

insideinformation – fact sheet

Rule 39 & Confidential Access

Information courtesy of Nicola Line of Chivers Solicitors Bingley

PSO 4411 provides guidance to prison staff and prisoners on correspondence between prisoners and their legal advisers. Any letter sent from a prisoner to a legal adviser or vice versa is afforded legal privilege and prison staff may not open, read or stop this correspondence unless there are exceptional reasons for believing it is not to or from a legal adviser. In such circumstances, the mail may only be opened on the instruction of an Operational Manager and more importantly in the presence of the prisoner concerned.

As referred to in Prison Rule 39 (1), a legal adviser is defined to be a solicitor, counsel, or a clerk who acts on behalf of either the solicitor or counsel. The Court Service is also to be treated as privileged. The envelopes of legal correspondence should be clearly marked 'Prison Rule 39'. Prisoners are also afforded 'Confidential Access' correspondence, which is outside of Rule 39. Confidential Access has the same handling arrangements as legal mail, but applies to correspondence with certain statutory bodies and individuals. These are as follows:

- Bar Council,
- Commission for Equality and Human Rights (CEHR),
- Courts, Criminal Cases Review Commission (CCRC),
- Embassy or Consular Officials, Healthcare
- Commission, Her Majesty's Inspectorate of Prisons (HMIP), Law Society, Members of European Parliament (MEP), Members of Parliament (MP)(only when acting in a parliamentary capacity) ,
- Members of the National Assembly for Wales (AM),
- Office for the Supervision of Solicitors (OSS),
- Office of the Legal Services Ombudsman,
- Official Solicitor,
- Parliamentary Commissioner for Administration(PCA),
- Prisons and Probation Ombudsman (PPO)
- The Samaritans.

If a prisoner writes to any of the above they should mark the envelope 'Confidential Access' (as opposed to Rule 39). All incoming mail to prisoners from the above bodies and individuals should bear the appropriate identifying mark that is associated with that particular organisation. If an outgoing letter does not bear the correct "Rule 39" or "Confidential Access" marking, but is clearly addressed to a legal individual or organisation, then the letter must still be treated as privileged and handled appropriately. If a letter is received by a prisoner from one of the bodies mentioned, but does not have the proper marking of that organisation, then the letter will be stopped by staff and opened in the prisoner's presence. Prisoners may not send social letters under Rule 39 or Confidential Access.

Despite the legal case of *Watkins v Home Office & Others* (2006) UKHL 17, which concerned the abuse of legal correspondence by prison officers, there may be cases where prisoners find officers not complying with PSO 4411 Annex A with regards to the proper handling of legal and privileged correspondence. Likewise, problems can occur for prisoners when organisations use handwritten envelopes. As long as the official marking is stamped on the envelope this should be accepted by the Prison. The Courts have shown willingness to intervene in such cases and prisoners should seek legal advice as this could be challenged by way of Judicial Review.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis and applies to England and Wales. It is intended for use as guidance only. If you propose taking action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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