly can materially impact on the perceived legitimacy of the complaints system as a whole. This bulletin looks at five-and-a-half years of DIRFs and discrimination complaints investigated by the PPO. It identifies four themes from these investigations, along with associated lessons. We hope this bulletin and the case studies and lessons it contains will help prisons investigate these complaints more effectively in future.

Endnotes

- ¹ Equality Act 2010, c. 15 online at <https://www.legislation.gov.uk/ukpga/2010/15/contents>
- ² *Ibid*, at s. 149.
- ³ The Lammy Review: An independent review into the treatment of, and outcomes for, Black Asian and Minority Ethnic individuals in the Criminal Justice System. Online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
- ⁴ See Ministry of Justice (2017) 'National Offender Management Service Offender Equalities Annual Report 2016/17' *Ministry of Justice Statistics Bulletin*. Online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663390/noms-offender-equalities-annual-report-2016-2017.pdf
- ⁵ HM Inspectorate of Prisons (2009) 'Disabled prisoners: a short thematic review on the care and support of prisoners with a disability, March 2009.
- ⁶ Prison Service Instructions (2011) Ensuring Equality, PSI 32/2011. Online at https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi_2011_32_ensuring_equality.doc
- ⁷ The formal prison complaint system is governed by PSI 02/2012, *Prisoner Complaints*. This usually involves filling out a form (which, at the first stage is called a COMP1) and placing it in a complaint box. The boxes are emptied daily, and responded to within timescales that reflect the urgency of the complaint. COMP1 forms should have a tick box to specify the complaint involves discrimination, harassment or victimisation. Complaints can also be made verbally.
- ⁸ Edgar, K. and Tsintsadze, K. (2017) *Tackling discrimination in Prison: still not a fair response*, London: Prison Reform Trust. Online at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Tackling%20discrimination.pdf>
- ⁹ NOMS Race and equalities action group (2008) *Race Review 2008: Implementing race equality in prisons five years on*, London: National Offender Management Service, at page 62. Online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294157/1000439crace_review_part_1.pdf
- ¹⁰ See Edgar, K. and Tsintsadze, K. (2017) *Tackling discrimination in Prison: still not a fair response*, London: Prison Reform Trust, at pages 30, 37, 38. Online at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Tackling%20discrimination.pdf>
- ¹¹ Prisons and Probation Ombudsman (2017) Transgender prisoners, online at: https://s3-eu-west-2.amazonaws.com/ppo-dev-storage-4dvljl6iqfyh/uploads/2017/01/PPO-Learning-Lessons-Bulletin_Transgender-prisoners_Final_WEB_Jan-17.pdf. The relevant case in this bulletin concerned a complaint about transphobic bullying and harassment. Here, the prison ensured the prisoner was moved away from the alleged perpetrators, but did not investigate or make any findings about the substance of the discrimination.

Lessons to be learned

Lesson 1

Prisons should allocate appropriate resources to investigating equalities concerns, to ensure discrimination complaints are investigated promptly and effectively and that they are able to act quickly to set things right where necessary.

Lesson 2

Prisons should ensure those responsible for dealing with discrimination-related complaints understand their responsibilities under the PSI and Equality Act, and receive appropriate training and support to fulfil their duties.

Lesson 3

In line with the requirements of PSI 32/2011, staff should log any complaint involving discrimination, and complaint handlers should directly address any identified discrimination issues.

Lesson 4

In line with PSI 32/2011, prisons should establish regular monitoring and data collection of personal characteristics of prisoners and key service areas including, but not limited to, the allocation of jobs.

The Prisons and Probation Ombudsman investigates complaints from prisoners, young people in secure training centres, those on probation and those held in immigration removal centres. The Ombudsman also investigates deaths that occur in prison, secure training centres, immigration detention or among the residents of probation approved premises. These bulletins aim to encourage a greater focus on learning lessons from collective analysis of our investigations, in order to contribute to improvements in the services we investigate, potentially helping to prevent avoidable deaths and encouraging the resolution of issues that might otherwise lead to future complaints.

PPO's vision

To carry out independent investigations to make custody and community supervision safer and fairer.

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