

Adjudications

There are approximately 100,000 disciplinary hearings or adjudications held in prison each year. These are carried out either by prison staff - governors, directors, operational managers and 'Developing Prison Service Managers' (formerly principal officers) - or by independent adjudicators/visiting magistrates. Unlike prison governors, independent adjudicators have the power to award up to 42 additional days' imprisonment for each finding of guilt.

Guidance on adjudication procedure is given in PSI 2011-47. According to PSI 2011-47 an adjudication has two stated purposes:

- (a) to help maintain order, control, discipline and a safe environment by investigating offences and punishing those responsible;
- (b) to ensure that the use of authority in the establishment is lawful, reasonable and fair.

When a charge is brought against a prisoner, the adjudicator must follow the guidance in PSI 2011-47 on the conduct of adjudications. They must act fairly and justly. If they depart from the guidance and compromise fairness, their decisions risk being overturned if the adjudication is reviewed.

Most prisoners are bewildered when they appear before an adjudicator. It can be a frightening and frustrating process. We aim in this information sheet to assist prisoners facing adjudications to achieve justice and fairness. Unfortunately we cannot list every detail of every prison rule governing the adjudication procedure, but we advise you to carefully read PSI 2011-47 on the conduct of adjudications. If you are in any doubt about any part of your adjudication, you should request an adjournment to seek legal advice.

The Notice of report (or 'nicking sheet')

When a prisoner is placed on report, s/he should be served with a form DIS1 ('nicking sheet' – formerly F1127). This must be issued within 48 hours of the alleged offence being discovered and at least two hours before the start of the adjudication. The 48-hour rule must be strictly

adhered to and applies at all times, including weekends and public holidays.

Before the adjudication you should ask to be provided with copies of all paperwork relating to the charge. PSI 2011-47 para 2.9 states that if the prisoner's legal representatives (ie solicitors who attend the hearing) request copies of the adjudication papers (DIS1, written statements, etc) these should be provided at no cost. If legal advisers (ie solicitors who provide advice to the prisoner but do not attend the hearing) request papers they should be told that papers will not be supplied directly to them, but the prisoner can request them and send them on to the advisers.

The DIS3 (Record of Hearing)

The DIS3 is a form on which the adjudicator keeps a record of the hearing of the adjudication.

The adjudicator will begin the adjudication by asking a series of questions:

1. Have you received the form DIS 1?
2. Have you received the form DIS 2 (a sheet explaining how the hearing will proceed)?

The charge is then read out and the following questions asked:

3. Do you understand the charge?
4. Do you understand what is happening?
5. Do you want legal advice or help during the hearing before proceeding further?
6. Have you had enough time to think about what you want to tell me and prepare a defence?
7. Did you receive any witness statements already provided for the hearing?
8. Have you made a written statement/reply?
9. Will you be calling any witnesses?
10. How do you plead - guilty or not guilty? (If you refuse to plead, a plea of not guilty is entered.)

Questions 1 and 2 are standard procedure. If your answer to questions 3 or 4 is 'no' the adjudicator should explain. If your reply to 8 is 'yes', then your written reply will be read out, either by yourself or by the adjudicator.

Question 5 is very important as you may be able to request an adjournment either to seek legal advice or to search for witnesses.

Legal representation

On question 5 if your answer is yes, it is the adjudicator's duty to explain the possibilities of assistance in the forms of legal representation, legal assistance or a McKenzie friend (the latter can usually be a member of the chaplaincy, probation, teacher or fellow prisoner). It is at the adjudicator's discretion whether to allow you such assistance. You should note however, that you are entitled to legal representation in cases before an independent adjudicator.

If a prisoner requests assistance, the adjudicator must consider the request by completing the relevant section on form DIS3. The DIS3 must include sufficient detail to show the adjudicator has properly considered the request(s).

There are set guidelines on the right to legal representation at governors' adjudications, which are referred to as the 'Tarrant Criteria'. When considering a request for further assistance, the governor must consider the following factors:

- (1) the seriousness of the charge and the potential penalty;
- (2) whether any points of law are likely to arise;
- (3) the capacity of the prisoner to present his/her own case;
- (4) whether or not there are likely to be any procedural difficulties;
- (5) the need for reasonable speed in hearing the charge;
- (6) the need for fairness;
- (7) anything else the prisoner raises.

If I am found guilty, can I appeal?

1. Review of adjudications heard by governors or directors – Briefing and Casework Unit

You can appeal against a finding of guilt at an internal adjudication by submitting form DIS8 (formerly ADJ1) within six weeks of completion of the hearing. The prison must forward this to the Briefing and Casework Unit (BCU). The BCU will consider the review request and make a recommendation to a Deputy Director of Custody (DDC), or the Director of High Security (DHS) who will then decide the appeal. The BCU will then write to the prisoner and Governor informing them of the DDC/DHS's decision. Alternatively your solicitor may write directly to the BCU, appealing on your behalf.

The reviewer may:

- a) uphold the adjudicator's decision
- b) mitigate the punishment (ie reduce it to something less severe),
- c) quash the finding of guilt and punishment

2. Review of independent adjudications – Chief Magistrate's Office

Prisoners or their legal adviser/representatives requesting a review of an adjudication conducted by an independent adjudicator should set out their reasons on form IA4 (not DIS8) or in a letter, and forward it to the Governor within 14 days of the end of the hearing. The Governor will then forward all the adjudication papers (as for governor cases above) to The Senior District Judge, Chief Magistrates' Office, Westminster Magistrates Court, 181 Marylebone Road, London, NW1 5BR

The Senior District Judge delegates review requests to a Nominated District Judge (NDJ), who considers them and writes to the prisoner and Governor to inform them of the outcome within 14 days of receiving the request.

The NDJ may quash or mitigate a punishment, but has no power under the Prison or YOI Rules to quash a finding of guilt by an IA.

In either case, the same rules apply as before the initial hearing in terms of obtaining a copy of the written record of the hearing. You can also seek legal advice and assistance from a solicitor with the appeal process.

If your appeal is unsuccessful, you can:

- make a complaint to the Prison and Probation Ombudsman within three months. The Ombudsman may make a recommendation to NOMS which although not binding will usually be accepted. The Ombudsman's remit however does not include judicial decisions, including those of IAs (District Judges), so if you are not satisfied with the outcome of the NDJ's review the only avenue open is to apply for a judicial review – i.e., to ask a court to look into the case and rule whether proper legal procedures were followed etc.
- apply for judicial review if some aspect of the adjudication was unlawful. Judicial review is only available in limited circumstances. You should always seek legal advice if you think it may apply.