

Adjudications

This information sheet aims to give you some basic information to assist you with the adjudication process and to know your rights. However, we strongly suggest that you always check Prisoner Discipline Procedures (Adjudications) Policy Framework 31.05.2024 when preparing for your adjudication. This sets out detailed guidance about the adjudication procedure (including all charges). If you are in any doubt about any part of your adjudication, you should request an adjournment to seek legal advice and ask to be provided with a copy of the Framework document. You have a right to view this.

Types of adjudication

Although the same general rules apply to both, there are two types of adjudication:

- **Governors' adjudications** are presided over by a senior member of prison staff- governor, director or operational manager, who can impose a range of punishments, including loss of earnings or privileges and cellular confinement. Except under very exceptional circumstances (set out in the 'Tarrant criteria') there is no right to be legally represented, although **you may seek legal advice via telephone or letter on their conduct**. Since December 2013 there is no legal aid for governors' adjudications; however PAS can provide free telephone legal advice.
- **Independent adjudications** are dealt with by visiting external judges who, unlike governors etc, have power to impose up to 42 additional days' imprisonment for each finding of guilt. **You have a right to be legally represented at these hearings and legal aid is available.**

Charges

Disciplinary charges are listed in Prison Rule 51, paragraphs 1-25. Full guidance on the charges, including what needs to be established

in order to prove guilt, is set out in the Framework document. You should always look at this before your hearing.

The notice of report

When a prisoner is placed on report, s/he should be served with a form DIS1 (often referred to as a 'nicking sheet'). 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. Framework para 4.25 states that if the accused prisoner or legal representative (ie a solicitor who attends a hearing in front of an independent adjudicator (IA)) or legal adviser (ie a solicitor who provides advice to a prisoner on a governor's adjudication) requests copies of the adjudication papers (DIS1, written statements etc), these should be provided to them. Para 4.24 says that if evidence such as CCTV/BWCF is relied on for the adjudication, this must be able to be viewed by the prisoner or their legal representative, if not it is likely to lead to a successful appeal if a guilty finding is made. If it is too high risk to be viewed it should not be relied on as evidence.

The hearing

The adjudicator will open the hearing by asking:

1. Have you received the form DIS1?
2. Have you received the form DIS2 (a sheet explaining how the hearing will proceed)?

The charge should then be read out and the following asked and replies recorded on the DIS 3 (the form on which the adjudicator keeps a record of the hearing of the adjudication):

3. Do you understand the charge?
4. Do you understand what is happening?
5. Do you want legal advice or representation 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.)

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 important as you may be able to request an adjournment either to seek legal advice or to search for witnesses. If you have witnesses you want to call, it is important to ensure you provide their names and they are recorded on the DIS3. If you believe that there are relevant witnesses but you do not know their names, you should tell the adjudicator. In general you should check that the adjudicator records any requests you make, even if they are refused, together with the reasons for refusals.

You can ask questions of the reporting officer and any other witnesses. Written evidence can be accepted if all parties accept the statement and have no questions. CCTV or body-worn camera video recordings will also be accepted [4.24]. In some circumstances circumstantial and hearsay evidence are permissible, although direct evidence should be treated as preferable. MDT confirmation test results are accepted as evidence, even though the scientist who performed the test is not required to attend.

Access to adjudication paperwork

After your adjudication has concluded, you are entitled to a copy of the DIS3 and should request a copy of this for your records.

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Appeals against governors' adjudications

You can appeal against a finding of guilt at an internal adjudication by submitting form DIS8 within 6 weeks of completion of the hearing. The prison must forward this to the Prisoner Casework Section [para 6.203]. They will then consider the review request and make a recommendation to the Prison Group Director who will then decide the appeal. The reviewer may:

- a) uphold the adjudicator's decision;
- b) reduce the punishment to something less severe;
- c) quash the finding of guilt and punishment.

If your adjudication is quashed on appeal or dismissed/not proceeded with and you're downgraded to Basic, you should have an IEP review ASAP as this could be unfair [para 6.200]. If your appeal is unsuccessful, you can complain to the Prison and Probation Ombudsman (Independent Prisoner Complaint Investigations) within 3 months. The PPO can make a recommendation to the prison which, although not binding, will usually be accepted. In very limited circumstances you could apply for judicial review of a governor's adjudication, if an aspect of it was unlawful.

Please also see PAS' self-help toolkit on Governors' adjudications.

Appeals against independent adjudications

To appeal against the punishment given by an IA you should complete a form IA4 (not DIS8) and submit it to the governor within 14 days of the end of the hearing. The governor will then forward all the adjudication papers to The Senior District Judge, Chief Magistrates' Office, Westminster Magistrates Court, 181 Marylebone Road, London, NW1 5BR. Solicitors can also send appeals direct to Westminster Magistrates' Court.

Reviews are conducted by a Nominated District Judge who may quash or mitigate a punishment, but has no power to quash a finding of guilt. **This can only be done by judicial review.** If you believe you have a strong case for challenging an IA finding of guilt on the grounds it was unlawful, irrational or procedurally incorrect you should obtain legal advice as soon as possible.

<p>PRISONERS' ADVICE SERVICE PO BOX 46199, LONDON EC1M 4XA Advice Line: TEL: 020 7253 3323 Mon, Wed, Fri 10am-12.30pm & 2pm-4.30pm</p>
